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Court of Appeals No. 47195-7-II
Pierce County Superior Court No. 14-2-06699-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

JOSEPH R. AMEDSON,

PETITIONER,

v.

PUGET SOUND ELECTRIC COMPANY, a Washington
corporation; and TRAVELERS CASUALTY AND SURETY
COMPANY, BOND # 105336057,

RESPONDENTS.

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JOSEPH R. AMEDSON'S PETITION FOR
DISCRETIONARY REVIEW – RAP 13.4(a)

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ORIGINAL

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I. PREFACE

The Court of Appeals made two very significant and obvious outcome determinative errors of law in its decision (made *without* oral argument) reversing the trial court's grant of summary judgment to Amedson. First, the Court of Appeals abdicated its judicial responsibility and duty to interpret statutory language as an issue of law – not as a question of fact. Second, the Court of Appeals prescribed a new legal standard applied to the Declarations of a party opposing a summary judgment motion; namely, that the opposition Declarations **must** be taken as true notwithstanding both *unopposed* general objections thereto and a Motion to Strike. The result of these errors was that the Court of Appeals considered speculative, self-serving, and equivocal assertions of future possible actions that were irrelevant and immaterial to the strict liability statutory scheme of Chapter 19.28 RCW. These errors taken together overturned a trial court decision in which it (1) interpreted statutory language as an issue of law; (2) considered only competent, admissible evidence; and (3) correctly decided as a matter of law that waiting for possible actions *in futuro* did not create a genuine issue of material fact regarding an action against an electrician's bond. *See Appendix, at pp. APP-14 -- APP-20.*

II. IDENTITY OF PETITIONER

Pursuant to RAP 13.4(c)(3), Joseph R. Amedson (Amedson) is the Petitioner asking the Supreme Court to grant discretionary review of Court of Appeals decisions terminating review. Amedson was the prevailing party in

Pierce County Superior Court on his Motion for Summary Judgment against Travelers Bond # 105336057 in the amount of \$ 4,000 under and pursuant to the strict liability statutes set forth in Chapter 19.28 RCW (Electricians and Electrical Installations).¹

III. CITATION TO COURT OF APPEALS DECISIONS

The Court of Appeals, Division 2, issued and filed its Unpublished Opinion on March 22, 2016. *See* Appendix, at pp. APP-2 -- APP-12.

Amedson timely filed his Motion for Reconsideration, together with a Motion to Publish any revised appellate decision based on his Motion for Reconsideration, on April 4, 2016. By its decision issued and filed on April 18, 2016, the Court of Appeals denied both of Amedson's Motions, thereby terminating its review. *See* Appendix, at p. APP-13.

IV. ISSUES PRESENTED FOR REVIEW

The issues of law presented to this Court for review are:

1. Whether the interpretation of the statutory term "any installation" in RCW 19.28.041(3) is solely for the court to determine as an issue of law, as properly done by the trial court, or for the trier of fact as a question of fact, as improperly decided by the Court of Appeals? Appendix, at p. APP-3.²

¹ The Court of Appeals, Division 2, reversed the trial court's Order of Summary Judgment based on several significant and obvious errors of law that should be reviewed by this Court; the correction of which patent errors will address a manifest injustice, restate the law, and reinstate Amedson's final judgment as properly determined and awarded by the trial court.

² Under the well known rules of statutory interpretation, RCW 19.28.041(3) must be read in concert with RCW 19.28.010(1) that mandates "*all wires and equipment, and installations thereof, . . . shall be in strict conformity* with this chapter, the statutes of the state of Washington, and the rules issued by the department". RCW 19.28.010(1) (emphasis added).

2. Whether “any installation” means and includes the admitted completion of rough-in wiring, the failure of the electrician in such installation to strictly comply with the requirements of Chapter 19.28 RCW, including the applicable National Electric Code, gives rise at that time to a claim against the electrical bond? Appendix, at pp. APP-3 and APP-11 -- APP-12.
3. Whether the legal standard by which Declarations opposing a motion for summary judgment is that such “must be taken as true for summary judgment purposes,” Appendix, at p. APP-9, or that only those portions of Declarations setting forth *incontrovertible* facts are taken as true in a summary judgment proceeding? *Thompson v. Wilson*, 142 Wn. App. 803, 811, 175 P.3d 1149 (Div. 2, 2008).

V. STATEMENT OF THE CASE

A. PREFACE TO ISSUES PRESENTED

As they did in Superior Court, in the Court of Appeals the Respondents did not challenge the strict liability standard imposed by Chapter 19.28 RCW in actions against the Electrical Contractor’s Bond.³

In issuing its order on summary judgment, the trial court determined that, as a matter of statutory interpretation for the court, the term “any installation” in RCW 19.28.041(3), read in concert with the mandate of RCW 19.28.010(1), means and includes rough-in and that, under the circumstances where the rough-in is admitted to be complete and the contractual relationship is brought to a conclusion, there is no requirement under Chapter 19.28 RCW that Amedson wait for and allow Respondents to also complete the

³ Their only issue regards whether Amedson must wait to bring such an action until after the original underlying contract is completed (*i.e.*, the trim phase), rather than at the completion of any significant, stand-alone element thereof (*i.e.*, the rough-in phase) under circumstances where the contractor confirms that its services are completed, those services are fully paid, and the contract is mutually brought to a conclusion without any objection, reservation, or protest (as evidenced by the fact that PSEC filed no counterclaims in the underlying action).

trim phase in order to bring an action on the bond to, at least in part up to the maximum of four thousand dollars, cover the damages and costs of correcting all the rough-in defects and deficiencies in meeting code requirements.

In reversing the trial court's grant of summary judgment to Amedson, the Court of Appeals set new review standards and disregarded others by (1) ignoring the firmly-established rule by this Court that statutory interpretation presents an issue of law solely for the court to decide, and (2) overruling its own prior holding that only those portions of Declarations setting forth *incontrovertible* facts are taken as true in a summary judgment proceeding. *Thompson*, 142 Wn. App. at 811.

In its Unpublished Opinion, which the Court of Appeals declined to set precedent by denying Amedson's Motion to Publish, all of Respondents' Declarations were taken as true notwithstanding Amedson's stated and *unopposed* objections thereto both in general and in his Motion to Strike⁴ and the Respondents' equivocal affirmation of their Declarations.⁵

⁴ The trial court properly applied the standards of review applicable to summary judgment motions and, moreover, properly considered only admissible evidence and Amedson's stated objections to Respondents' evidence and testimony presented in their Declarations. See Clerk's Papers (CP) at 206-08, and fns. 9 & 10; CP at 288-91.

⁵ Whereas the Amedson, Sirb, and Harris Declarations were each unequivocally sworn as "true and correct" with no equivocation, both the Clark and the James Declarations are equivocal stating only that they so swore "to the best of my knowledge." Compare CP at 70, 100, and 112 with CP at 156 and 197. See GR 13(a); RCW 9A.72.085(2). It should be noted as a matter of law that a declaration made under penalty of perjury that the facts set forth are "true and correct" with no equivocation is more meaningful than a declaration that asserts the facts set forth are "true and correct" with the equivocation that includes "to the best of my knowledge." See, e.g., *Ferrante v. MAS Medical Staffing*, 2015 U.S. Dist. LEXIS 38399, *113 (D. Maine, March 26, 2015). The issue posed by such equivocation is whether such
(continued...)

B. BACKGROUND STATEMENT OF FACTS

In 2007, Amedson short-platted certain real property he first acquired in 1998 into four separate lots for single family residential purposes.⁶ In November 2012 and still owning three of the lots, Amedson entered into three written contracts with Respondent Puget Sound Electric Company (“Puget Sound” or PSEC) for the “complete Rough-In and Trim-Out” for each of the new homes he was building on Lots 2, 3, and 4.⁷

Due to various issues that arose between Amedson and PSEC, the electrical work performed by PSEC on each of the three homes was through the completion of rough-in installation.⁸ During the course of the electrical work, Amedson and PSEC had disagreements over various contractual and non-contractual issues, including the timing of the payment of the sales tax,⁹ and PSEC’s unbudging and threatening insistence, by and through its President, Charles W. Clark, that Amedson pay certain alleged late penalties

³(...continued)

“knowledge” is based on the declarant’s own personal knowledge based on first hand facts (as the oath does not state that it is the declarant’s own knowledge), or whether such “knowledge” was merely gleaned from other hearsay, unnamed sources, or simple speculation.

⁶ CP at 214-16, 218-19.

