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Supreme Court # ~~83864-0~~
Superior Court No. 08-2-12124-1KNT

SUPREME COURT
OF THE STATE OF WASHINGTON

MINI-DOZER WORK,
WAYNE R. RICHARDSON,

Appellants,

vs.

MATHEW JACKSON
(Inspector for Labor and Industries)

Respondent.

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Appellant
ANSWER BRIEF OF PETITIONER

Respectfully submitted by:

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ORIGINAL

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1. **Introduction: Status of cause of action;**

Appellant received respondent's brief on Thursday, June 17, 2010. Reply brief is due on Monday, July 19th, 2010. The King County Prosecuting attorney was served a copy of the appellant's brief at 9:34am on April 16, 2010 in compliance of the clerk of this court addressing the prosecuting attorney as an amicus curix. There has been no answer or reply from that service of process.

The trial in the District Court has finally been set for July 27, 2010, more than two years after the 90 day speedy trial date had passed. The preliminary reading to the respondent's brief shows confusion in the understanding of the statutes that make up this chapter. Nine tenths of the case law she lists is old case law that fails to comply with the case law cited by the appellant's brief. To wit:

A. Respondent's brief at page 1 ¶ 1 fails to determine the basic reason why this chapter is even in the RCWs. RCW 18.27.010 makes certain limitations as to what the contractor is allowed to do and the requirements for being licensed under this chapter. The interpretation of this chapter is stated throughout the different statutes that are incorporated therein. This

first statute RCW 18.27.010(1) makes the first question whether or not the contractor has to be registered under chapter 18.27 RCW.

" . . . 'Contractor' also includes any person, firm, corporation, or other entity covered by this chapter, **whether or not registered as required under this chapter or**"

RCW 18.27.010(5)

"General Contractor" means a contractor whose business operations require the use of more than one **building trade or craft** upon a single job or project or under a single building permit."

The argument presented by the appellant to the trial court ascertained the issues presented in this chapter was strictly for working on a structure, house, that some person uses as an abode. (*Davidson v. Hensen* 135 Wn.2d 112, 954 P.2d 1327 (May 1998) See page 26 appellant's brief) Structure also applies to an excavation of sufficient depth and size that has to be retained by a cement wall or piling. The respondent's brief claims otherwise on page 16 but makes no finding of fact by any case law to overturn *Davidson v. Hensen*. The fact is that the chapter itself limits the action to the building of a structure, abode to four units or less on a single building permit. **RCW 18.27.110**. Further, **HINTON v. JOHNSON 87 Wn. App. 670, 942 P.2d 1061 (Sept. 1997) @ 670**

“For purposes of the registration of contractors statute (RCW 18.27), a “contractor” includes a person or entity routinely in the business of acting as a building contractor”

The respondent’s brief is full of accusations and innuendoes to use up paper without case law or statute to back up the statement. However, there is no finding that Mini-Dozer Work builds houses or apartments. To this end her dictation or post hoc theory is moot as to the reason for the writing of chapter 18.27 RCW.

B. The respondent only implied pages 1-5 of appellant’s brief in her introduction on page one and two. The continued introduction on page 6 of appellant’s brief is accepted as a verity on appeal.

C. The issues cited by the respondent on page 2 fail to include all the issues presented in appellant’s brief submitting to the truth of the issues submitted in the opening brief.

D. Respondent’s Statement of the Case under “A” on page 2 and 3 does not discuss the five words cited in RCW 18.27.020(2)(a) **“as required by this chapter”**, nor does it take into account the legislature findings of 1993 c 454 at the bottom of RCW 18.27.010(12). The interpretation of c 454 pertains to the state loosing millions of dollars in

lost revenue for contractors failing to register with the tax department to do business in Washington State. There is no test to be taken under chapter 18.27 RCW. The crux of the writing of this chapter has nothing to do with knowing how to build a house or structure. If the party has the money to pay for insurance and a bond of \$12,000.00 or \$6,000.00 depending whether he is a general or specialty contractor he/she has the right to work on a structure. It further states the department of revenue should coordinate and communicate with each other to identify unregistered contractors. Mini-Dozer Work is properly registered with the state as required under the Trade Name Act of 1979. The defendant/respondent failed to challenge the plaintiff's capacity to sue under the Trade Name Act chapter 19.80 RCW. Such failure by the respondent/defendant waived the appellant's capacity to sue under the Trade Name Act. **DEARBORN LUMBER v. UPTON 34 Wn. App. 490, 662 P.2d 76 and 34 Wn. App. 490, 662 P.2d 76 (Apr. 1983).**

E. Page 3 ¶ 2, the reply brief short changes the wording claiming only the public is to be protected by a bond. The actual wording is

“It is the purpose of this chapter to afford protection to the public including all

persons, firms, and corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors. [1983 1st ex.s. c 2 § 21; 1973 1st ex.s. c 161 § 2.]

