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NO. 63204-3-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

PACIFIC GUARDIANSHIP SERVICES, INC. on
Behalf of MARIANO ROMERO ROMERO
Plaintiff/Appellant,

v.

NWCC INVESTMENTS V, LLC
Defendant/Respondent

RESPONDENT'S BRIEF

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I. STATEMENT OF THE CASE

This lawsuit arises from an alleged on-the-job injury. Appellant Mariano Romero claims that he was injured on a construction site in February 2007 while he was an employee of Green Valley Drywall, an independent contractor. Appellant Romero apparently fell from a single wooden plank while he was taping drywall in the bathroom of a restaurant during construction of Phase V at the Snoqualmie Ridge complex (hereinafter “Snoqualmie Ridge”). Appellants sued the general contractor, B&B Equipment Construction & Supply, Inc. (hereinafter “B&B Construction”) and the property owner, Respondent NWCC Investments V, LLC (hereinafter “NWCC”). NWCC was specifically incorporated to act as the building owner for Phase V at Snoqualmie Ridge. CP 132-133. B&B Construction is a corporation wholly owned by Jim Boyer, and for the past several years, NWCC and B&B Construction have been involved in numerous construction projects as owner and general contractor. CP 44-73.

In this case, NWCC was the owner of Snoqualmie Ridge and was not the general contractor on the jobsite. CP 132-133. B&B Construction was paid to be the general contractor on the Snoqualmie Ridge jobsite and assume all responsibilities of a general contractor on the jobsite. CP 132-133. More specifically, B&B Construction, as the lone general contractor at Snoqualmie Ridge,

was responsible for jobsite safety and conducted safety meetings. CP 132-133.

Furthermore, NWCC, the property owner, neither supervised nor retained control over the method and manner of work performed by the subcontractors at Snoqualmie Ridge. Green Valley Drywall directly employed Appellant Mariano Romero, paid his wages, and had supervisory authority over him. CP 132-133. NWCC was neither responsible for, nor did it conduct, any safety meetings on the jobsite. CP 132-133.

Accordingly, NWCC moved for summary judgment asking the trial court to dismiss Appellants' claims because it did not owe a duty to the employee of an independent contractor since it neither assumed a supervisory role over the safety of the workplace nor retained control over the workplace. B&B Construction did not oppose NWCC's motion for summary judgment. CP 16-28; CP 74-78.

On February 27, 2009, King County Superior Court Judge Jim Rogers granted NWCC's motion for summary judgment and dismissed Appellants' claims against NWCC with prejudice. CP 80-81. On March 3, 2009, Appellants and B&B Construction proceeded to mediation and settled Appellants' claims against the general contractor. Thereafter, on March 23, 2009, Appellants filed a notice of appeal to the Court of Appeals, Division One. CP 82-85.

II. SUMMARY OF ARGUMENT

The issue before the Court is whether NWCC controlled the manner in which Green Valley Drywall performed its work, not whether NWCC meets the definition of a contractor under an irrelevant registration statute.

NWCC did not owe a duty to Appellants and is not liable for injuries to an employee of an independent contractor. It is undisputed that Appellant Mariano Romero was an employee of independent contractor Green Valley Drywall. NWCC did not retain control over the manner in which Green Valley Drywall performed its work. Furthermore, B&B Construction, was paid to be the general contractor on the Snoqualmie Ridge jobsite and was responsible for jobsite safety.

Washington law makes clear that NWCC, as the jobsite owner, is not liable for injury to an employee of an independent contractor since it did not control the manner of the independent contractor's work. Appellants failed to provide any evidence to the trial court that NWCC retained the requisite control mandated by Washington case law and they have failed to provide the requisite evidence to this Court.

Instead, Appellants argue that the contractor registration statute somehow mandates that an owner can be liable for an injury to the employee of an independent contractor. Appellants, however, have once again failed to provide any legal authority to support their novel theory that the contractor registration statute imposes liability

under the facts of this case. NWCC is not a registered contractor. Regardless, the contractor's registration statute does not apply in this case because NWCC qualifies for at least two exemptions from the statute.

The bottom line is that NWCC neither supervised nor retained control over the method and manner of work performed by the subcontractors at Snoqualmie Ridge; therefore, it cannot be held liable for negligence under the facts of this case and Washington law. As such, NWCC respectfully requests the Court affirm the trial court's summary judgment dismissal.