⁷ *See, e.g.*, CP at 72-74 (contract for Lot 2).

⁸ Under each contract Amedson paid PSEC a total of \$ 6,500.00 plus sales tax, for a total of \$ 21,723.95. CP at 93. Overall, the total amount Amedson paid PSEC was \$ 25,223.45. CP at 67 ¶¶ 28-29.

⁹ *See* CP at 66 ¶¶ 22-23. Which under the express terms of the contracts was not due as a lump sum payment until subsequent to trim approval. CP at 73.

assessed against PSEC by the State Department of Revenue.¹⁰ Amedson and PSEC came to a mutual conclusion of their contractual relationship on April 17, 2013,¹¹ and with PSEC executing and providing a Daily Service Report of that date with “Service Complete” circled “Yes” without any objections, reservations, qualifications, limitations, exceptions, conditions, or provisos whatsoever.¹² The services actually admitted by PSEC as complete on April 17, 2013, was that electrical work comprising its installation of rough-in.

As generally accepted and as commonly used in electrical work, the term “rough-in” means and is described as follows:

In broad terms, “Rough-In” means electrical work on everything to be covered by surfaces – principally drywall (*e.g.*, wire, plug boxes, junction boxes).

CP at 194 ¶ 3 (Declaration of Mark James, on behalf of PSEC).

¹⁰ For a general discussion of this particular matter, *see* CP at 65-66 ¶¶ 21-23. In fact, there were no “late penalties;” the alleged “late penalty” assessed against PSEC was in fact two Judgments obtained in 2010 and 2011 by the Department of Revenue (DOR) against PSEC stemming from a tax debt. CP at 66 ¶ 23; CP at 88. The DOR only wanted Amedson to withhold future payments that may be due PSEC in order to remit to the DOR to satisfy the Judgments; but by the time Amedson received the DOR notice on April 18, 2013, all payments from Amedson to PSEC had been made and there was nothing to withhold and remit. CP at 66 ¶¶ 23-24; CP at 88-91; CP at 93.

¹¹ Amedson paid PSEC an amount equal to \$ 2,223.45 that represented the sales tax on the work completed and the alleged “late penalty assessed by Dept. of Revenue” (accepted by signature of Charles Clark, President of PSEC) in addition to \$ 1,000 by check made payable to “Cash” for work PSEC’s crew performed on April 17 under the contracts. *See* CP at 66 ¶¶ 24-25.

¹² *See* CP at 67 ¶ 27; CP at 93. *Compare with* CP at pp. 84-86 (PSEC Daily Service Reports for Lots 2, 3, and 4 dated 1/15/2013 with “Service Complete” circled “No” and payment for sales tax noted on each Report as “Due” by a certain date). As further evidence, PSEC filed no contractual counterclaims against Amedson in the underlying suit and all of Amedson’s other claims were dismissed under CR 41(a)(1)(B), thus rendering the Court of Appeals hypothetical opining in its Opinion (Appendix, at p. APP-10 fn.2) moot because any compulsory or permissive counterclaims are barred as a matter of law. CR 8(c) and CR 13.

In broad terms, “rough in” means electrical work on everything to be covered by surfaces – principally drywall (*e.g.*, wire, plug boxes).

CP at 150 ¶ 3 (Declaration of Charles W. Clark, President of PSEC). And described in a bit more detail:

Completion of rough-in means that the electrical contractor has identified all electrical circuits and calculated all loads for each breaker to be installed; and that all wiring has been installed for each circuit from the breaker box to each outlet, fixture or component to be served by each such circuit.

CP at 63 ¶ 18 (Amedson’s Declaration).¹³

With PSEC’s completion of installation of the electrical rough-in on April 17, 2013, Amedson proceeded with having a contractor finish the interior of each of the new homes and retaining additional electricians to install and complete the trim.¹⁴ One of the contractors employed, CTI Con-

¹³ Based on his personal experience and familiarity with rough-in electrical work in residential construction, Amedson very succinctly explained in his Declaration why the correct installation of the rough-in electrical work is so critically important in new home construction: “Upon completion of electrical rough-in, it is essential that all circuitry work has been completed to all code requirements as following approval of rough-in by LNI [Washington State Labor and Industries] the wall insulation and drywall is installed to prepare for painting and finishing of the home interior. . . . It is essential that the rough-in work was done correctly by the electrical contractor as making any corrections to wiring and/or circuitry defects or deficiencies at the final trim stage [*i.e.*, connecting the existing wiring to each outlet, fixture and component that is installed at that time, and connecting all wiring circuits to the power source through the breaker box] entails much damage to the home’s interior causing delays in time for the home completion and marketing and substantial increases in cost.” CP at 63 ¶ 18. Respondents admit that as part of the rough-in installation the contractor should test its work and correct any problems at that time. CP at 194 ¶ 4; Appellants’ Opening Brief (Court of Appeals), at p. 11. Nowhere does Clark confirm such testing was ever done.

¹⁴ The electrical “trim” is generally defined to mean “everything installed outside of the drywall (*e.g.*, light fixtures) and is what is seen by the homeowner.” CP at 194 ¶ 3; CP at 150 ¶ 3 (trim includes “light fixtures, outlets, [and] light switches”); CP at 64 ¶ 18 (“trim work . . . consists of connecting the existing wiring to each outlet, fixture and component that is installed at that time, and connecting all wiring circuits to the power source through the
(continued...)”)

struction, experienced many problems with installing the trim work on PSEC's rough-in that it could not fully resolve as personally observed and experienced first hand by Amedson.¹⁵ Amedson then retained SIRB Electric to troubleshoot, report on, repair, and correct all of PSEC's defects and deficiencies in its installation of the rough-in electrical wiring and equipment in the new homes on Lots 2, 3, and 4. CP at 68 ¶ 34. As experienced first hand by Amedson, and unequivocally sworn as fact in his Declaration (CP at 64-65 ¶¶ 18 and 19; CP at 67-69 ¶¶ 27, 31-39), and based on SIRB Electric's inspection and report (CP at 104), as confirmed by LNI Inspector Greg Harris (CP at 110-12), PSEC's installation of the electrical rough-in for Amedson's new homes failed to comply and strictly conform with the requirements of Chapter 19.28 RCW.¹⁶

¹⁴(...continued)
breaker box").

¹⁵ Including switches that did not operate their intended fixtures and/or components, circuits that were not connected with wiring or otherwise not completed, missing ground fault protection devices, and circuit breakers that tripped when fixtures and/or components were turned on indicating the overloading of such circuits. CP at 68 ¶¶ 31 (lines 6-10) and 33.

¹⁶ Including the following violations of applicable provisions of the 2008 National Electric Code (2008 NEC): "circuit load calculation errors and overloading of circuit breakers (2008 NEC § 210.23), discontinuity in branch circuits (2008 NEC § 110.7; 2008 NEC § 300.13), incomplete circuits to all rooms and missing GFI protection (2008 NEC § 210.8; WAC 296-46B-210); poor workmanship (2008 NEC § 110.12; ANSI/NECA 1-2006, *Standard Practices for Good Workmanship in Electrical Contracting*); and improper placement of or missing receptacles and/or junction boxes (2008 NEC § 210.50)." CP at 69 ¶ 36; CP at 98 ¶ 10; CP at 111-12 ¶ 7. The additional cost that Amedson paid SIRB Electric for its work to finish the electrical systems' final trim for each new home and to remedy PSEC's deficient and defective installation of electrical rough-in work in the new homes on Lots 2, 3, and 4, and thereby meet the requirements of Chapter 19.28 RCW, including the 2008 NEC, was \$ 12,939.50. CP at 69 ¶ 38; CP at 106-09. However, that part of SIRB Electric's work necessary and appropriate to correct the defects and deficiencies in PSEC's installation of
(continued...)

C. BACKGROUND STATEMENT OF PROCEDURES

Following the Superior Court's grant of Summary Judgment to Amedson on the Bond on November 14, 2014, and prior to final entry, the Court asked for the parties to research and present to it their findings regarding the possible effect on PSEC of immediate execution on its Bond. The parties conducted their research and presented their findings to the Court, with additional oral argument, on December 12, 2014.¹⁷ The Court signed and entered the Judgment and Order Granting Summary Judgment on that date. CP at 287-92.¹⁸ Respondents filed their Notice of Appeal to the Court of Appeals on January 30, 2015, seeking review of only the Superior Court's entry of Judgment and Order Granting Summary Judgment to Amedson on the Bond, and the Superior Court's denial of Respondents' Motion for Reconsideration. As referenced in Part III above, Amedson now seeks this Court's review of the Court of Appeals decisions terminating review, the effect of which reverse the trial court's grant of summary judgment to him.