Mini-Dozer Work is a sole proprietor under the definitions of “persons”, or “firms” that furnish labor, material, or equipment to a contractor. Mini-Dozer Work is registered under the Trade Name Act chapter 19.80 RCW that is in compliance with the above recited five words stated in RCW 18.27.020(2)(a), RCW 18.27.030(1)(f) and RCW 18.27.010(4) that states “General Contractor shall not include an individual who does all work personally without employees or other “specialty contractors” as defined in this section. The terms “general contractor” and “builder” are synonymous.” RCW 18.27.010(9) states “Specialty contractor” means a contractor whose operations do not fall **within the definition of “general contractor”**. Mini-Dozer Work falls within the “**definition**” of a general contractor. Mini-Dozer Work is not a specialty contractor that includes an electrician, plumber, HVAC, mechanical, roofer, or some person or firm who permanently attaches a finished fixture to a structure. That exemption comes under RCW 18.27.090(5) that the respondent refuses to

argue in her brief. The respondent again makes a false statement at page 14 the last sentence states “sale of any finished products . . . The actual wording states “**The sale ‘or installation’ of any finished products, or articles or merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure.” The respondent continued the sentence after the word *structure* “under the common law of fixtures.” When reading a statute it must be interpreted as it is written. One cannot remove from or add to a statute to have it made to order one’s interpretation. **WASH. CEDAR v. LABOR & INDUS. 137 Wn. App. 592 (Mar. 2007), LANG v. DENTAL QUALITY ASSUR. COMM’N 138 Wn. App. 235 (Apr. 2007), SANDERS v. STATE 166 Wn.2d 164 (May 2009), ASS’N OF WASH. BUS. v. DEPT OF REVENUE 155 Wn.2d 430, 120 P.3d 46 (Sept. 2005), A.W.R. CONSTR. v. LABOR & INDUS. 152 Wn. App. 479 (July 2009)****

SERVICE OF PROCESS TO SOLE PROPRIETORSHIP

Respondent’s brief page 3 item “B” first sentence states:

“In 2001, Inspector Jackson issued an infraction to Mr. Richardson for failing to have a contractor’s license. CP 65.”

The above sentence is ambiguous and contains a court paper that has not been served on the appellant under RAP 9.6(a); “Any party may supplement the designation of clerk’s papers and exhibits prior to or with the filing of the party’s last brief.” and RAP 9.7(a), (b), (c).

The appellant may only assume that CP 65 may be a declaration retrieved from the archives of L & I or manufactured after the fact to fit the present situation. In either event the appellant’s brief stipulates to the process of service on pages 11 and 12 claiming the process of service did not comply per statute, court rule or WAC 10-08=180(1). **DOLBY v. WORTHY 141 Wn. App. 813, 173 P.3d 946 (Nov. 2007) @ 815**

“RCW 4.28.080 governs service of lawsuits and subsection (9) governs how to serve a company or corporation.¹ Service on either entity can be obtained by serving particular employees of the business, including an office assistant of the president. Subsection (15) governs personal service for individual defendants. An individual can be served in two ways: personal service, where the summons and complaint are delivered directly to the defendants, or abode service, where the summons and complaint are delivered to one of suitable age and discretion who lives with the defendant in his or her place of residence. RCW 4.28.080(15); CR 4(d)(1) states the service of process must be served by someone over the age of 18 yrs. with no interest in the parties or the action.

There has never been an affidavit of service filed in any action involved between the appellant and the respondent showing personal service on the sole proprietor. “Service was not obtained before the statute of limitations

expired. The trial court properly granted the worthys' motion to dismiss. Accordingly, we must affirm." @ 517 (See AB at page 19-20).

The respondent continues on page 3 and 4 referring to court papers not before this court to the appellant's knowledge stating that the respondent continued to file infractions to the prosecuting attorney only referring to RCW 18.27.020 that does not grant any documents to be sent to a prosecuting attorney. There was never a finding of fact issued by an administrative law judge required under RCW 18.27.250 stating the infraction was valid. Further, the respondent does not state that any hearing was ever granted to the appellant to confirm the infraction in front of an administrative law judge per RCW 18.27.250. The gravamen of the claims from the plaintiffs consisted of a signed contract between the appellant and the plaintiffs that comes under the rules of contract compliance that is to be heard in the Superior Court under contract law. The business Mini-Dozer Work being properly licensed with the State Tax Department and maintaining a Federal tax Identification Number effectively estopped any action instigated by any inspector of L. & I. This tort action was instigated against the respondent for interference with

Mini-Dozer Work's right to work in Washington State and violated Title 42 § 1983. The respondent claims the tort claim was administratively denied on January 10, 2006.

