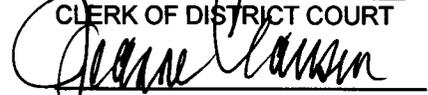


FILED 1/30/2023

AT 12:25 O'Clock P. M

CLERK OF DISTRICT COURT


Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

J ROB CONSTRUCTION, LLC)
)
) *Plaintiff/Counterdefendant,*)
 vs.)
)
 DORAN THOMAS, ET. AL,)
)
) *Defendant/Counterclaimant.*)
)
)
)

Case No. **CV28-22-2924**

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART PARTIES'
CROSS-MOTIONS FOR SUMMARY
JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the parties' Cross-Motions for Summary Judgment.

The plaintiff in this matter, J Rob Construction, LLC ("J Rob"), is an Idaho limited liability company, whose primary place of business is in Coeur d'Alene, Kootenai County, Idaho. Compl. 1, ¶ 1. It is managed by Johnny Robert Clark¹ and his wife, Emily A. Clark. The defendants in this matter are Jonell Thomas and Doran Thomas (collectively "Thomases"), and Jonell A. Thomas, as the trustee of the Thomas Family Spendthrift Trust ("Thomas Trust"), (all collectively referred to as "defendants"). The Thomas Trust is the record owner of the real property in question, commonly known as 11575 West Coyote Lane, Post Falls, Idaho, 83854² ("the property"). Compl. 2, ¶ 3, 4.

¹ Johnny Robert Clark goes by "Rob Clark." Clark 2nd Decl. 1, ¶¶ 1, 2. Rob Clark, Johnny R. Clark, and Johnny Robert Clark are all the same person.

² The full legal description of the property is attached as Exhibit A to the Complaint.

This case involves a dispute regarding the partial construction on the property performed by J Rob.

It is alleged that on or about November 20, 2020, the Thomas Trust and Johnny "Robert" Clark ("Clark"), as the owner of J Rob Builders, entered into a working agreement prepared by Clark. Def.'s Answer and Aff. Defenses and Counterclaim ("Answer") 5, ¶ 6. The Working Agreement provides:

**WORKING AGREEMENT BETWEEN THOMAS FAMILY
SPENDTHRIFT TRUST AND ROB CLARK OF J ROB BUILDERS**

The agreement herein is for cash payment in the amount of \$70,000 from the THOMAS FAMILY SPENDTHRIFT TRUST to Rob Clark for the completion of J Rob Townhomes project at 302 N. Spokane St, Post falls Idaho. In return, Rob Clark, of J Rob builders, will serve as the General Contractor for the building of a house for THE THOMAS FAMILY SPENDTHRIFT TRUST and will provide two townhouse units for beneficiaries of THE THOMAS FAMILY SPENDTHRIFT TRUST at a prepaid credit of \$1,650 each month until the constructed house has a Certificate of Occupancy.

Answer, Ex. A. The Working Agreement was signed by "Jonell A. Thomas, Trustee Thomas Family Spendthrift Trustee," and "Rob Clark, Owner J Rob Builders." *Id.* The Working Agreement is not dated, however Darren Thomas³ claims that it was signed on April 7, 2020. Decl. of Doran Thomas In Opp. to Pl.'s Mot. for Summ. J. ("Doran Decl.") 2, ¶ 4. There are no other written agreements between the parties. Obj. and Mem. in Opp'n to Pl.'s Mot. for Summ. J. ("Obj. to Pl.'s Mot. for Summ. J.") 2. The Thomas Trust paid \$70,000 to J Rob on or about April 9, 2020. Obj. to Pl.'s Mot. for Summ. J., 2. Jonell Thomas states that this payment was not for the construction of the house in this matter, but instead,

was paid to Rob Clark so that J Rob Builders could complete the J Rob Townhome project at 302 N. Spokane Street, Post Falls, Idaho 83854. This project was completed in May of 2020 and the Thomas family

³ Doran later claims that he has never had an agreement with J Rob, as he is not an owner of the property. *Id.* at 2, ¶ 5.

moved into the units agreed to on or about June 1, 2020.

Decl. of Jonell A. Thomas In Opp'n to Pl's Mot. for Summ. J. ("Jonell Decl.") 2, ¶ 4. See also *Id.* at 3, ¶ 10.

Separate from the Working Agreement, J Rob claims that in or about November, 2020, the same parties entered into an oral contract by which J Rob was to construct a custom home on the Property, with J Rob being paid periodically. Compl. 2, ¶ 7, 8. According to J Rob, the Thomases agreed to pay "periodically" "on time + costs basis, whereas [J] Rob would be reimbursed for all of its costs, and it would also be paid for the time it spent working on the construction of the Thomas home" and that the Thomases would "pay [J] Rob from their own cash approximately \$400,000 to \$500,000, and then obtain construction loan to finish paying for the remainder of the construction." Clark Decl. 2, ¶¶ 5, 6. The Thomases, however, deny that there was any such agreement.⁴ Answer. 2, ¶ 5. While the Thomases denied this oral contract, the Thomases do claim that they advised J Rob that, "the Thomas Trust had approximately \$400,000.00 to \$500,000.00 to apply towards construction of the residence" and "that Thomas Trust would need to apply for a construction loan to complete the project once these funds were depleted." Jonell Decl. 3, ¶ 8. It is not clear from the record when the construction began on the Property, but the Claim of Lien provides "November 2020." Franz Decl. Ex. 3.