¹⁶(...continued)

electrical rough-in for all the new homes, and in order that the finished electrical wiring and equipment met all the requirements of applicable law, including the 2008 NEC, was equal to not less than \$ 4,977.86. CP at 99-100 ¶¶ 13-14; CP at 69 ¶ 39.

¹⁷ See Verbatim Transcript of Proceedings, Hearing (December 12, 2014).

¹⁸ Respondents then submitted a Motion for Reconsideration, that the Superior Court denied on December 31, 2014. CP at 340. On January 6, 2015, and subsequent to his completing discovery and with no counterclaims filed by PSEC, Amedson filed a CR 41(a)(1)(B) motion for voluntary dismissal of all remaining claims and defendants, retaining only PSEC and Travelers/Bond, that was granted by the Superior Court on January 23, 2015. Respondents did not appeal this Order of Dismissal. Based on the grant of Amedson's CR 41(a)(1)(B) Motion and the absence of any appeal, the underlying case has been completed and is final.

VI. ARGUMENT

This Court should grant Amedson's Petition for Discretionary Review because (1) the decision of the Court of Appeals is in conflict with decisions of the Supreme Court, RAP 13.4(b)(1); (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals, RAP 13.4(b)(2); and (3) the Petition involves issues of substantial public interest that should be determined by the Supreme Court, RAP 13.4(b)(4).

A. Overview

The temporal question of what point in time must any installation of electrical wiring and components strictly comply with the applicable codes and regulations, with strict liability for the failure to do so, is found solely and exclusively in the statutes comprising RCW 19.28 (*see* Appendix, at pp. APP-21 -- APP-26). The timing of compliance is a matter of statutory interpretation. The answer lies not as an issue of fact for a jury, but as an issue of law in the sole and exclusive province of the court. Accordingly, any and all speculation by Puget Sound as to what could happen and when *in futuro* is irrelevant and immaterial, giving rise to no genuine issue of material fact. The trial court properly decided this question as an issue of law. The Court of Appeals failed in its duty to resolve this question of statutory interpretation as an issue of law instead abdicating its responsibility by erroneously treating this legal issue as one of fact. By itself, this obvious judicial failure underscores the absolute necessity for review by this Court.

Incorporated herein by reference thereto, in his Motion for Reconsideration to the Court of Appeals, Amedson identified each of the Findings and Conclusions that he challenges as erroneous as a matter of law and fact.

B. The Court of Appeals Failed In Its Judicial Responsibility And Duty To Answer The Question Of Temporal Compliance With Code Requirements As A Matter Of Statutory Interpretation That Is Solely And Exclusively In The Province Of The Courts As An Issue Of Law – Not As An Issue Of Fact – And Its Decision To Do So Conflicts With Decisions Of The Supreme Court (RAP 13.4(b)(1))

The Court of Appeals stated that “the key issue in this case is whether Puget Sound’s electrical work was deficient or merely incomplete.” Appendix, at p. APP-9.¹⁹ However, temporal compliance with code requirements is a matter of statutory interpretation that presents an issue of law for the courts – *not an issue of fact*. See Appendix, at pp. APP-21 -- APP-26 (RCW 19.28.010(1); RCW 19.28.041(3); and RCW 19.28.071). Whereas both the trial court and the Court of Appeals correctly ruled that the provisions of RCW 19.28 establish a statutory strict liability standard, the trial court properly held that strict compliance with code requirements shall be met “for any and all” electrical work performed by the electrician, without any temporal constraints (CP at 290 ¶ 2), but in stark contrast the Court of Appeals abdicated its judicial duty and sole responsibility to interpret the

¹⁹ And through its disregard of both competent facts and law, the Court of Appeals then reversed the trial court’s grant of summary judgment by holding that “a genuine issue of material fact exists regarding whether Puget Sound failed to make the rough-in installation in accordance with the applicable electrical code or whether Puget Sound’s work was simply incomplete when its work on the project ended.” Appendix, at p. APP-10.

provisions of RCW 19.28 as a matter of law,²⁰ instead erroneously declaring that it is a question of fact as to whether an action against the electric bond was entitled to be brought upon the stated completion of any electric work, including the installation of rough-in, or whether an action against the bond could only be brought after completion of the trim phase. *See* Appendix, at pp. APP-11 -- APP-12. The answer to this fundamental query lies in the language of the statutes as written by the Legislature;²¹ and moreover specifically lies in the interpretation of the phrase “*in any installation . . . of wires or equipment to convey electrical current, . . . the principal will comply with the provisions of this chapter*”. RCW 19.28.041(3) (emphasis added). This must be read in the statutory context that “*all wires and equipment, and installations thereof, . . . shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department*”. RCW 19.28.010(1) (emphasis added).

It is a matter of statutory interpretation, a sole duty and responsibility of

²⁰ And the trial court further and correctly interpreted RCW 19.28 as not imposing any temporal restrictions on bringing an action against the bond. *See* Verbatim Transcript, at pp. 11 and 16. The trial court found and concluded that reasonable minds could not differ as to the competent and admissible evidence-grounded facts, and that it was PSEC’s rough-in electric installation that was defective and deficient and failed to strictly comply with code requirements. Verbatim Transcript, at p. 16.

²¹ The Legislature has spoken on this matter very clearly, likely because of a disfavored practice by some electricians to put off strict compliance with code requirements rather than finding and correcting any defects or deficiencies in their work as they go on a step-by-step basis. *See* Verbatim Transcript, at pp. 15-16. This is also very likely why the maximum amount of the electric bond is only \$ 4,000 – an appropriate amount available to fix problems as they are promptly found and remedied, rather than waiting for some future time when the expense of correction is much greater because drywall and flooring have been installed and finished. *See* Amedson Declaration, CP at 64 ¶ 18; CP at 69 ¶¶ 37-39.

the court as an issue of law – not one of fact,²² as to whether “in *any* installation . . . of wires” where it is mandatory that “*all* wires and equipment, *and installations thereof*, . . . shall be in strict conformity” with all electric code requirements and regulations applies a strict liability standard to a failure of the electrician to comply therewith *at all steps* of any installing of electric wiring and/or systems, *including the undisputed completion of rough-in wiring*.²³

Applying the rules of statutory interpretation, in the context of Chapter 19.28 RCW, the word “failure” means “failure of duty or obligation . . . ; deficiency; want, or lack; inefficiency as measured by some legal standard.”²⁴ The word “installation” is generally defined as meaning “the act of installing

²² Issues of construction or interpretation of a statute are questions of law for the court, not questions of fact. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673, 146 P.3d 893 (2006); *State v. Ford*, 99 Wn. App. 682, 691, 995 P.2d 93 (2000).

²³ The fundamental rules of statutory interpretation are (1) courts begin with the statute’s plain meaning, discerned by the court from the ordinary meaning of the language at issue, the statute’s context, related provisions, and the statutory scheme as a whole; (2) courts must not add words where the Legislature has chosen not to place them and must construe statutes such that all language is given effect; and (3) if the statute is unambiguous after a review of the plain language, the court’s inquiry is at an end. *Lake v. Woodcreek Homeowners Association*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Notably, a statute is not ambiguous simply because different interpretations are possible and it is not for the courts to discern any possible ambiguity by imagining a variety of alternative interpretations. *American Continental Insurance Company v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004). Where unambiguous, the court will apply such language as the clear expression of legislative intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). And it is important to note that courts will not rewrite unambiguous statutory language under the guise of interpretation. *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006).

²⁴ Black’s Law Dictionary, at p. 534 (5th ed. 1979). It is also generally defined to mean “an act or instance of failing . . . ; nonperformance of something . . . required.” Webster’s College Dictionary, at p. 478 (Random House 1995). Moreover, the phrase “a failure” as used in RCW 19.28.041(3) connotes “any” failure to strictly conform with statutory requirements. Black’s Law Dictionary, at p. 1.

. . . ; the fact of being installed.” Webster’s, at p. 698.²⁵ Thus, “a failure . . . to make the installation” should unambiguously be read to mean a deficiency or want of strict conformity in the act of, or during, any installing of electric wiring and equipment as measured by the relevant legal standards of Chapter 19.28 RCW, including the 2008 NEC. The act of or during any installing includes the rough-in work that was in fact stated by PSEC, and found as undisputed fact by both the trial court and the Court of Appeals, to have been completed by no later than April 17, 2013.²⁶ Accordingly, Respondents’ opining as to what could happen *in futuro* is immaterial.