A tort claim does not mature until the tort action ceases under Title 42 § 1983. The time to file a tort action ceases four years from the last date of the same tort by the same Tort feasor. The dismissal of a claim by the State Risk Management entity does not dispose of the claim. It only means the State Risk Management is not going to pay the claim without a court ruling for the exact amount that has to be paid. However, this action was not against the state but was an individual action against a state employee for actions of continued barratry against a business owner properly licensed to work in Washington State.

Page 5 item "D" first ¶ is convoluted stating "In December 2008, **Inspector Jackson** filed a motion for default arguing, inter alia, that Inspector Jackson had not answered. CP 18-25. In response, Inspector Jackson filed his notice of appearance and answer to the complaint through an attorney general" who was not authorized to represent an employee of a state entity without a court order under RCW 4.92.150.

The respondent's answer was purposefully delayed for nine months by an attorney general who did not maintain a court order under RCW 4.92.150. **This is not due process of law.** The conflict of interest is intertwined with RCW 18.27.300 that limits the attorney general to only represent the **department** only in an administrative proceeding. This cause of action was/is not an administrative proceeding. The lawsuit against the respondent was a response demanded under RCW 18.27.290 for a tort action of improper service that included continuous acts of barratry from the year 2000 involving the same inspector. It does not limit what type of response is to be made. The infraction claimed the business Mini-Dozer Work was properly licensed with Washington State tax department but separated the owner/appellant from his business to try to gain extra taxes for working on a single project. **That is what started this lawsuit.** The argument in front of the administrative court in 2006 by the inspector stated Wayne R. Richardson could not sign a paper or contract with Mini-Dozer Work as the prime contractor under RCW 18.27.200(c).

The appellant presents this question to the court. Mini-Dozer Work is an assumed name that is licensed under chapter 19.80 RCW. The

assumed name maintains a Federal I. D. number filed with the Internal Revenue on June 25, 1967 with the owner listed as Wayne R. Richardson under Fed. I.D. 91-6113857. Tax returns were filed every year without any tax audits until 1997 when the Social Security Judge granted 100% disability for washing machine injury to the left arm at age 3. In 1998, a request to the Washington State B. O. Tax Revenue Department for a limited income finding that the left arm disability limited my work to minor jobs that I could work by myself. Mini-Dozer Work never hired any helpers after 1987. The question presented to this court and the respondent is “If the sole proprietor Mini-Dozer Work makes a contract to do excavation for another person, **who is supposed to sign the contract at the bottom and sign the checks for buying the materials?** It is not Joe Blow. It must be the owner of the business. Nevertheless, inspector Jackson at the hearing claimed Wayne R. Richardson could not sign and pay for the advertisement claiming Mini-Dozer Work was the entity looking for clients. There was never a warrant filed in any superior court as required under RCW 18.27.370(3). RCW 18.27.370(4) states the Sheriff must serve the warrant on the defendant for any order presented by

a superior court. There is no statute in any part of chapter 18.27 RCW that gives any statutory jurisdiction to any District Court Prosecuting Attorney. There has never been a printed finding by five Supreme Court Justices that an inspector of Labor and Industries had an automatic right to pass an infraction to a district court prosecuting attorney without having a hearing before the administrative law judge as required under RCW 18.27.250.

RESPONDENT'S ITEM IV. STANDARD OF REVIEW

Page 6 and 7 of respondent's brief make's an unfounded claim in the last paragraph stating "Richardson did not present any evidence in the defense of the summary judgment motion." Respondent makes issue with assignments of error on page 7 item "B" claiming legal authority and citation to the record on a motion for summary judgment but fails to state the moving party made any findings of fact and conclusions of law presented to the court and the non moving party. The respondent was the moving party for the summary judgment motion. As such, it is the moving party's responsibility to serve a proposed order claiming the findings of fact and conclusions of law. (CR 56 vbr 38 lines 7-8, vbr 39, 40-49, 50 lines 9-12).