III. ARGUMENT

A. **NWCC WAS NOT THE GENERAL CONTRACTOR AND NOT RESPONSIBLE FOR SAFETY.**

Appellants' original Complaint alleged that "Defendant NWCC was the general contractor at the worksite" located at Snoqualmie Ridge.¹ This is false. NWCC was the owner of the property at Snoqualmie Ridge.² It is undisputed that B&B Construction was the general contractor on this jobsite.³ Jim Boyer, Sr., principal of B&B Construction, has repeatedly acknowledged that B&B Construction was the general contractor at Snoqualmie Ridge and that B&B Construction assumed all duties of the general

¹ CP 1-12.

² CP 132-133.

³ See B&B Construction's Answers to Plaintiffs' First Interrogatories attached to the Declaration of William Spencer. CP 89-118.

contractor on the jobsite. CP In fact, Jim Boyer testified to the following at his deposition:

Q: You identified B&B Construction as the general contractor on this job, correct?

A: Yes.

Q: And counsel has asked you questions about the split of responsibility or authority between yourself and Mr. McDonald. But is there any question in your mind that you were the general contractor on the Snoqualmie Ridge Phase V project?

A: I was the general contractor, yes.

...

Q: And in terms—for example, as the general contractor, was it your responsibility to supervise the work of the subcontractors on site?

A: Yes, sir.

Q: And it was your duty as general contractor to schedule the subcontractors?

A: Yes.

...

Q: Have you ever considered him [Mark McDonald] to be a general contractor on any of these projects you've had with him?

A: On any of the projects I've been on, no,

sir.

Q: That's what he pays you to do, correct?

A: That is correct.⁴

It is undisputed that B&B Construction took responsibility for supervising the subcontractors on the Snoqualmie Ridge jobsite. NWCC had no such responsibility in this case. Since NWCC cannot be held liable as a general contractor, the Court should affirm dismissal of Appellants' claims against NWCC as a matter of law.

B. NWCC NOT LIABLE FOR INJURY TO INDEPENDENT CONTRACTOR'S EMPLOYEE.

The general rule at common law is that an owner who engages an independent contractor is not liable for injuries to employees of the independent contractor resulting from their work. *Kelly v. Howard S. Wright Construction Co.*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978) (citing *Fenimore v. Drake Construction Co.*, 87 Wn.2d 85, 549 P.2d 483 (1976); *Larson v. America Bridge Co.*, 40 Wn. 224, 82 P. 294 (1905)).⁵ An "independent contractor" is a person who contracts with another to do something for him but who is not controlled by the other or subject to the other's right to control with respect to his physical conduct in the performance of the

⁴ See excerpts from the January 13, 2009 deposition of Jim Boyer, Sr. attached to the Declaration of William Spencer. CP 89-118.

⁵ See also W. Prosser, *Handbook of the Law of Torts* at 468 (4th ed. 1971) (hereinafter referred to as Prosser); 2 *Restatement of Torts* 2d s 409 (1965).

undertaking.⁶ Property owners who engage independent contractors are not liable for injuries incurred by employees of the independent contractor because they cannot control the manner in which the independent contractor works.⁷

In this case, Green Valley Drywall, an independent contractor, agreed to perform drywall services pursuant to a one-page contract with NWCC.⁸ At the time of the alleged accident, Appellant Romero was an employee of independent contractor Green Valley Drywall. Therefore, under Washington law, NWCC is not liable for the injuries sustained by Appellant Romero because he was an employee of an independent contractor.

C. NWCC DID NOT RETAIN CONTROL OVER GREEN VALLEY DRYWALL'S WORK.

In order for a jury to find NWCC liable, Appellants must provide evidence that there was such retention of a right of supervision by NWCC that the independent contractor, Green Valley Drywall, was not entirely free to do its work in its own way. In this case, there is simply no evidence that NWCC retained control over the manner of performance or that NWCC affirmatively assumed responsibility for project safety. Therefore, NWCC owed no duty to Appellant Romero regarding project safety and cannot be held liable for his injuries.

⁶ *Id.* (citing *Restatement (Second) of Agency* §2(3)).

⁷ *Id.*

⁸ See contract attached to the Declaration of William W. Spencer. CP 89-118.

