GP

Givens Pursley LLP

Sims v. ACI Northwest, Inc.

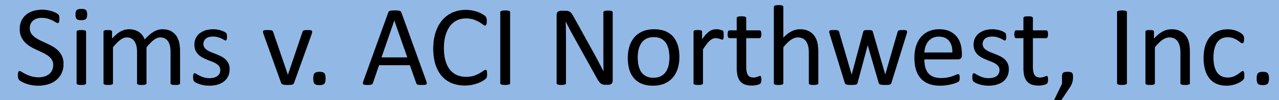
Hap Taylor & Sons v. Summerwind Partners, LLC

Sims v. ACI Northwest, Inc.

Idaho Supreme Court

Decided Jan 21, 2015

- The First Lien
  - 5/27/2008 ACI began furnishing labor on real property owned by Monument Heights
  - 8/6/2008 Monument Heights records a DOT in favor of Jacobsen, *et. al.*,
  - 1/29/2009 ACI records Mechanic's Lien ($53,437.10)
  - 7/28/2009 ACI records Endorsement to Lien for Payment on Account (-$25,000)
  - 8/10/2009 ACI institutes judicial foreclosure w/o naming DOT trustee



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- The Second Lien
  - 3/11/2011 Second DOT is recorded
  - 6/14/2011 ACI went back to work commenced furnishing labor and materials
  - 7/26/2011 ACI recorded second mechanic's lien ($462,780)
  - 1/12/2012 ACI files amended complaint seeking to judicially foreclose its liens; did not name any trustees of the DOT

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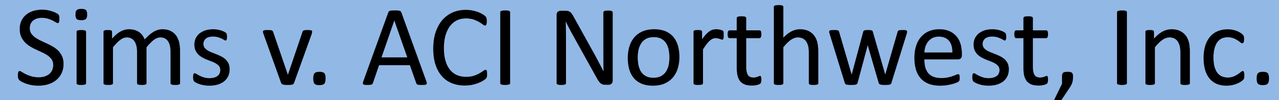
- *Parkwest II* Decision issued 2/4/13 and 4/18/13, 302 P.3d 18
  - Held that a trustee under a deed of trust is a necessary party and must be named in a judicial foreclosure action
  - Seems to imply that trustee may have other duties besides those spelled out in statutes



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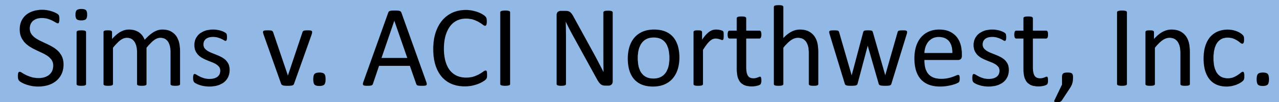
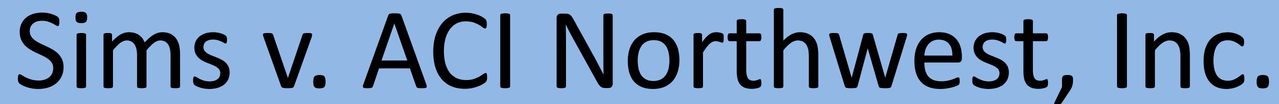
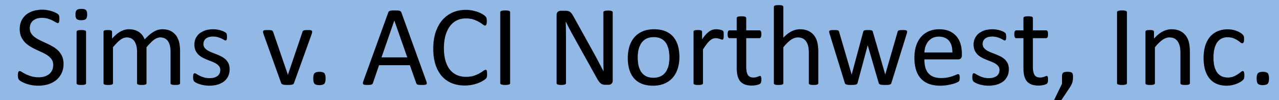
- *Parkwest II* Emphasized case law from DOT context that says Idaho is a title theory state, not a lien theory state. Legal title passes.
- Criticism:
  - Trustee has only (a) very limited power of sale, exercisable only upon default on “a mortgage with power of sale”; and (b) a duty to reconvey.
  - Trustee has to do whatever owner of property and beneficiary of DOT have agreed to, just along for ride.
  - Thus, trustee should not be treated as an owner of the property.



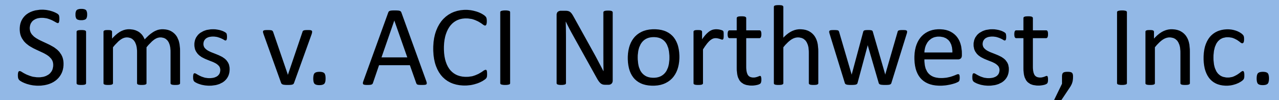
- *Parkwest II* leads to absurd consequences
  - Sheriff named too?
  - Trustee resigns?
  - Must original Trustee sign amendments to DOT?
  - Name Trustee under clearly senior DOT?