PAGE 8 ITEM “V”. ARGUMENT OF RESPONDENT

The respondent at page 8 item “A.” cites RCW 4.92.100 under laws of 2006, ch. 82, § 1.² claiming the new law under chapter 4.92 RCW of the laws of 2006 applied to the action against the respondent. (See respondent’s foot note 2) She further states RCW 4.92.100 was amended in 2009. Statutes are not amended unless there is a Supreme Court ruling to amend said statute. Chapter 4.92 RCW is the new chapter of 4.96 RCW that was revised to accommodate Title 42 U.S.C. § 1983. The old statute RCW 4.96.020 along with RCW 4.92.100 are in conflict with *Felder v. Casey*, 487 U.S. 131, 138, 108 S. Ct. 2302, 2306, 101 L. Ed. 2d 123 (1998) (under supremacy clause, state nonclaim statutes do not apply to § 1983 claims). **WRIGHT v. TERRELL 162 Wn.2d 192 (2007) @ 196.**

The respondent did not argue this or cite this type dismissal in any paper or order for dismissal under the Motion for summary judgment. Likewise the respondent makes no reference to any CP, vbr, or case law to back up her statement for dismissal that allowed statutory jurisdiction on an in fraction issued by a L. & I. inspector to be presented to a prosecuting attorney. There is no statute in all of chapter 18.27 RCW that grants a

transfer of an infraction to a district court prosecuting attorney. Nor is there one cited by the respondent throughout the reply brief or argued by the respondent at summary judgment.

Page 9 ¶ 2 respondent states courts consistently hold that strict compliance with the requirements of the statute is required and that the proper remedy for failure to comply with the statute is dismissal of the action and cites two case law. She seems to imply that only one side of the claim must adhere to the wording of the statute. The old saying that ‘what is good for the goose is also good for the gander’, applies to the respondent as well as the appellant. The correct name of the business is Mini-Dozer Work; not “Works” as noted on line 4 of page 9.

The respondent’s referral to two case law for dismissal of an action is appropriate if the reading of the statute demands a certain action that must be adhered to or the cause is ripe for dismissal demands that the respondent must comply with the statutes governing his answer and argument. RCW 18.27.250 states unambiguously that “An administrative law judge **Shall** rule on each infraction. (See AB page 17)

The respondent page 24 cites RCW 18.27.250 as Assignment of

Error No 10 as being a requirement to pay an appeal bond is a deliberate false fallacy to mislead the court or she does not know how to interpret the statutes cited in this assignment of error as to what is required to happen first for due process of law to comply with the issuance of a citation as set forth on AB pages 8 and 9 lines 1, 3.

The respondent's argument at page 25 is not in sink with the wording of RCW 18.27.250 that demands "*an infraction under this chapter shall be heard by an administrative law judge of the office of administrative hearings*". This is where the respondent's theory as to the procedure required for due process of law to comply with Title 42 U.S.C § 1983 to keep the response out of the Statute of Frauds fails.

Respondent's brief at page 23-24 is not congruent with and does not maintain any congruity with the chapters that control contractors in this state. There is no rebuttal of the argument cited at bar (vbr 38-49) or rebuttal from the appellant's brief from page 12 through 26. Her arguments of the appellant's Assignments of Error through Error No. 13 are convoluted and fail to comply with her first claim that the "Courts consistently hold that strict compliance with the requirements of a statute

is required . . .” to wit:

EXAMPLES

1. Page 16 RB last ¶ states “The superior court did not say he was not required to have a bond; the court merely observed that he likely did not have one since he was not registered.” The actual quote from the vbr 30 @ line 8 “I mean, I don’t think this section applies to you except as something that you’re supposed to do.” This reply was taken from the argument on vbr 28 where the judge agreed with the definition of attaching some finished product permanently to a structure under RCW 18.27.090(5); and vbr 29 through line 21. Vbr 36 further expands on the bond payment and its first intended use to pay helpers wages who work for the contractor.

2. The respondent again at page 17 ¶ 2 falsely states the statute as written claiming only (starting at line 6) that “RCW4.92.150 does not require the Attorney General’s Office to obtain a court order to represent a state employee.” The actual wording of RCW 4.92.150:

“After commencement of an action in a court of competent jurisdiction upon a claim against the state or **any of its officers, employees, or volunteers arising out of tortious conduct** , , , the attorney general, with the prior approval of

the risk management division and with approval of the court, following such testimony as the court may require, may compromise and settle the same and stipulate for judgment against the state, the affected officer, employee, volunteer, or foster parent. [2002 c 332 § 15

The respondent's brief makes no argument on any part of the appellant's brief that starts on page 12 and goes through 25. She does make a false claim against *Davidson v. Hensen* cited on AB 26 but claims there is no continuity between the ruling in that case law that applied to the contractor registration act. Her hypothesis is not cognitive to the fact that Mini-Dozer Work is not required to be registered under chapter 18.27 RCW because he does not have any helpers and does not build houses or attach any finished fixture permanently to a structure.