As previously outlined, a party who hires an independent contractor cannot be liable for injuries to the independent contractor's employees. *Kelley v. Howard S. Wright Construction*, 90 Wn.2d 323, 330, 582 P.2d 500 (1978). An exception to the general rule of non-liability for an owner to the employee of an independent contractor exists when the owner retains the right to direct the manner in which the work is performed. This exception to the general rule, however, exists only when the owner has "retained control" over the work place and affirmatively assumes responsibility for project safety.⁹

Under this exception, in order to find an owner liable, there must be such retention of a right of supervision that the independent contractor is not entirely free to do the work in its own way. In this case, there is simply no evidence that NWCC "retained control" over the manner and method of performance of Green Valley Drywall's work or that NWCC affirmatively assumed responsibility for project safety.

In fact, Sergio Blanco, the owner of Green Valley Drywall, testified at his deposition that Appellant Romero was working for him at the time of the accident and that B&B Construction was the general contractor at Snoqualmie Ridge.¹⁰ Furthermore, Sergio Blanco testified that he supervised his own employees on the jobsite

⁹ *Id.* (citing *Henning v. Crosby Group, Inc.*, 116 Wn.2d 131, 134, 802 P.2d 790 (1991)).

¹⁰ See excerpts of the Deposition of Sergio Blanco, p.74, attached to the Declaration of William Spencer. CP 89-118.

and that Mark McDonald/NWCC never told him how to do his job.

More specifically, Sergio Blanco testified as follows:

Q: Did Mr. McDonald ever instruct you in terms of your work duties on the Snoqualmie job?

A: No.

Q: Did you ever talk to Mr. McDonald?

A: Just once.

...

Q: Did Mr. McDonald ever tell you how to do your job.

A: No.¹¹

Since NWCC neither retained control over the method and manner of Green Valley Drywall's performance, or affirmatively assumed responsibility for project safety, NWCC owed no duty to Appellant Romero and cannot be held liable for his injuries.¹²

¹¹ *Id.*

¹² Washington is far from being the only jurisdiction adhering to the rule that there is no liability against an owner for injury to an independent contractor's employee unless the plaintiff can prove a high degree of control over the performance of the independent contractor's work. *See, e.g., King v. Midas Realty Corp.*, 204 Ga.App. 590, 420 S.E.2d. 62 (1992) (summary judgment could be granted for defendant where contract unambiguously placed all responsibility for workplace safety on contractor, and employer's uncontroverted deposition showed that inspection was limited to determining progress of work for purposes of payment); *Brauning v. Cincinnati Gas & Electric Co.*, 54 Ohio App.3d 38, 560 N.E.2d 811 (1989) (person who employs general contractor but does not actively participate in work does not, merely by virtue of supervisory capacity, owe duty to employees of independent contractor injured while performing work); *Kendrick v. Alabama Power Co.*, 601 So.2d 912 (Ala 1992) (contractor's employees testified that no agent or employee of defendant had ever given them instructions regarding job performance).

In *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 53 P.3d 472 (2002), the Washington Supreme Court established the requisite right to control and cited the Restatement (Second) of Torts §414 comment c (1965) at page 121:

It is not enough that [the jobsite owner] has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations or deviations.

...

There must be such retention of a right of supervision that the contractor is not entirely free to do the work in his own way.

The *Kamla* Court further held that the jobsite owner was not liable where it did not retain the right to interfere with the manner in which the independent contractor completed its work and did not affirmatively assume responsibility for the workers' safety.¹³ In this case, NWCC did not retain the right to interfere with Green Valley Drywall's work and it did not affirmatively assume responsibility for jobsite safety.

In *Kamla*, Plaintiff was an employee of Pyro-Spectaculars. Pyro-Spectaculars was hired to install fireworks on the Space Needle. Plaintiff was injured while installing these fireworks, and he

¹³ *Id.* at 121-22.

sued the Space Needle for negligence alleging it had breached its common law and statutory duties.¹⁴ Plaintiff argued the jobsite owner owed him a common law duty of care based on the jobsite owner's alleged retained control over the manner in which the contractor completed the job. Plaintiff further argued the jobsite owner owed him a statutory duty of care under the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW.

