

SUPREME COURT OF IDAHO

Todd v. Sullivan Construction LLC, 146 Idaho 118

191 P.3d 196 (2008) · No. No. 33954 · Decided July 17, 2008

SUMMARY

The Idaho Supreme Court reviewed claims arising from the alleged diversion of construction jobs by an LLC member and employee using company employees and equipment. The court vacated the damages portion of the judgment, the denial of a motion to add punitive-damages claims, the directed verdict on the willful-misconduct claim, and the order denying costs and attorney fees. It remanded for further proceedings, including a new trial on damages and specified claims, and awarded appellate costs to Sullivan Construction.

CASE DETAILS

COURT	Supreme Court of Idaho
WRITING FOR THE COURT	Eismann, Chief Justice; Burdick; Eismann; Horton; J. Jones; W. Jones
JURISDICTION	Idaho
DECIDED	July 17, 2008
DOCKET	No. 33954
DISPOSITION	vacated
PROCEDURAL POSTURE	Sullivan Construction appealed after a jury found Todd and Petersen liable for tortious interference with a prospective business opportunity but awarded only \$100 in damages, and after the district court dismissed other claims and denied related motions.
STANDARD OF REVIEW	Abuse of discretion for rulings on motions in limine and motions to amend pleadings; free review of a directed verdict, viewing adverse evidence as true and drawing every legitimate inference for the party opposing the motion.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential.
PARTIES	Sullivan Construction LLC, Sullivan Construction LLC, formerly Sullivan Todd Construction, LLC v. Dave Todd, Jason Petersen

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by excluding all evidence of Sullivan Construction's lost profits because no expert witness had been disclosed.
2. Whether the district court abused its discretion by denying Sullivan Construction's motion to amend its pleadings to add punitive-damages claims.
3. Whether the district court erred by directing a verdict against Sullivan Construction's willful-misconduct counterclaim against Todd.
4. Whether the district court abused its discretion by denying Sullivan Construction's Rule 15(b) motion to add claims for disgorgement or restitution against Petersen.
5. Whether the district court erred in determining that Sullivan Construction was not the prevailing party.
6. Whether Todd and Petersen were entitled to attorney fees on appeal under Idaho Code § 12-121.

HOLDINGS

1. The district court abused its discretion by ruling that Sullivan Construction could not prove any lost profits without opinion testimony. Lost profits may be proved without expert opinion when the evidence is sufficient to establish damages with reasonable certainty.
2. The district court abused its discretion by denying Sullivan Construction's motion to amend its pleadings to add punitive-damages claims without conducting the weighing and reasonable-likelihood analysis required by Idaho Code § 6-1604(2).
3. The district court erred by directing a verdict against Sullivan Construction's willful-misconduct counterclaim.
4. The district court's denial of Sullivan Construction's Rule 15(b) motion was vacated because, on remand, the court could determine whether disgorgement or restitution was an appropriate remedy after damages were litigated.
5. The order denying Sullivan Construction costs and attorney fees was vacated because the prevailing-party determination had to be made anew after resolution of the remaining claims and damages.
6. Todd and Petersen were not entitled to attorney fees on appeal because they did not prevail.

KEY QUOTATIONS

"Compensatory damages for lost profits and future earnings must be shown with a reasonable certainty. Damage awards based upon speculation and conjecture will not be allowed." (191 P.3d at 200)

"Reasonable certainty requires neither absolute assurance nor mathematical exactitude; rather, the evidence need only be sufficient to remove the existence of damages from the realm of speculation." (191 P.3d at 201)

“Intentionally interfering with Sullivan Construction's prospective business advantage is willful misconduct.”
(191 P.3d at 203)

“Restitution and disgorgement are remedies.” (191 P.3d at 204)

FACTUAL BACKGROUND

David Todd and Brett Sullivan formed Sullivan Todd Construction, LLC, with Todd responsible for concrete and Sullivan responsible for masonry. While Todd was still a member and Petersen was an employee, Todd and Petersen diverted concrete jobs for Petra, Inc., using the company's employees and equipment, and directed the resulting payments to a company they later formed. A jury found that Todd and Petersen tortiously interfered with Sullivan Construction's prospective economic advantage but awarded only \$100 because the district court had excluded evidence of lost profits.

PROCEDURAL HISTORY

Todd sued Sullivan Construction for unpaid wages, treble damages, and interest. Sullivan Construction asserted counterclaims against Todd and later sued Petersen; the actions were consolidated for discovery and trial. The district court excluded Sullivan Construction's lost-profit evidence, denied its motion to add punitive-damages claims, directed a verdict against its willful-misconduct claim, denied an amendment seeking disgorgement or restitution, and found that Sullivan Construction was not the prevailing party. The Supreme Court of Idaho vacated those rulings in the specified respects and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for a new trial on damages as to Todd and Petersen and on Sullivan Construction's willful-misconduct claim; reconsider Sullivan Construction's motion to amend to add punitive-damages claims under Idaho Code § 6-1604(2), taking account of the jury's findings; determine whether disgorgement or restitution is an appropriate remedy; and reconsider prevailing-party status and costs and attorney fees after final resolution. Sullivan Construction receives costs on appeal.

CASES CITED

- Puckett v. Verska, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007)
- Gunter v. Murphy's Lounge, LLC, 141 Idaho 16, 29, 105 P.3d 676, 689 (2005)
- Hughes v. Fisher, 142 Idaho 474, 484, 129 P.3d 1223, 1233 (2006)
- State v. Field, 144 Idaho 559, 568, 165 P.3d 273, 282 (2007)
- Inland Group Cos., Inc. v. Providence Washington Ins. Co., 133 Idaho 249, 257, 985 P.2d 674, 682 (1999)
- Griffith v. Clear Lakes Trout Co., Inc., 143 Idaho 733, 740, 152 P.3d 604, 611 (2007)
- Trilogy Network Systems, Inc. v. Johnson, 144 Idaho 844, 172 P.3d 1119 (2007)
- Curtis v. Firth, 123 Idaho 598, 609, 850 P.2d 749, 760 (1993)

- Myers v. Workmen's Automobile Insurance Co., 140 Idaho 495, 503, 95 P.3d 977, 985 (2004)
- Linscott v. Rainier National Life Insurance Co., 100 Idaho 854, 858, 606 P.2d 958, 962 (1980)
- Vendelin v. Costco Wholesale Corp., 140 Idaho 416, 430, 95 P.3d 34, 48 (2004)
- Gillingham Constr., Inc. v. Newby-Wiggins Constr., Inc., 136 Idaho 887, 892, 42 P.3d 680, 685 (2002)
- Highland Enterprises, Inc. v. Barker, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999)
- Helgeson v. Powell, 54 Idaho 667, 682, 34 P.2d 957, 963 (1934)
- Bedke v. Pickett Ranch and Sheep Co., 143 Idaho 36, 41, 137 P.3d 423, 428 (2006)
- Howard v. Perry, 141 Idaho 139, 143, 106 P.3d 465, 469 (2005)
- Point of Rocks Ranch, L.L.C. v. Sun Valley Title Ins. Co., 143 Idaho 411, 415, 146 P.3d 677, 681 (2006)