3. The attorney general's claim that RCW 4.92.150 is a mandatory statute that a claim to the risk management entity of the state or municipality must be first heard by the entity before a lawsuit for the tort of an official is served and filed is spurious. **WRIGHT v. TERRELL 162 Wn.2d 192 (Nov. 2007), SANDERS v. STATE 166 Wn.2d 164 (May 2009) @ 171**

"RCW 43.10.040 uses the term 'officials.' An 'official' is defined as 'one who holds or is invested with an office.' WEBSTER'S THIRD WORLD DICTIONARY 1567 (2002). When used as an adjective, 'official' means 'derived from the proper

office or officer or authority.’ *Id.* We accord a plain and ordinary meaning to terms that are not defined by a statute unless a contrary legislative intent appears. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813, 828 P.2d 549 (1992)

To apply the statute without an official acts limitation would lead to a result the legislature obviously did not intend—requiring the attorney general to represent a judge before administrative agencies in all matters, both official and private. ‘Statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided.’ *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)

Justice Sanders was charged in the complaint before the Commission with ethical violations involving acts that are outside the scope of a judges official duties. . . the purpose of RCW 43.10.040 . . is to provide defense to an official when engaged in official acts. Justice Sanders knew or should have known that his conduct was unethical; therefore, he is not entitled to representation.”

The respondent Mathew Jackson holds an office with Labor and Industries as a compliance officer. The appellant stated in the claim that Jackson wanted to examine the documents of the expenses incurred by the appellant and that if that examination did not mature he would notify the King County District Court Prosecuting Attorney. CP 3-10. The following Monday the appellant made legal service of process against Jackson with acts of barratry. There was no finding by the court that Jackson did not form an act of barratry or was in compliance with his statutory job title that restricts his actions to personal service of the citation on the accused.

4. Respondent claims chapter 19.80 RCW is not a chapter that controls contractors under chapter 18.27 RCW. **DEARBORN LUMBER v. UPTON 34 Wn. App. 490, 662 P.2d 76 (Apr. 1983) @ 493**

“Upton now contends that Dearborn was barred from bringing suit by RCW 19.80.040.² Though from the record before us it appears that this issue is raised for the first time on appeal, Upton states that he raised it in closing argument. That was too late. . . . The objection must be raised by appropriate preliminary pleading, CR 9(a), or by answer. *Crosier v. Cudihee*, 85 Wash. 237, 239-40, 147 P. 1146 (1915). Since Upton did not challenge the plaintiff’s capacity until after his answer, this assignment of error is deemed waived. *Hale v. City Cab, Carriage & Transfer Co.* 66 Wash. 459, 462, 119 P. 837 (1912)”

The respondent claims for the first time on appeal that Mini-Dozer Work could not sue Michel Jackson for a tort against his business. (vbr 26)

5. Respondent’s brief at 25 ¶¶ 1, 2 are not congruous with the wording on the citation that was argued at bar. (vbr 26-27, 31-35, 38-42)

CONCLUSION

In finality the Honorable Hollis Hill stated she had to have a proposed order with findings of fact and conclusions of law. The moving party, Ms. Mortinson, the Attorney General fallacious representing Mathew Jackson, claimed she did not know what the findings of fact and conclusion of law on a summary judgment. Judge Hill hinted to her that it could be that there are no disputed facts. (vbr 49) Judge Hill then asked

the appellant to prepare a proposed order with the findings of fact and conclusions of law. (vbr 50). The point of testimony when the judge told the attorney general how the order could be worded placed the position of prejudice toward the non-moving appellant/plaintiff. CR 56 states the moving party shall serve their findings of fact and conclusions of law to the opposing party at the time of the service of their motion for Summary Judgment. This did not happen. Also CR 56 further states the moving party has the right to serve and file a reply to the non-moving party and the court five days before the hearing. That never matured. This may have been the reason Judge Hill started the questioning. However, if the Attorney General never objected to the non-moving party's argument at bar their argument in counter-diction on appeal is waved. **GREEN v. A.P.C. 136 Wn.2d 87, 960 P.2d 912 (Aug. 1998) @ 88**

“A party seeking summary judgment has the burden of establishing the presence of undisputed material facts that would support a judgment in the party's favor.

The fraud in this action against the respondent Mathew Jackson is his trying to separate the business owner from his business stating the business is properly licensed but trying to place the true owner into a

separate entity to gain extra taxes payable to the state. The wording of the infraction does/did not comply with due process of law. (See page 17-18 of appellant's brief.)

Respectfully submitted by:

July 19, 2010
Wayne R. Richardson

Wayne R. Richardson, owner of Mini-Dozer Work Pro Se