The Space Needle moved for summary judgment partly on the basis that Pyro-Spectaculars was an independent contractor, and that it did not retain control or supervision over the job.¹⁵ The trial court dismissed the claims on summary judgment. The Court of Appeals, Division One, affirmed the trial court's dismissal of the statutory and common law retained control claims. Thereafter, the Washington Supreme Court affirmed the Court of Appeals on the statutory and common law retained control claims and held that the owner was not liable because it did not retain control over the method and manner of work and that the owner was not similar enough to a general contractor to justify imposing liability on the owner.

More specifically, the Washington Supreme Court found that the Space Needle's agreement to provide Pyro-Spectaculars with a suitable display site and fallout zone, access to the display site to set up the display, adequate crowd control, firefighters, permit fees, security and fencing, public broadcast and public relations, and

¹⁴ *Id.* at 118.

¹⁵ *Id.*

technical assistance and support did not create a common law duty of care on the part of the Space Needle because it did not retain the right to interfere with the manner in which Pyro-Spectaculars completed its work, nor did the Space Needle affirmatively assume responsibility for the workers' safety.¹⁶ As an independent contractor, Pyro-Spectaculars was free to do the work in its own way.

In this case, much like Pyro-Spectaculars in *Kamla*, Green Valley Drywall was an independent contractor that was free to do its work in its own way. Furthermore, NWCC did not affirmatively assume responsibility for the safety of Green Valley Drywall's employees.¹⁷ Jobsite safety was the responsibility of the general contractor, B&B Construction.

At most, Appellants might be able to present evidence that Mark McDonald/NWCC occasionally visited the work site to check on the progress of the work. Occasional visits, however, do not mean that NWCC is liable for an injury to an employee of an independent contractor. In *Hennig v. Crosby Group, Inc.*, 116 Wn.2d 131, 802 P.2d 790 (1991), the Washington Supreme Court held that the authority to inspect a contractor's work and demand contract compliance does not equal "retained control" sufficient to strip away the common law liability insulation.

¹⁶ *Id.* at 121-22.

¹⁷ CP 132-133.

Hennig, supra, involved a personal injury action brought by a construction worker against his employer and the Port of Seattle for injuries sustained at a work site. Plaintiff was an employee of a construction company that had been retained by the Port of Seattle to rehabilitate Pier 91. Plaintiff recognized the rule of non-liability, but argued the facts fell under the common law exception, claiming that the Port of Seattle had retained control over a portion of the work and thus could be held liable. Plaintiff's contention of retained control consisted solely of the Port's express right under the contract to conduct inspections of the contractor's work to ensure full compliance with the contract provisions. The Washington Supreme Court found such involvement inadequate to permit liability on the part of the Port and noted the following:

The retention of the right to inspect and supervise to ensure the proper completion of the contract does not vitiate the independent contractor relationship.¹⁸

In this case, just like in *Hennig*, jobsite safety was not the responsibility of NWCC. NWCC never supervised Green Valley Drywall's employees.¹⁹ Under Washington law, "retained control" clearly requires much more than occasional visits to the jobsite to check on the progress of the work. Therefore, just as the Port was

¹⁸ *Hennig* at 134 (citing *Epperly v. Seattle*, 65 Wn.2d 777, 785, 399 P.2d 591(1965)).

¹⁹ CP 132-133.

dismissed in *Hennig*, NWCC was properly dismissed from this lawsuit.

Appellants may also attempt to infer that NWCC was Appellant Romero's employer in this case since NWCC issued payment to Green Valley Drywall. This claim, if made, should be rejected. A similar claim was made and rejected in *Craig v. Washington Trust Bank*, 94 Wn.App. 820, 976 P.2d 126 (1999).

Appellants' case is analogous to *Craig, supra*, wherein a janitor, who was employed by American Building Maintenance Company (ABM) providing janitorial services, brought an action against the bank, as property owner, for personal injuries sustained during the course of employment. The trial court granted summary judgment dismissing the claims against the bank.

The Court of Appeals affirmed, holding that the bank was not an employer within the meaning of RCW 49.17.060(2), and thus had no duty to comply with WISHA regulations. The appellate court noted that, while the bank had control over the quality of the cleaning services provided by ABM because it could terminate the contract if the service was not acceptable, ABM hired the janitor, kept her on the company books, controlled her duties and directly paid her wages.

