

U.S. DISTRICT COURT

CLERK OF COURT

REC'D _____
BARBARA S. [unclear]

CLERK, IDAHO

EHARDT SMITH & TORGESEN
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Idaho Falls, Idaho 83402
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an
Idaho Limited Liability Company, in the
name of THE UNITED STATES OF
AMERICA,

Plaintiff,

vs.

DESERT SAGE CONTRACTORS, INC.,
an Idaho Corporation, and
DEVELOPERS SURETY AND
INDEMNITY COMPANY, Surety,

Defendants.

Case No. CV-03-273-E-LMB

AFFIDAVIT OF JOHN STOSICH

STATE OF IDAHO)
) ss.
County of Bonneville)

AFFIDAVIT OF JOHN STOSICH - 1

17

JOHN STOSICH, being first duly sworn, deposes and says as follows:

1. I am a licensed attorney in the State of Idaho and was the counsel of record for the Defendants, Desert Sage Contractors, Inc. and Developers Surety and Indemnity Company, in the above-captioned matter and I have personal knowledge of the facts set forth herein.

2. I initially became involved in this matter based upon a referral from Idaho Falls attorney Kimball Mason. Mr. Mason and I are not partners or associated in any business dealings.

3. My initial involvement was immediately following a letter sent on behalf of the Plaintiff, Holm Construction, L.L.C. ("Holm"), by attorney Justin Oleson on or about March 20, 2003. A true and correct copy of the March 20, 2003 letter is attached hereto, marked Exhibit "A" and incorporated by this reference.

4. In response, I sent a letter to Mr. Oleson on March 31, 2003. A true and correct copy of the March 31, 2003 letter is attached hereto, marked Exhibit "B" and incorporated by this reference.

5. Thereafter I participated in a telephone conference with Mr. Oleson on April 7, 2003. We discussed the underlying merits of the claim and factual issues. Mr. Oleson conferred with his client and sent me a letter outlining their position on these factual matters on April 14, 2003. A true and correct copy of the April 14, 2003 letter is

attached hereto, marked Exhibit "C" and incorporated by this reference.

6. During the latter part of April and into May, Mr. Oleson and I each attempted to resolve the factual matters and inform the surety, Insko (the underwriter for Developers), regarding the nature of the contract and the ensuing claims.

7. In the end, Holm and Desert Sage reached a fundamental disagreement regarding the nature of the contract and specifically as to whether it was a bid for labor or a bid per unit. Having provided documentation of our client's position and having reached an impasse with Holm, I believed that they had decided to let the matter drop. There was absolutely no communication from Holm in response to the details of Desert Sage's contention that they had been adequately compensated for the footage of construction completed.

8. My next contact with Holm was in October, 2003. It seems that during 2003, Holm changed from Mr. Oleson to Mr. Blaser, at that firm. I had telephone conversations with Mr. Blaser, wherein he stated that his client wished a resolution. I suggested mediation after consulting with Mr. White of INSCO and the Desert Sage principals. Mr. Blaser indicated his client accepted mediation as a worthwhile approach, and indicated it should be arranged.

9. I received a message in October or November, 2003, from the Desert Sage principals that Mr. Blaser had sent them a federal suit on behalf of Holm Construction. Along with that paperwork, was the waiver of service form. I spoke with

Desert Sage about this, and they were concerned about the lawsuit and mediation they believed was going to take place. I then contacted Mr. Blaser, and after discussing the waiver and mediation, he represented to me that Holm's desire was to mediate, not litigate. We discussed certain possible mediators. I was under the belief that Mr. Blaser would arrange for a mediator and contact Desert Sage when a mediator was selected. Upon his reassurance and representation, I signed the waiver for Desert Sage, with their consent, on November 14, 2003.

10. Upon winding up my private practice, I informed Mr. Kimball Mason, Desert Sage's other attorney, and Desert Sage that I had been offered and had accepted, employment with the Idaho Attorney General's office. I informed them throughout the process of this matter, that if federal litigation was pursued, I would not be experienced enough to represent them, but would help them in mediation and in finding other counsel. Upon accepting employment with the Idaho Attorney General's office, I informed Mr. Mason and the Desert Sage principals that I could not engage in further representation or litigation for them. I believed that Mr. Mason was engaging other counsel for Desert Sage in this matter. In order to fulfill my representation to Mr. Blaser and the Desert Sage principals, I signed the waiver of service on Friday, November 17, 2003. I did this believing that Mr. Mason and Desert Sage were aware that it was being done, and that I was no longer to be involved in the matter. I began my employment with the state Monday, November 17, 2003.