The Court of Appeals’ total failure to adhere to this Court’s long-standing decisions that statutory interpretation is an issue of law solely for the courts, and not an issue of fact, not only flies in the face of sound principles of *stare decisis*, but for no reason whatsoever treats this case on a different judicial footing than all other cases involving issues of statutory interpretation. For this outcome determinative reason alone the Court should grant Amedson’s Petition for Discretionary Review. RAP 13.4(b)(1).

²⁵ Also as generally understood and used, the word *installation* means “an installing or being installed.” Webster’s New World Dictionary, at p. 757 (College ed. 1966). And the phrase “any installation” in RCW 19.28.041(3) means “all or every” act of installing. Black’s Law Dictionary, at p. 86.

²⁶ There is absolutely nothing in statute that requires Amedson wait to have PSEC do the trim work or to allow PSEC onto his property after its services were admitted to be complete as to rough-in installation and which, pursuant to statute, is at that time mandated to be in strict compliance with all code requirements. *See* colloquy at summary judgment hearing between the Judge and Respondents’ attorney – Verbatim Transcript, at pp. 11-13 (application of statutory interpretation to the relevant and material facts).

C. The New Summary Judgment Standard Announced By The Court Of Appeals Conflicts With Another Decision Of The Same Court of Appeals (RAP 13.4(b)(2))

The Court of Appeals stated as a purported judicial standard in the review of a summary judgment, *sans citation of authority*, that “the declarations [presented by the nonmoving party] . . . *must be taken as true* for summary judgment purposes.” Appendix, at p. APP-9 (emphasis added). This is not only an incorrect statement of law, this holding is directly contrary to a prior decision of this same Court of Appeals; namely, that only those portions of declarations setting forth *incontrovertible* facts are taken as true in a summary judgment proceeding.²⁷

In the absence of incontrovertible facts, the well-established standard of review from a summary judgment is for the appellate court to take the position of the trial court and assume facts and reasonable inferences, based on competent and definite evidence, most favorable to the non-moving party to determine whether there exists a genuine issue of material fact that can only be resolved by a trial. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).²⁸ However, “the nonmoving party may not rely on mere

²⁷ *Thompson v. Wilson*, 142 Wn. App. 803, 811, 175 P.3d 1149 (2008). “Incontrovertible” is commonly defined as “not open to question; indisputable.” Webster’s College Dictionary, at p. 681 (Random House 1995).

²⁸ The purpose of summary judgment is to avoid a useless trial. *Seven Gables Corporation v. MGM/UA Entertainment Company*, 106 Wn.2d 1, 12, 721 P.2d 1 (1986). A “material fact” is one that “might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A dispute is “genuine” only if a reasonable jury could find for the nonmoving party. *Anderson*, 477 U.S. at 248. The
(continued...)

allegations, denials, opinions, or conclusory statements” to show a genuine issue of fact on an essential element.²⁹ Moreover, a party's self-serving opinions and conclusions are insufficient to defeat a summary judgment motion.³⁰

This obvious error of law by the Court of Appeals was outcome determinative, because as discussed above, only those portions of opposing declarations that set forth incontrovertible facts are taken as true in a summary judgment proceeding.³¹ In deciding that summary judgment was improperly

²⁸ (...continued)

nonmoving party must come forth with specific facts from the record which show a genuine issue of material fact. *Morfin v. City of East Chicago*, 349 F.3d 989, 997 (7th Cir. 2003). *In the light most favorable* “means no more than that the party opposing summary judgment is to be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists that justifies proceeding to trial.” 10 C. Wright & A. Miller, *Federal Practice & Procedure* § 2725, p. 510 (1973).

²⁹ *Parks v. Fink*, 173 Wn. App. 366, 374, 293 P.3d 1275, *review denied*, 177 Wn.2d 1025 (2013). Thus, opposition to summary judgment must be supported by definite, competent evidence. *Seven Gables*, 106 Wn.2d at 12-13; *EEOC v. Sears, Roebuck & Co.*, 233 F.3d 432, 437 (7th Cir. 2000). Accordingly, the evidence presented by the nonmoving party must create more than some metaphysical doubt as to the material facts. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-86, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). “At the summary judgment stage, a nonmoving party must offer some hard evidence showing that its version of the events is not wholly fanciful.” *Jeffreys v. City of New York*, 426 F.3d 549, 554 (2d Cir. 2005).

³⁰ *Grimwood v. University of Puget Sound, Inc.*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988). In order to preclude summary judgment, an expert's affidavit must amount to more than mere speculation or conclusory statements. *Guile v. Ballard Community Hospital*, 70 Wn. App. 18, 25, 851 P.2d 689 (1993). “Conclusory allegations, conjecture and speculation . . . are insufficient to create a genuine issue of fact.” *Kerzer v. Kingly Manufacturing*, 156 F.3d 396, 400 (2d Cir. 1998).

³¹ Moreover, as this Court has long held, opposing declarations must set forth admissible, competent evidence and not be based on conclusory or argumentative assertions, speculation, and self-serving or bald assertions unsupported by competent evidence in the record. CR 56(e) (affidavits must set forth facts admissible in evidence that are made on personal knowledge). Accordingly, experts may not offer opinions of law in the guise of expert testimony. *King County Fire Protection Districts #16, #36 and #40 v. Housing Authority of King County*, 123 Wn.2d 819, 826 n.14, 872 P.2d 516 (1994). Regardless, under the applicable rules governing summary judgment proceedings, courts are instructed to ignore such conclusions (continued...)

granted by the trial court, the Court of Appeals disregarded Amedson's *unopposed* objections to and Motion to Strike incompetent testimony proffered by Clark and James on behalf of PSEC's opposition to Amedson's Motion for Summary Judgment,³² and also overlooked Amedson's unequivocal sworn testimony that was found by the trial court to be competent, compelling, and admissible based on first hand knowledge of the relevant facts.

THE COURT: What about Mr Amedson's testimony? Why is that not sufficient?

MR ALVESTAD: Because there is no indication that these conditions existed at the time that my client got through with the job because there were two other --

THE COURT: Mr Amedson has sworn that these conditions did exist, and that's why he hired these other companies to fix it.

Verbatim Transcript of Proceedings, at p. 10 (November 14, 2014). The sworn testimony to which the trial Judge was referencing is that set forth in Amedson's Declaration based on his own personal knowledge and expertise.³³ CP at 64-65 ¶¶ 18 and 19; CP at 67-69 ¶¶ 27, 31-39.³⁴ Moreover,

³¹(...continued)
sions and give them no weight. *The Orion Corporation v. State of Washington*, 103 Wn.2d 441, 461-62, 693 P.2d 1369 (1985).

³² See CP at 206-08, and fns. 9 & 10 thereon.

³³ It is beyond words that the Court of Appeals found that "significantly, Amedson's declarations did not expressly address Puget Sound's claims." Appendix, at p. APP-10. This statement is directly contradicted by Amedson's unequivocal Declaration as to the facts. See CP at 64-65 ¶¶ 18 and 19; CP at 67-69 ¶¶ 27, 31-39. The Court of Appeals also found that "the limited scope of the Sirb and Harris declarations is important because Puget Sound only completed the rough-in." Appendix, at p. APP-10. What the Court of Appeals disregarded is the fact that Amedson, Sirb and Harris are allowed by law to testify only as to the facts based on their own personal knowledge -- and not express any opinion as to statutory
(continued...)

because the question posed by the Court of Appeals as to the temporal nature of strict compliance with code requirements is as a matter of law answered in the interpretation and application of the relevant statutes in RCW 19.28 as solely an issue of law *exclusively* within the province of the courts, and *not* as an issue of fact, any and all declarative statements made by Clark and James constituting their opinion as to what can or should occur *in futuro* or assertions as to the law, albeit made under the guise of purported factual assertions in their capacity as either an expert or a fact witness, must be ignored and struck from the record. *See* fn. 4, *supra*.³⁵ Just considering this

³³(...continued)

interpretation that is solely and exclusively the courts' province to answer the temporal matter as to when strict compliance with the electric code is required, and whether Amedson was required under the statute to bring PSEC back to the work site time and again to allow it to try to correct all of its defects and deficiencies in its completed rough-in work. The trial court fulfilled its judicial duty to answer this question as an issue of law based on statutory interpretation. *See* Verbatim Transcript, at pp. 13 and 16. The Court of Appeals did not and has delegated issues of law, consisting of statutory interpretation, to a fact finder as an issue of fact. The Amedson, Sirb and Harris Declarations are all properly limited to direct testimony of facts based on their own personal knowledge. It is solely up to the courts, as did the trial court, to interpret the statutory requirements and apply that law to the facts properly admitted for consideration under the rules applicable to summary judgment proceedings.