In this case, as in *Craig, supra*, Green Valley Drywall hired Appellant Mariano Romero, kept him on its company books,

controlled his duties and directly paid him his wages.²⁰ Furthermore, Green Valley Drywall exercised supervisory control over its own employees.²¹ Since NWCC exercised no supervisory control over Appellant Romero, NWCC cannot be considered his employer. As such, Appellants' claims against NWCC were properly dismissed with prejudice on summary judgment.

There is simply no evidence in this case that NWCC told Green Valley Drywall and/or Appellant Romero how to perform the drywall work. Furthermore, there is no evidence that NWCC exercised supervisory authority so similar to a general contractor's that it gives rise to a duty of care to Appellant Romero. Finally, there is no evidence that NWCC had any influence or control over safety measures. Accordingly, the Court should affirm dismissal of NWCC from this lawsuit.

Appellants' brief does not even address, let alone attempt to distinguish, controlling Washington case law establishing that jobsite owners are not liable for injuries incurred by employees of independent contractors when they do not control the manner in which the independent contractor works. *See Kamla, supra*, 147 Wn.2d 114, 119, 53 P.3d 472 (2002) (retention of the right to inspect and supervise to ensure proper completion of contractual duties does not create a retained control exception to the rule of owner non-liability); *Hennig, supra*, 116 Wn.2d 131, 802 P.2d 790 (1991) (the

²⁰ CP 89-118.

²¹ *Id.*

authority to inspect a contractor's work and demand contract compliance does not equal "retained control" sufficient to strip away the common law liability insulation). On the other hand, the cases cited in Appellants' brief are easily distinguishable and do not establish that NWCC is liable for an injury to an employee of an independent contractor.

1. *No Authority for Appellants' Novel Registration Statute Theory.*

Appellants have failed to offer any authority to support their theory that a statutory definition, enacted for registration purposes, creates liability under the facts of this case. None of the cases dealing with an owner's liability for injury to an employee of an independent contractor discuss the contractor registration statute. In other words, Appellants have completely failed to offer any legal support that would allow a jury to find NWCC liable for an injury to an employee of an independent contractor simply because of a definition contained in the contractor's registration statute.

Hinton v. Johnson, 87 Wn.App. 670, 942 P.2d 1061 (1997), involved a breach of contract dispute between a contractor and a real estate developer. In that case, the Court allowed the plaintiff to proceed with a breach of contract claim because none of the exemptions to RCW 18.27 applied.²² There is nothing in *Hinton* to suggest that an owner is liable for an injury to an employee of an

²² In this case, two exemptions to RCW 18.27 apply. Therefore, the statutory definition of a contractor under the contractor's registration statute is inapplicable to NWCC.

independent contractor. Furthermore, there is absolutely nothing in *Hinton* to suggest that NWCC is liable under the facts of this case.

In *Weinert v. Bronco National Company*, 58 Wn.App. 692, 795 P.2d 1167 (1990), the Court noted an owner could be liable if it has the same overall supervisory authority as a general contractor and is in the best position to enforce compliance with safety regulations. In this case, however, there is no evidence to infer that NWCC had the requisite supervisory authority or that it was in the best position to enforce compliance with safety regulations. Furthermore, as previously mentioned, B&B Construction was the general contractor at Snoqualmie Ridge and was admittedly responsible for jobsite safety. Therefore, *Weinert* is easily distinguishable and inapplicable to the facts of this case.

In *Husfloen v. MTA Construction*, 58 Wn.App. 686, 794 P.2d 859 (1990), the owner specifically acted as the jobsite general contractor, directed the construction, and never denied that it was the general contractor. Once again, NWCC was not the general contractor and never directed construction on the jobsite. There is no evidence in this case that NWCC, the jobsite owner, told Green Valley Drywall, an independent contractor, how to perform its drywall work. In other words, the facts of *Husfloen* have literally no rational connection to the facts and the evidence in this case.

It is undisputed that B&B was the general contractor on the jobsite and exercised supervisory authority over the independent contractors. B&B neither disputed this fact nor contested NWCC's

motion for summary judgment. Furthermore, there is no evidence that NWCC had any influence or control over safety measures. Since NWCC neither assumed a supervisory role over the safety of the workplace nor retained control over the workplace, it cannot be held liable for negligence because it did not owe Appellant Romero a duty.