11. As I had not received any other documentation or communication from Holm or Desert Sage after signing the waiver of service, I did not think this matter was proceeding; in fact, as Mr. Blaser had committed to mediation, I felt this matter was proceeding in a settlement direction. After November 14, 2003, not having been informed otherwise, it was my understanding the matter would be adequately seen through by other counsel. As is evident, I was mistaken and Desert Sage inadvertently or mistakenly did not have other counsel follow through. That notwithstanding, and knowing that I had previously extensively communicated with Mr. Blaser regarding the claims of Holm Construction, Mr. Blaser did not contact me either at my new employment, my previous post office box or mailing address, my previous office number (which I still maintain), or in any other way prior to the default, or upon entry of judgment.

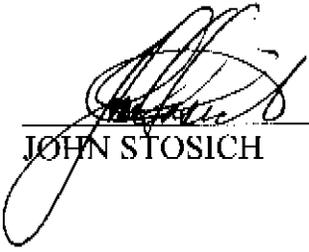
12. Upon leaving my private practice, I understood that Desert Sage had all of the documentation for this matter. I believed that they maintained a file and would present that to any successor attorney; my file only contained copies of what they had received from Mr. Blaser, Mr. Olcson, and INSCO. I understood that Mr. Mason and I had discussed recommending to Desert Sage that attorney's with federal experience should represent them in further litigation. I understood that Mr. White, of INSCO, believed this matter was to be mediated, along with Mr. Blaser, Holm Construction, and Desert Sage.

13. I mistakenly and inadvertently did not follow up with Desert Sage, Mr. Mason, or Mr. White of INSCO, to assure that mediation was taking place or that an appearance was filed to protect Desert Sage's interest. My mistaken belief that this was being tended to was based upon the fact that Desert Sage and Mr. Mason knew I was no longer in private practice, that Mr. Blaser's last representation to me was that waiving service was an accommodation to his client and would only result in mediation being arranged, that I had received no further communication from Mr. Blaser about this matter, and that in shuffling my practice and winding up matters, I understood that the file was either with Mr. Mason or new counsel.

14. I was never advised or notified of Holm's intent to take judgment on this matter. I attributed the extended lack of communication to me by Mr. Blaser, Mr. White, or Desert Sage to mean that I had been replaced as counsel, the matter was concluded by mediation, or a determination had been made to forego further prosecution of the claim.

Further your Affiant sayeth naught.

DATED this 13 day of August, 2004.



JOHN STOSICH

STATE OF IDAHO)
) ss
County of Bonneville)

Subscribed and sworn before me this 13th day of August, 2004.

S
E
A
L



Brenda Hess
Notary Public for Idaho
Residing at Idaho Falls
My Commission Expires: 10-08-2008

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery, or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 13th day of August, 2004.



Marty R. Anderson

Stephen J. Blaser, Esq.
Blaser, Sorensen & Hansen, Chartered
285 N.W. Main
P.O. Box 1047
Blackfoot, ID 83221

Mail
 Hand Delivery
 Facsimile

Exhibit
A

BLASER, SORENSEN & HANSEN, *Chartered*

Attorneys at Law
(208) 785-4700
FAX No. 785-7080

Stephen J. Blaser
Murray Jim Sorensen
Scott H. Hansen

285 N.W. Main
MAILING ADDRESS:
P.O. Box 1047
Blackfoot, Idaho 83221

March 20, 2003

Kimball Mason
PO Box 50561
Idaho Falls, ID 83405

Re: Holm Construction v. Desert Sage

Dear Kimball:

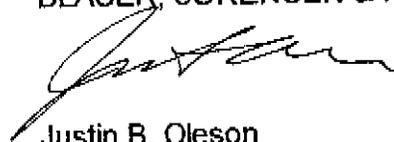
Desert Sage Contractors has sent us a letter stating that you are their attorney. I spoke with Mr. Bare prior to us receiving the letter and he stated that he was going to provide us with documentation showing that Holm Construction had been over paid on the above job. I would like to review that information prior to us having to file suit.

I will hold off filing suit for one week from today's date in order to provide Mr. Bare time to provide that information. However, if I do not receive any information from him then we will be forced to proceed to collect the amounts that are owed Holm Construction.

If you have any questions, please don't hesitate to contact me. Thank you for your cooperation and assistance in this matter.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.