³⁴ *See* fn. 5, *supra*. The foregoing was patently ignored by the Court of Appeals because it now holds that the Declarations submitted by the party opposing summary judgment must be taken as true, notwithstanding unopposed objections thereto and the introduction of incompetent and immaterial evidence that as a matter of law must be disregarded by the court in a summary judgment proceeding. Not only does this newly announced and applied standard of review conflict with established law and a prior published decision of this same Court of Appeals, this new standard poses an insurmountable barrier to overcome by any direct or rebuttal competent evidence and renders summary judgment illusory.

³⁵ It is an error of law for a court in a summary judgment proceeding to rely on witness testimony where such expresses an opinion on a conclusion of law as "no witness is permitted to express an opinion that is a conclusion of law" 5B Karl B. Tegland, *Washington Practice: Evidence* § 704.5, at 267 (5th ed. 2007). Lay witness testimony on a conclusion of law is barred under Rule 701 because it is not "helpful to a clear understanding of the witness' testimony or of a fact in issue." ER 701(b); *see also* 5B Tegland, at 267. Legislative (continued...)

issue alone presents sufficient legal ground for this Court to grant Amedson's Petition for Discretionary Review. RAP 13.4(b)(2).

D. The Court Of Appeals Total Abdication Of Judicial Responsibility Regarding Statutory Interpretation And Prescribing A New Standard Of Review Applicable To Summary Judgment Proceedings Present An Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court (RAP 13.4(b)(4))

In general terms, an issue of public interest arises where the legal rights and/or liabilities, or commercial and/or financial interests, of a substantial segment of the population are potentially affected or at risk. *State v. Watson*, 155 Wn.2d 574, 577-78, 122 P.3d 903 (2005). Here the Court of Appeals has ignored the reliable doctrine of *stare decisis* and has set a nigh impossible barrier to anyone again prevailing in a time-honored and cost-effective means of resolving civil actions; namely, summary judgment. Almost everyone will at one time or another retain electricians to install wiring and systems in their dwellings or work places. The bond available to correct defects and deficiencies in such installations is limited to a maximum of only \$4,000. The summary judgment proceeding should be a time-saving, cost-effective means of enforcing the bond and avoiding a useless trial on what is a straightforward case. However, if all incompetent and immaterial evidence presented in

³⁵(...continued)

intent is very clearly a question of law. "This court has the ultimate authority to determine the meaning and purpose of a statute." *Lindeman v. Kelso School District 458*, 162 Wn.2d 196, 201, 172 P.3d 329 (2007). It is an abuse of discretion to decide otherwise and treat such as a question of fact. *Washington State Physicians Insurance Exchange & Association v. Fisons Corporation*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (a court ruling based on an error of law is an abuse of discretion).

opposition to summary judgment must now be taken as true, the summary judgment proceeding is rendered absolutely useless with the result that the damaged public must either forego enforcing the bond or face a great expenditure of time and money to obtain a *de minimis* and somewhat pyrrhic victory. And the patent abdication of an established judicial responsibility regarding statutory interpretation greatly diminishes the public's respect and reliance on the judiciary to properly fulfill its constitutional duties and creates an unnecessary uncertainty as to the outcome of any statute-based action brought by members of the public. Such increased expense and uncertainty presents an issue of substantial public interest that must be addressed and resolved by the Supreme Court. RAP 13.4(b)(4).

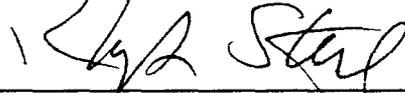
VII. CONCLUSIONS

Based on the foregoing, Joseph Amedson respectfully asks this Court to grant his Petition for Discretionary Review and upon its determination of the issues presented affirm the trial court's grant of Judgment and Order of Summary Judgment in his favor against the Travelers Bond # 105336057 in an amount equal to \$ 4,000.

DATED this 9th day of May, 2016.

Respectfully submitted,

RHYS A. STERLING, P.E., J.D.



Rhys A. Sterling, WSBA #13846
Attorney for Petitioner Joseph Amedson

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APPENDIX

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APPENDIX INDEX

Court of Appeals Unpublished Opinion. APP-2

Court of Appeals Order Denying Motions For Reconsideration
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March 22, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOSEPH R. AMEDSON,

Respondent,

v.

PUGET SOUND ELECTRIC COMPANY, a
Washington corporation; CHARLES W.
CLARK and “JANE DOE” CLARK, husband
and wife, both individually and jointly as a
marital community; and TRAVELERS
CASUALTY AND SURETY COMPANY,
BOND #105336057,

Appellants.

No. 47195-7-II

UNPUBLISHED OPINION

MAXA, J. – Puget Sound Electric Company (Puget Sound), Charles Clark and Travelers Casualty and Surety Company (Travelers) appeal the trial court’s order granting summary judgment in favor of homebuilder Joseph Amedson on his claim against Puget Sound’s electrical contractor’s bond issued by Travelers.

Amedson hired Puget Sound to perform electrical work on three houses he was building. Puget Sound’s work on the project ended after it had completed the “rough-in” electrical work but before it had the chance to perform the “trim” work and complete the project. Amedson determined that Puget Sound’s work was deficient and violated the electrical code in several respects. He filed suit for breach of contract and for recovery against Puget Sound’s bond. The trial court granted summary judgment in favor of Amedson on the bond claim.

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Amedson argues that summary judgment was proper because Puget Sound failed to make its electrical installation in accordance with the applicable electrical code, which was a condition of the bond. Puget Sound argues that summary judgment was improper because (1) all the alleged deficiencies either were part of the trim work or would have been corrected easily during performance of the trim work, and it was not allowed to complete the trim work; and (2) other electricians worked on the job after Puget Sound stopped work but before the deficiencies were discovered, and therefore it is unclear whether the deficiencies were caused by Puget Sound. As a result, Puget Sound argues that a genuine issue of material fact exists regarding whether it failed to perform its work in accordance with the applicable electrical code.

We hold that the trial court erred in granting summary judgment because a genuine issue of material fact exists regarding whether Puget Sound failed to make an installation in accordance with the applicable electrical code. Accordingly, we reverse and remand for further proceedings.

FACTS

In November 2012, Amedson contracted Puget Sound to install the rough-in and trim electrical work on three homes that Amedson was building. The contracts specified that payment for the work on each home would come in three installments: (1) initial payment of \$2,000 to cover material and permit costs, (2) payment of \$4,500 when the rough-in work passed inspection, and (3) final payment of \$2,000 plus sales tax after the trim work passed final inspection.

“Rough-in” work refers to the electrical work that will be covered by drywall such as wiring and plug boxes. “Trim” work refers to the electrical work done after the drywall is

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installed and includes what will be seen by the homeowner, such as light fixtures, outlets, and switches. A Labor and Industries (L&I) electrical inspector must inspect and approve the rough-in work before drywall may be installed. RCW 19.28.101(4). After the trim work is installed, an L&I inspector conducts a final inspection. RCW 19.28.101(5). Typically, the same electrical contractor completes both stages of installation because the contractor needs to have knowledge of what was installed behind the wall during rough-in in order to do the trim work.

According to Clark, Puget Sound's president and sole shareholder, Puget Sound completed the rough-in by late December. L&I electrical inspector Greg Harris inspected Puget Sound's rough-in work on December 28 and approved each home. After the rough-in work passed inspection, general contractors began installing the drywall and painting, but work was delayed because of water intrusion and subcontractor problems.

At some point after the rough-in inspection, Clark and Amedson had an extended dispute over sales tax and minor contract changes, which was resolved in April 2013. On April 12, Clark received a letter from Amedson's lawyer regarding the dispute, which indicated that (1) Puget Sound had not yet begun the trim work at that time, (2) there was not much work remaining to complete the scope of the contract, and (3) Clark should meet with Amedson to discuss fixtures and materials for trim in order to complete the work. The letter did not indicate that there were any issues with the quality of Puget Sound's work.

After the rough-in inspection, Puget Sound did some additional work, but Puget Sound never completed the trim work and Puget Sound was not paid for any trim work. Puget Sound last worked on the job on April 17. Amedson alleges that Puget Sound simply ceased working and represented that it had completed the scope of the contract at that time. But Clark alleges

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that Amedson terminated Puget Sound and hired new electrical contractors to complete the trim work.