- ITLA filed *amicus curie* “friend of the court” brief in this appeal.
  - ITLA argues “that *Parkwest II* out-of-touch with practical reality of the use of deeds of trust and creates confusion, uncertainty and increased expense in the real estate industry”

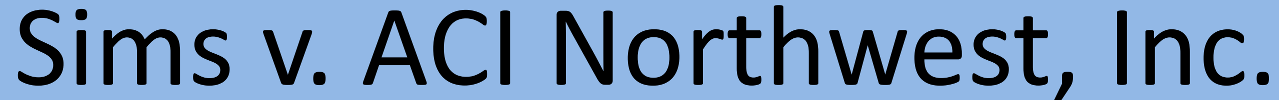


- ACI court refused to overrule Parkwest II
  - Says ITLA's position may be somewhat valid
  - Then denies that Parkwest II is premised on whether Idaho follows lien or title theory
  - Says instead premised on 45-510 and most efficient way to resolve competing interests in liened property
- Court effectively limits *Parkwest II*, saying of that decision that it:
  - is a "narrow holding grounded in … 45-510."
  - Does not stand for "the proposition that a trustee is a necessary party to all real property litigation"
  - Does not "authorize an expansion of the law on actions against a trustee for breach of trustee's duties"
  - Limited "to actions to foreclose a mechanic's lien"



§ 45-510. Duration of lien

No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or unless a payment on account is made, or extension of credit given with expiration date thereof, and such payment or credit and expiration date, is endorsed on the record of the lien, then six (6) months after the date of such payment or expiration of extension.



- “[A]ny change to the statutory procedure for mechanic’s lien enforcement is best suited for the legislature. ‘The wisdom, justice, policy, or expediency of a statute are questions for the legislature alone.’ . . . Here, . . . ITLA’s issue with the rule that a trustee is a necessary party is exclusively attributable to 45-510 and the Court’s interpretation of that statute, which relies on precedent established almost 100 years ago. Moreover, the legislature brought about the transition from a lien to a title theory state with the enactment of the Trust Deeds Act in 1957. The legislature provided that a trust deed conveys legal title to the property to the trustee. Thus, no matter how our case law characterizes the trustee’s interest or authority, even if minimal, the trustee still holds legal title under the statutes. Therefore, pursuant to Idaho Code section 45-510 and its statutory interpretation, the trustee is a necessary party to foreclose a materialmen’s lien. Any change to this rule is a task for the legislature.”

- 2015 Senate Bill 1135—proposed amending 45-507 and 510 to say Trustee not an owner and need not be included in claim of lien or foreclosure or judgment under this chapter, i.e., not a necessary party.
- Signed by governor on 7/1/2015
- But again, is Trustee required solely based on “this chapter?” What about a regular non-judicial foreclosure, judicial foreclosure? Parkwest III awaits? Legislative fix afoot?

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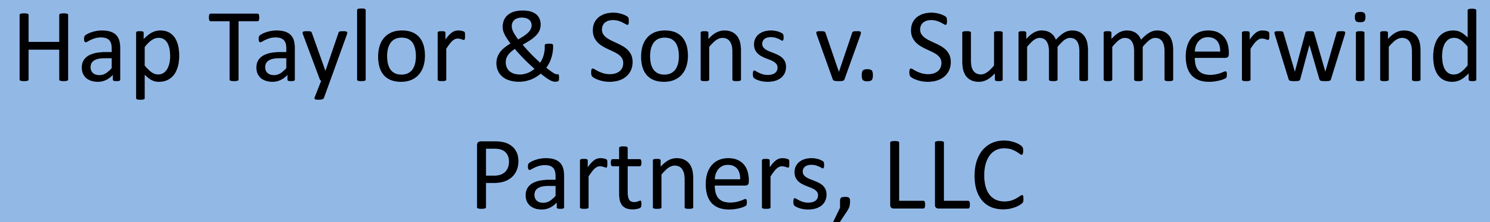
Idaho Supreme Court Decision

338 P.3d 1204

11/13/2014



- Infrastructure development of a residential subdivision and golf course near Greenleaf, ID
- My client, Stanley Consultants, Inc., is an engineering firm that did work associated with the Clubhouse.
- 6/18/2007 - Stanley signs a Professional Services Agreement
- 6/26/2007 - Stanley employee does 1.5 hours of work described as "project administration"

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- 7/13/2007 - Owner signs DOT for $9.5 M
- 7/19/2007 - First work on site by Stanley
- Issue: Does an Engineer or Surveyor, like other lien claimants such as a general contractor or material supplier, have to physically work on the property in order to establish the date of their lien priority?
  - District Court Answer: On site work required
  - Ultimate Answer on Appeal: No, Engineers or Surveyors have special "Pen to Paper rule" or "invisible lien rights rule"

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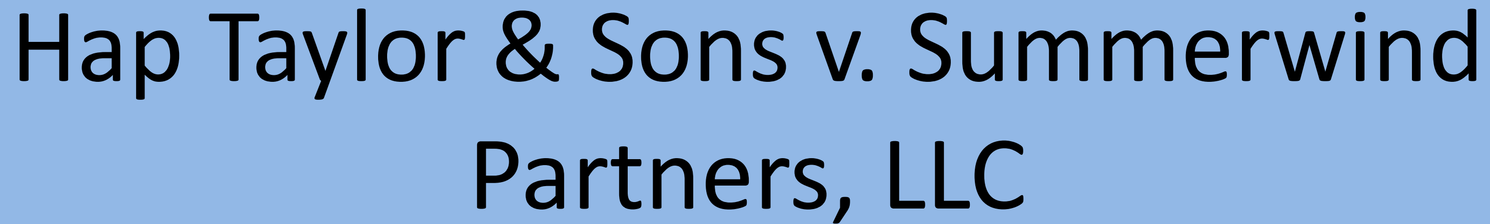
- Two Statutes at play: 45-501 and 45-506



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45-501

"[E]very professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished,"

45-506

"The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished"

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- Means of protection for underwriting
  - Know the prospective insured
  - Make inquiry of any work done before DOT of trust recorded and require Affidavit disclosure of no such work
  - Indemnity by Company and Personal guarantee (“bad boy” guaranty if won’t sign personal)
  - Lien waivers for progress payments that include priority to date, signed by engineers and all others