Justin B. Oleson
Attorney at Law

Enclosure

Exhibit
B

John L. Stosich
Attorney at Law
P.O. Box 50652
Idaho Falls, ID 83405-0652

March 31, 2003

Mr. Justin Oleson, Esq.
Blaser, Sorensen & Hansen, Chartered
Attorneys at Law
P.O. Box 1047
Blackfoot, ID 83221

Re: Holm Construction v. Desert Sage

Dear Mr. Oleson:

Desert Sage Construction and Mr. Kimball Mason have engaged me to respond to you most recent letter.

In preparation for responding to your demand, I reviewed the documentation of the work that your client alleges was completed on the Cress Trail job, and the payments disbursed to your client for work preformed. After consulting with the Desert Sage principals, we have determined that your client has been paid completely for the work your company completed at that job.

Therefore, Desert Sage Construction would review any additional documentation for the Cress Trail job for work actually preformed. This would exclude Holm's claim for hourly compensation for workers while on the job, as the job and payment were bid on an actual percentage of the construction completed, not based upon expenses. Controlling costs of a bidding party while in construction is not the job of the contractor, but that of the bidding party.

As you may be aware, Desert Sage Construction has been advised of incidents of prohibited conduct by some of the workers of Holm Construction, directed towards female employees of Desert Sage. We are in the process of documenting this and determining if any further investigation or reporting is warranted.

Again, if you have documented actual footage completed for which you were not compensated, Desert Sage would review those claims. Please forward that documentation forthwith, and if none is forthcoming, Desert Sage continues to consider Holm Construction to be fully compensated

Sincerely,


John L. Stosich

Exhibit
C

BLASER, SORENSEN & HANSEN, Chartered

Attorneys at Law
(208) 785-4700
FAX NUMBER 785-7080

Stephen J. Blaser
Murray Jim Sorensen
Scott H. Hansen

285 N.W. Main
MAILING ADDRESS:
P.O. Box 1047
Blackfoot, Idaho 83221

April 14, 2003

John Stosich
Attorney at Law
PO Box 50662
Idaho Falls, ID 83405

RE: Holm Construction v. Desert Sage

Dear John:

I have reviewed your letter and the documentation you have provided. I am in disagreement with the same.

Your client, Desert Sage, continually attempts to put my client's bid on a per unit cost. My client did not bid this job on a per unit cost. They bid the labor for the total job. After they completed the most labor intensive part of the job, your client asked them to walk away. The only reason they agreed to this was the promise from your client that he would pay them the sum of \$34,533.00. After he paid them the initial \$20,000.00, over the next couple of months, he continually said the remainder was in the mail, on his desk, the check was here, the check was there, and finally said he didn't owe my client any more money.

If Holm Construction would have known that your client wasn't a man of his word and would not comply with the promises he made, they would never have walked away from the job and would have completed the job. My client spent approximately four weeks of labor on the job doing the most labor intensive portions and the remaining part of the job would have taken less than a week, because it was all down on the ground where it could be poured easily.

As a result of this, my client performed approximately 80% of the labor required in their bid and therefore, they are entitled to 80% of their bid on the schedules that they performed labor on. Therefore, my client is entitled to approximately \$43,000.00 and Desert Sage continues to owe them \$22,540.00 for the labor they completed.

KIRKALL W. HANSEN FAX: 2080258826 APR 10 10:00 P. 03
April 7, 2003
Page 2

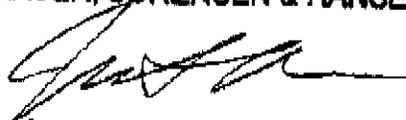
Desert Sage's claim that the bid was for an actual percentage is wrong. My client bid this job on the labor for a full job. Only as a result of your clients promises did they leave after performing 80% of the labor required. Therefore, they are entitled to 80% of their bid.

Your comment about prohibited conduct has been investigated. Apparently there was some foul language that was spoken during the construction, but that was not directed at any of the female employees, and that has been confirmed. Furthermore that has nothing to do with your clients broken promises. Therefore, it would be helpful for your client to deal with the issue at hand and not stray into a witch hunt which is unproductive.

If your client continues to be uncooperative and unwilling to accept any type of responsibility then we are left with no option but to file suit. If you have any questions or comments don't hesitate to contact me.

Yours very truly,

BLASER, SORENSEN & HANSEN, Chrt.



Justin B. Oleson
Attorney at Law

JBO/ly
cc: Holm Construction