Amedson hired a new electrical contractor, CTI Construction Services LLC (CTI), to complete the trim work. Later, Amedson hired SIRB Electric LLC (SIRB Electric) to troubleshoot defects and deficiencies in the electrical work. Sam Sirb of SIRB Electric compiled a report for Amedson listing all the defects and code violations that SIRB Electric corrected. Amedson and Sirb attributed the electrical deficiencies to the rough-in work done by Puget Sound.

Amedson filed suit against Puget Sound, Clark, and Travelers, asserting multiple contract claims as well as a claim against Puget Sound's bond. Amedson filed a summary judgment motion on the bond claim, arguing that Puget Sound's rough-in work did not comply with applicable codes and standards as required by the bond conditions.

Amedson provided his own declaration in support of his summary judgment motion as well as declarations from Sirb and Harris that discussed the alleged deficiencies in Puget Sound's rough-in work. Sirb identified several deficiencies in the electrical work: (1) circuit load calculation errors and overloading of circuit breakers, (2) discontinuity in branch circuits, (3) incomplete circuits to all rooms and missing ground fault circuit interrupter protection, (4) poor workmanship, and (5) improper placement of or missing receptacles and/or junction boxes. Harris's declaration stated that the defects listed by Sirb violated specific provisions of the 2008 National Electric Code (2008 NEC).

In opposition to summary judgment, Puget Sound and Travelers filed declarations by Clark and electrical contractor Mark James. Both Clark and James stated that the alleged

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deficiencies were all items that normally would be completed during the trim phase or easily corrected during that phase. Clark stated, “I did all rough in work properly and anything else would have been completed in the trim phase.” Clerk’s Papers (CP) at 156. James stated that the deficiencies Sirb described “are well within the range of the work quality typically found on a residential job site.” CP at 197. James also concluded that “the alleged deficiencies could easily have been completed in a short period of time” if the rough-in electrician had been allowed to complete the job. CP at 197.

Clark and James also noted that it was unclear who caused the deficiencies because more than one electrical contractor performed work on the project before SIRB Electric became involved. Clark stated, “I cannot determine the extent of nor whether the alleged deficiencies (incomplete work) are attributable by me or the other three contractors on site.” CP at 155.

The trial court granted summary judgment in favor of Amedson and awarded Amedson \$4,000, the amount of the Travelers bond held by Puget Sound.¹ Travelers filed a motion to reconsider, which the trial court denied. Puget Sound, Clark and Travelers appeal.

ANALYSIS

A. STANDARD OF REVIEW

We review a trial court’s order granting summary judgment de novo. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). We review the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *Id.* Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is

¹ After the court granted summary judgment on the bond claim, Amedson voluntarily dismissed all other claims.

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entitled to judgment as a matter of law. CR 56(c); *Keck*, 184 Wn.2d at 370. “An issue of material fact is genuine if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.” *Keck*, 184 Wn.2d at 370. “If reasonable minds can reach only one conclusion on an issue of fact, that issue may be determined on summary judgment.” *Sutton v. Tacoma Sch. Dist. No. 10*, 180 Wn. App. 859, 865, 324 P.3d 763 (2014).

When seeking summary judgment, the initial burden is on the moving party to show there is no genuine issue of material fact. *Elcon Const., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 169, 273 P.3d 965 (2012). Once the moving party has made such a showing, the burden is on the nonmoving party to set forth specific facts that rebut the moving party’s contentions and indicate a genuine issue of material fact. *Id.*

B. FAILURE TO PERFORM ELECTRICAL WORK TO CODE

Puget Sound and Travelers argue that the trial court erred in granting summary judgment because there is a genuine issue of material fact regarding whether Puget Sound failed to make the rough-in installation in accordance with the applicable electrical code. We agree.

1. Electrical Contractor Bond

RCW 19.28.041(3) requires licensed electrical contractors to carry a bond totaling \$4,000 at all times. The statute also states the bond conditions:

The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all . . . damages that may be sustained by any person . . . due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3).

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RCW 19.28.041(3).

Under RCW 19.28.071, any person may bring an action against the bond surety for damages or injury caused by the principal's breach of the bond conditions. Claims payable under the bond include the "failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto." At the time of Puget Sound's contract and work with Amedson, the 2008 NEC supplied the applicable regulations and standards for electrical work. Former WAC 296-46B-010(1) (2008).

RCW 19.28.071 involves strict liability for the breach of bond conditions. *See City of Seattle v. Koh*, 26 Wn. App. 708, 713-14, 614 P.2d 665 (1980) (discussing a building code provision). Accordingly, there is no need for a bond claimant to show the contractor's negligence or breach of contract in order to recover the bond. The claimant need only show that the contractor failed to make an installation in accordance with the applicable standards and provisions and that there were resulting damages.

2. Puget Sound's Alleged Deficient Work

Amedson's declaration that Puget Sound's work was defective, Sirb's list of specific deficiencies in the electric work, and Harris's declaration that the listed deficiencies would be electrical code violations supported Amedson's bond claim. However, Puget Sound argues that summary judgment was not proper because (1) the deficiencies Sirb identified do not reflect the failure to make an installation in accordance with the 2008 NEC because those deficiencies normally would be corrected during the trim phase of the project, and (2) Sirb's list of defects could be attributed to an intervening contractor. We agree.

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a. Correction of Deficiencies During Trim Phase

Puget Sound and Travelers argue that the deficiencies Sirb identified do not reflect the failure to make an installation in accordance with the 2008 NEC because Puget Sound performed the rough-in work properly and those problems normally would be corrected during the trim phase of the project.

The key issue in this case is whether Puget Sound's electrical work was deficient or merely incomplete. The declarations of Clark and James, which must be taken as true for summary judgment purposes, provide evidence that Puget Sound's rough-in work was not deficient despite the code violations that Sirb identifies because Puget Sound had not yet finished the trim phase.

Clark stated that the alleged deficiencies involved work that normally is completed during the trim phase, not the rough-in phase:

I am certain that a) the items of which [Amedson and Sirb] complain are common items to be completed during the trim phase – in other words, the things he describes are items which are incomplete until the trim work is finished; b) [Puget Sound] would have been able to easily complete those matters during the trim stage, and c) . . . would have been completed by [Puget Sound] during the trim phase according to contractual terms.

CP at 155. He concluded that “I did all rough in work properly and anything else would have been completed in the trim phase.” CP at 156.

James provided expert testimony supporting Clark's declaration. James stated: (1) “the alleged defective items all are common issues, commonly corrected during the trim phase,” CP at 196; (2) “even the work described in the SIRB and Harris declarations were either to be done during the trim phase or would easily be completed during the trim phase by the electrician who did the rough in work,” CP at 197; and (3) “had the rough in electrician been allowed to complete

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the job, . . . the alleged deficiencies could easily have been completed in a short period of time.” CP at 197. James concluded that the deficiencies Sirb described “are well within the range of work quality typically found on a residential job site.” CP at 197.

Significantly, Amedson’s declarations did not expressly address Puget Sound’s claims. Sirb did not state that the deficiencies he identified constituted electrical code violations if they existed when the rough-in work was done but before the trim work was complete. And although Harris confirmed that the defects listed by Sirb would violate specific provisions of the 2008 NEC, Harris did not indicate *when* such defects would be in violation – after rough-in or after trim. The limited scope of the Sirb and Harris declarations is important because Puget Sound only completed the rough-in.

Clark also noted that Harris passed Puget Sound’s rough-in installation and approved the drywall installation, which indicates that the rough-in was in accordance with the 2008 NEC. And during the course of installation, Clark did not receive any complaints from either Amedson or Amedson’s lawyer about the quality of Puget Sound’s rough-in work.

Based on the evidence Puget Sound and Travelers submitted, we hold that a genuine issue of material fact exists regarding whether Puget Sound failed to make the rough-in installation in accordance with the applicable electrical code or whether Puget Sound’s work was simply incomplete when its work on the project ended.²

² A question of fact also exists as to whether Amedson terminated Puget Sound or whether Puget Sound simply ceased working. Resolution of this issue may affect whether Puget Sound’s work was deficient.

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b. Responsibility for Deficiencies

Puget Sound and Travelers also argue that Amedson fails to show that the alleged deficient work is in fact attributable to Puget Sound. Puget Sound claims that because other electricians worked on the project before Sirb's inspection identified the deficiencies, there is a question of what electrical contractor caused the deficiencies.