2. **Registration Act Definition is Irrelevant and Inapplicable.**

Appellants' argument that NWCC meets a statutory definition of a contractor under RCW 18.27 is an attempt to divert the Court's attention from the real issue in this case.²³ The issue is whether NWCC controlled the manner in which Green Valley Drywall performed its work, not whether NWCC meets a statutory definition of a contractor. As previously discussed, NWCC did not control the manner of Green Valley's work.

Regardless, NWCC qualifies for at least two exemptions from the contractor's registration statute under RCW 18.27.090. First, Appellants allege that NWCC furnished materials, supplies, and equipment to the jobsite. More specifically, Appellants now claim that NWCC "purchased and provided approximately eighty thousand dollars (\$80,000.00) in construction equipment. This equipment was

²³ The contractor's registration act was designed to prevent the victimizing of a defenseless public by unreliable, fraudulent and incompetent contractors, many of whom operated a transient business from the relative safety of neighboring states. *Harbor Millwork, Inc. v. Achttien*, 6 Wash. App. 808, 496 P.2d 978 (1972). The fact remains that NWCC is not a registered contractor.

used by subcontractors and B&B in building out the Snoqualmie Ridge Project, including that portion of the project developed under the auspices of Respondent NWCC.”²⁴ According to RCW 18.27.090(8), however, the provisions of RCW 18.27 do not apply to “anyone who furnished materials, supplies, or equipment” to the jobsite. As such, NWCC is exempt from RCW 18.27.²⁵

Second, RCW 18.27.090(11) states that the provisions of RCW 18.27 do not apply to “an owner who contracts for a project with a registered contractor.” In this case, it is undisputed that both B&B Construction and Green Valley Drywall were registered contractors. Therefore, subsection eleven (11) provides yet another, independent reason why RCW 18.27 does not apply to NWCC. *See Hinton v. Johnson*, 87 Wn.App. 670, 942 P.2d 1061 (1997) (provision in contractor’s registration act that exempts owner who contracts for a project with “a” registered contractor from being classified as a contractor is not limited to owner who contracts with a single registered contractor, but also applies when owner hires several registered contractors).

Since NWCC is exempt from RCW 18.27 for at least two separate reasons, Appellants’ argument that the contractor

²⁴ Please see Appellants’ Brief, p.9.

²⁵ See *Harbor Millwork, Inc. v. Achttien*, 6 Wash. App. 808, 496 P.2d 978 (1972) (contractor may be said to have “only furnished materials, supplies, or equipment” for purposes of subsection (8), even though items furnished have been custom designed and produced for use in structure in question); See also, *Norris Indus. v. Halverson-Mason Constructors*, 12 Wash. App. 393, 529 P.2d 1113 (1974) (exemption under RCW 18.27.090(8) applied where the alleged contractor contracted to supply materials).

registration statute applies to NWCC should be rejected. Furthermore, Appellants have once again failed to provide any Washington case law suggesting that a mere statutory definition somehow imposes liability under the facts of this case. The method and manner of control is the touchstone for imposing owner liability in a case such as this. NWCC, however, did not control the method and manner of Green Valley Drywall's work. Therefore, a jury cannot find NWCC liable for an injury to Appellant Romero in this case.

IV. CONCLUSION

Respondent NWCC respectfully requests the Court affirm the trial court's granting of its Motion for Summary Judgment. B&B Construction was paid to be the general contractor on the Snoqualmie Ridge jobsite and assume all responsibilities of a general contractor on that jobsite. Since NWCC neither supervised nor retained control over the method and manner of work performed by the subcontractors at Snoqualmie Ridge, it cannot be held liable for negligence because it did not owe Appellants a duty.

Appellants have failed to offer any legal authority to support their theory that the contractor registration statute somehow imposes liability under the facts of this case. NWCC is not a registered contractor. Regardless, the contractor's registration statute does not

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apply here because NWCC qualifies for at least two exemptions from the statute.

DATED this 3 day of September, 2009.

MURRAY, DUNHAM & MURRAY

By: 
William W. Spencer, WSBA #9592
Jason Soderman, WSBA #31111
of Attorneys for Respondent NWCC

CERTIFICATE OF SERVICE

I, Tammy Bolte, hereby declare under the penalty of perjury, under the laws of the State of Washington, that the following is true and correct.

I certify that on the 4th day of September, 2009, I caused a true and correct copy of Respondent's Brief to be served on the following via messenger:

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