According to Amedson's declaration and his motion for summary judgment, CTI was hired after Puget Sound to complete the trim phase. CTI could not properly complete the installation, and Amedson then hired SIRB Electric to troubleshoot the electrical problems in order to pass inspection. Amedson relies on the list of defects provided by Sirb during his troubleshooting. However, Sirb did not observe the job until after CTI's intervening work. Therefore, Sirb cannot rule out the possibility that CTI's work could have been the cause of some of the alleged defects. James also noted that often drywall contractors can disturb or damage the rough-in wiring during drywall installation.

Amedson provides no evidence to show that it was in fact Puget Sound, and not CTI or another contractor, who caused the problems noted by Sirb. Both Clark and James stated that they cannot determine from the declarations who caused the alleged deficiencies. Therefore, there is a genuine issue of material fact regarding whether the alleged defects were the result of Puget Sound's work.

Accordingly, we hold that there is a genuine issue of material fact regarding (1) whether the alleged defects would be considered in violation of the 2008 NEC at the time Puget Sound ceased work or whether the alleged defects were simply items that could not be completed until

No. 47195-7-II

the trim phase, and (2) whether the alleged defects were the fault of Puget Sound or attributable to another contractor.

We reverse the trial court's grant of summary judgment in favor of Amedson and remand for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, J.

We concur:



BJORGE, A.C.J.



SUTTON, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOSEPH AMEDSON,
 Respondent,
 v.
 PUGET SOUND ELECTRIC
 COMPANY, a Washington
 corporation; and TRAVELERS
 CASUALTY AND SURETY
 COMPANY, BOND #105336057
 Appellants.

No. 47195-7-II

ORDER DENYING MOTIONS FOR
RECONSIDERATION AND TO PUBLISH

FILED
 COURT OF APPEALS
 DIVISION II
 2016 APR 18 AM 10:33
 STATE OF WASHINGTON
 DEPUTY

RESPONDENT moves for reconsideration and publication of the Court's March 22, 2016 opinion. Upon consideration, the Court denies the motions. Accordingly, it is

SO ORDERED.

PANEL: Jj. Bjorgen, Maxa, Sutton

DATED this 18th day of April, 2016.

FOR THE COURT:

Bjorgen, C.J.
 CHIEF JUDGE

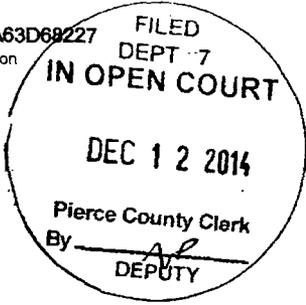
L. Paul Alvestad
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 lpa@alvestadlaw.com

Rhys Alden Sterling
 Attorney at Law
 PO Box 218
 Hobart, WA 98025-0218
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4631
12/17/2014



Case Number: 14-2-06699-1 Date: December 17, 2014
Case ID: 5A6CF2F3-F20F-6452-D178B4DA63D68227
Clerk: Kevin Stock Pierce County Clerk, Washington



1 JUDGE JERRY COSTELLO
2 DEPARTMENT 07, COURTROOM 533
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NO. 14-2-06699-1

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY	
JOSEPH R. AMEDSON,	
v.	Plaintiff,
PUGET SOUND ELECTRIC COMPANY, a Washington Corporation; CHARLES W. CLARK and "JANE DOE" CLARK, husband and wife, both individually and jointly as a marital community; and TRAVELERS CASUALTY AND SURETY COMPANY, BOND # 105336057,	Defendants.

JUDGMENT AND ORDER GRANTING
PLAINTIFF AMEDSON'S MOTION
FOR SUMMARY JUDGMENT AG-
AINST DEFENDANT TRAVELERS
CASUALTY AND SURETY COMPA-
NY, BOND # 105336057

JUDGMENT SUMMARY

Judgment Creditor:	Joseph R. Amedson 22522 S.E. 51st Street Issaquah, Washington 98029
Judgment Debtor:	Travelers Casualty and Surety Company One Tower Square Hartford, Connecticut 06183

ORIGINAL

JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT -- Page 1 of 6

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0200

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12/17/2014

1 Surety Bond #: 105336057
2 Type of Bond: Washington Electrical Contractors Bond
3
4 Principal Judgment
5 Amount: \$4,000.00
6 Attorney Fees and Costs: ---
7 Post Judgment Interest: ---
8 Attorney for Judgment Creditor: Rhys A. Sterling
9 PO Box 218
10 Hobart, Washington 98025
11 Attorney for Judgment Debtor: L. Paul Alvestad
12 Gordon & Alvestad, PLLC
13 7525 Pioneer Way, Ste. 101
14 Gig Harbor, Washington 98335

15 **ORDER GRANTING SUMMARY JUDGMENT**

16 This matter came on regularly for consideration with oral
17 argument on November 14, 2014, on Plaintiff Joseph R. Amedson's
18 Motion for Summary Judgment. The Court has duly considered Plain-
19 tiff's Motion for Summary Judgment, including as appropriate the
20 following evidentiary materials:

- 21 1. Plaintiff's Verified Complaint, and Exhibits attached
22 thereto;
23 2. Plaintiff's Motion for Summary Judgment, and the
24 Declarations of Joseph R. Amedson, Sam Sirb, Greg Harris, and Rhys
25 A. Sterling, and the Exhibits attached to each Declaration;
26 3. Defendants' Response in Opposition to Plaintiff's Motion
27 for Summary Judgment, and supporting Declarations of Charles W.
28 Clark and Mark James, and Exhibits attached thereto;
29

JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT -- Page 2 of 6

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APP-15

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12/17/2014

1 4. Plaintiff's Reply Brief, and Supplemental Declaration of
2 Rhys A. Sterling and Exhibits attached thereto; and
3 5. Relevant Court files and records, as deemed appropriate.
4 Pursuant to CR 56, and finding no just cause to delay entry of
5 an Order, the Court makes the following Findings of Fact:
6 A. Defendant Puget Sound Electric Company (PSEC) performed
7 electrical installation and construction work for Amedson's new
8 homes being constructed on Lots 2, 3 and 4 of the Amedson Short
9 Plat in Sammamish, Washington.
10 B. PSEC is a licensed electrical contractor by the Washing-
11 ton Department of Labor and Industries and is therefore required by
12 State law to obtain and maintain a surety bond in the amount of not
13 less than \$ 4,000.
14 C. PSEC obtained the required surety bond from Defendant
15 Travelers Casualty and Surety Company (Travelers), Bond # 10533-
16 6057, in an amount equal to \$ 4,000.
17 D. Travelers Surety Bond covers any and all damages suffered
18 by Amedson caused by PSEC's failure to strictly comply with the
19 requirements and provisions of State laws, regulations, and
20 applicable codes, including and not limited to the 2008 National
21 Electric Code (2008 NEC) for the installation of wiring and
22 electrical systems for the new homes on Lots 2, 3 and 4.
23 E. PSEC completed its electrical rough-in work for the
24 electrical systems in, and completed its services under its three
25 contracts with Amedson for, the new homes on Lots 2, 3 and 4 by not
26 later than April 17, 2013.
27 F. The electrical system work installed and constructed by
28 PSEC for Amedson's new homes failed to strictly comply and conform
29 with the requirements and provisions of applicable State laws, reg-

JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT -- Page 3 of 6

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APP-16

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12/17/2014

1 | ulations, and electrical codes, including the 2008 NEC.

2 | G. Amedson was required to retain other electrical contrac-
3 | tors in order to repair and correct PSEC's defects and deficien-
4 | cies in its electrical system work performed for the new homes on
5 | Lots 2, 3 and 4.

6 | H. Amedson paid the other electrical contractors more than
7 | \$ 4,000 in order to repair and correct PSEC's defects and deficien-
8 | cies and bring each of the new homes on Lots 2, 3 and 4 into com-
9 | pliance with the applicable State laws, regulations, and codes,
10 | including the 2008 NEC.

11 | Based on the foregoing Findings of Fact, the Court makes the
12 | following Conclusions of Law:

13 | 1. This action against an electrical contractor's bond
14 | required and issued pursuant to the provisions of Ch 19.28 RCW is
15 | grounded neither in contract nor negligence, and is brought neither
16 | for breach of contract nor for recovery of compensation for work
17 | performed by Amedson.

18 | 2. RCW 19.28.041(3) and RCW 19.20.071 are strict liability
19 | statutes that impose absolute liability on PSEC for its failure to
20 | strictly comply with requirements of law for any and all of its
21 | electrical work performed on the wiring and electrical systems it
22 | installed in Amedson's new homes on Lots 2, 3 and 4, and the
23 | resultant legal duty and obligation on Travelers to immediately pay
24 | Amedson the adjudged damages up to the Bond maximum of \$ 4,000.

25 | 3. Amedson was damaged in excess of \$ 4,000 by PSEC's fail-
26 | ure to strictly comply with the requirements and provisions of
27 | applicable State laws, regulations, and codes, including the 2008
28 | NEC, with respect to its electrical work performed on Amedson's new
29 | homes on Lots 2, 3 and 4.

JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT -- Page 4 of 6

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APP-17

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12/17/2014

1 4. There are no genuine issues of material fact that would
2 preclude this Court's entry at this time of summary judgment in
3 favor of Amedson.

4 5. There is nothing that has been made known to the Court
5 that immediate execution of a judgment against the Travelers' Bond
6 would preclude or prevent Puget Sound Electric Company from
7 obtaining either a new surety bond or posting a \$ 4,000 cash bond
8 as required by RCW 19.28.041(3) and continuing its licensure and
9 business as an electrical contractor. See Declaration of Rhys A.
10 Sterling In Support Of Entry Of Judgment Against Defendant Travel-
11 ers Casualty and Surety Company, Bond #105336057.

12 BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF
13 LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

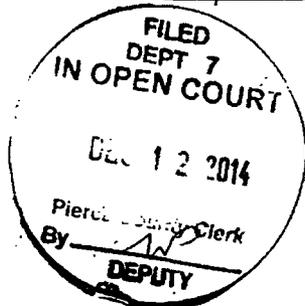
14 A. Plaintiff Joseph R. Amedson's Motion for Summary Judgment
15 is hereby **GRANTED**.

16 B. Judgment is entered in favor of Plaintiff Amedson against
17 Defendant Travelers on its Bond # 105336057 in and for the amount
18 of \$ 4,000.

19 C. All other issues and claims in Amedson's Complaint are
20 preserved for trial.

21 *D. Pursuant to RPP 2.2(d) the trial court determines that there is
no just reason for delay of an appeal in this matter.*

22 DATED this 12 day of DEC, 2014.



26 *Jerry Costello*
27 JERRY COSTELLO Judge

28
29
JUDGMENT AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT -- Page 5 of 6

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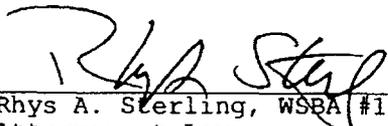
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12/17/2014

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Presented by:


Rhys A. Sterling, WSBA #13846
Attorney at Law
for Plaintiff Joseph R. Amedson

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that this foregoing instrument is
a true and correct copy of the original now on file in my office.
IN WITNESS WHEREOF, I herunto set my hand and the Seal of said
Court this 17 day of December, 2014



Kevin Stock, Pierce County Clerk

By /S/Alyssa Porter, Deputy.

Dated: Dec 17, 2014 2:43 PM



Instructions to recipient: If you wish to verify the authenticity of the certified document that was transmitted by the Court, sign on to:

<https://linxonline.co.pierce.wa.us/linxweb/Case/CaseFiling/certifiedDocumentView.cfm>,
enter SerialID: 5A6CF2F3-F20F-6452-D178B4DA63D68227.

This document contains 6 pages plus this sheet, and is a true and correct copy of the original that is of record in the Pierce County Clerk's Office. The copy associated with this number will be displayed by the Court.

RELEVANT WASHINGTON STATE STATUTES (RCW)

RCW 19.28.010 Electrical wiring requirements — General —
Exceptions.

(1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, the national electrical safety code, and other installation and safety regulations approved by the national fire protection association, as modified or supplemented by rules issued by the department in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of any electrical product testing laboratory which is accredited by the department. Industrial control panels, utilization equipment, and their components do not need to be listed, labeled, or otherwise indicated as acceptable by an accredited electrical product testing laboratory unless specifically required by the National Electrical Code, 1993 edition.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications

provided for state electrical inspectors in accordance with RCW 19.28.321. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town. Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(4) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connected with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system.

[2001 c 211 § 2; 1993 c 275 § 2; 1992 c 79 § 2. Prior: 1986 c 263 § 1; 1986 c 156 § 2; 1983 c 206 § 2; 1965 ex.s. c 117 § 1; 1963 c 207 § 1; 1935 c 169 § 1; RRS § 8307-1. Formerly RCW 19.28.020, 19.28.030, 19.28.040, 19.28.050.]

RCW 19.28.041 License required — General or specialty licenses — Fees — Application — Bond or cash deposit.

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractor license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

- (a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;
- (b) The location of the place of business of the applicant and the name under which the business is conducted;
- (c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for an electrical contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be

kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section, the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license, the applicant must designate an individual who currently possesses a valid master journey level electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which

application has been made, or administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made.

(6) Administrator certificate specialties include, but are not limited to: Residential, pump and irrigation or domestic pump, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate, an individual must pass an examination as set forth in RCW 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

(7) For a contractor doing domestic water pumping system work as defined by RCW 18.106.010(10)(c), the department shall consider the requirements of subsections (1)(a) through (h), (2), and (3) of this section to have been met to be a pump and irrigation or domestic pump licensed electrical contractor if the contractor has met the contractor registration requirements of chapter 18.27 RCW. The department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined in chapter 18.27 RCW and a pump and irrigation or domestic pump electrical contractor license as defined by this chapter.

[2013 c 23 § 28. Prior: 2006 c 224 § 1; 2006 c 185 § 5; 2002 c 249 § 2; 2001 c 211 § 3; 1998 c 279 § 4; 1992 c 217 § 2; 1986 c 156 § 5; 1983 c 206 § 5; 1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1; prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120, 19.28.130, 19.28.140, 19.28.150, 19.28.160, 19.28.170.]

RCW 19.28.071 Licensee's bond — Action on — Priorities — Cash deposit, payment from.

Any person, firm, or corporation sustaining any damage or injury by reason of the principal's breach of the conditions of the bond required under RCW 19.28.041 may bring an action against the surety named therein, joining in the action the principal named in the bond; the action

shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on the bond shall be paid in full in the following order of priority: (1) Labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto: PROVIDED, That the total liability of the surety on any bond shall not exceed the sum of four thousand dollars and the surety on the bond shall not be liable for monetary penalties; and any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit.

[2001 c 211 § 5; 1986 c 156 § 8; 1969 ex.s. c 71 § 3; 1965 ex.s. c 117 § 4; 1935 c 169 § 5; RRS § 8307-5. Prior: 1919 c 204 § 4. Formerly RCW 19.28.180.]

Supreme Court No.
Court of Appeals No. 47195-7-II
Pierce County Superior Court No. 14-2-06699-1

FILED
COURT OF APPEALS
DIVISION II
2016 MAY 10 AM 11:50
STATE OF WASHINGTON
BY DEPUTY

**SUPREME COURT
OF THE STATE OF WASHINGTON**

JOSEPH R. AMEDSON,

PETITIONER,

v.

PUGET SOUND ELECTRIC COMPANY, a Washington
corporation; and TRAVELERS CASUALTY AND SURETY
COMPANY, BOND # 105336057,

RESPONDENTS.

DECLARATION OF SERVICE

RHYS A. STERLING, P.E., J.D.
By: Rhys A. Sterling, #13846
Attorney for Petitioner Joseph R. Amedson

P.O. Box 218
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Telephone: 425-432-9348
Facsimile: 425-413-2455
Email: RhysHobart@hotmail.com

ORIGINAL

copy of this DECLARATION OF SERVICE in this matter, by personally delivering the same to the following physical address:

Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, Washington 98402
Attn: David C. Ponzoha,
Clerk/Administrator

5. On May 10, 2016, Petitioner Joseph R. Amedson tendered the appropriate filing fee to the Court of Appeals, Division 2.

6. Pursuant to the provisions of RAP 13.4(a), 10.2(h), and 10.4(a)(1), Amedson's Petition for Discretionary Review has been properly filed and all parties required to be served with a copy of both JOSEPH R. AMEDSON'S PETITION FOR DISCRETIONARY REVIEW – RAP 13.4(a) and this DECLARATION OF SERVICE have been served as set forth above.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

May 10, 2016
DATE


RHYS A. STERLING (WRITTEN)
WSBA # 13846

Hobart, WA
PLACE OF SIGNATURE

Rhys A. Sterling
RHYS A. STERLING (PRINTED)