J Rob claims that "for a number of months, J Rob would send bills for J Rob's third party/subcontract/supplier expenses and the [Thomases] would pay J Rob" and that "the parties performed this way for the duration of several months during which the

⁴ See however defendant's response to Plaintiff's First Set of Discovery Requests: "The construction project was initially financed by \$400,000.00 to \$500,000.00 cash available to the Thomas' and when those sums were depleted, the Thomas' agreed to apply for a Construction Loan to finish the construction

Defendants paid J Rob more than \$230,000.00.” Br. In Supp. of Pl.’s Mot. for Summ. J. 6. According to J Rob, the Thomases paid “\$235,525.78 through the summer of 2021 for work performed and to reimburse Rob for its costs expended.” Clark Decl. 2, ¶ 11. The last payment made by the Thomases to J Rob was on or about August 5, 2021, and Doran Thomas alleges that J Rob “did not request any payments after the last one sent.” Doran Decl. 4, ¶ 10. However, Doran then provides that J Rob provided a financial statement on January 17, 2022. *Id.* Since the last payment, J Rob claims it has paid an “additional \$375,937.52 in expenses to third party for the Thomas’s home construction,” (*Id.* at 5, ¶ 30), and further, J Rob claims it is owed \$76,000 for labor. *Id.* at 6, ¶ 43.

While Clark contends that the claims of deficiencies did not arise until after the Claim of Lien was recorded, the Thomases allege that it provided J Rob with a list of 64 deficiencies on January 2, 2022, and an updated list containing 74 deficiencies on February 17, 2022. Jonell Decl. 7-8, ¶ 24.

On February 22, 2022, J Rob claims that it informed the Thomases that it would not continue construction unless it was paid what it was due, to which the Thomases allegedly expressed that they did not have the ability to pay him. Clark Decl. 7, ¶¶ 44, 45. The Thomases have denied such conversation occurred. Jonell Decl. 3, ¶ 5. The Thomases claim that instead that they were informed by J Rob that he would “only finish the project through a successful framing inspection and continue to pay invoices on work done until February 22, 2022” and that “he was quitting the project because of his health.” Jonell Decl. 6. It is also claimed by the Thomases that J Rob read a letter to the Thomases during this conversation, wherein he stated he “was offended that his

project.” Frantz. Decl., Ex. 1.

skid steer got dirty.” *Id.* After the alleged February 22, 2022, conversation, J Rob ceased construction. *Id.* The Thomases additionally claim that a financial agreement between the parties provided that “after the cash funds were expended, [J Rob] would pay all costs until the house was finished and [Thomases] received our Certificate of Occupancy, thereafter, refinancing to reimburse [J Rob] for his costs.” Frantz Decl. Ex. 1., 9, ¶ 5.

On February 23, 2022, J Rob filed lien against the property in the Kootenai County Recorder’s office, as Instrument number 2888382000. *Id.* ¶ 46. This claim of lien was sent to the Thomases, at the property’s address, by certified mail. Compl. 3, ¶ 16, Ex. 3. No claim of lien was sent to the Thomases at their address.⁵ Obj. 3. The Thomases claim that they found out about the Claim of Lien on or around March of 2022 when they attempted to obtain private financing. Obj. 3.

On April 4, 2022, J Rob claims that a Kootenai County Building Inspector inspected the property’s “framing, sheer wall and mechanical,” and provided a partial pass. Second Decl. of Rob Clark Re. Summ. J. (“Clark 2nd Decl.”) 4, ¶ 23, 24, Ex. 3.⁶ The Thomases contend that at the time that J Rob stopped working on the project, there was a partial pass on the framing inspection. Jonell Decl. 6, ¶ 20.

Between May 14, 2022, and September 20, 2022, the Thomases claim that Eclipse Engineering, P.C. “conducted several site observations” and “identified 25 structural deficiencies. These range from issues with a moderate/low impact on the structural capacity of the building up to issues with life safety consequences.”

⁵ J Rob acknowledges in its Complaint that the Thomases do not live at the property by providing the Thomases correct address. Complaint, ¶ 4.

⁶ The Inspection Notice attached, however, only provides that the framing was inspected.

Daugharty Decl. 3, ¶ 11, Ex. H.⁷ The Thomases additionally retained Brian T. Daniels (“Daniels”) as an expert witness regarding the construction of the property. Decl. of Brian T. Daniels In Opp. to Pl.’s Mot. for Summ J. (“Daniels Decl”) 2, ¶ 4, Ex. 2.

Clark states that while he was the “General Contractor,” he was “in name only” and that Doran Thomas was “very active in the construction of the home on the property.” Clark’s 2nd Decl. 4, 5 ¶ 25-30. Further claiming that “most of the issues about which the Defendants complain in their objection to this summary judgment were actually hired and coordinated with by the Defendants, not Plaintiff.” *Id.* at ¶ 31.

On May 20, 2022, J Rob filed a Lien Foreclosure Complaint. On June 27, 2022, Thomas filed an Answer, Affirmative Defenses and Counterclaim. On July 18, 2022, J Rob filed a Reply to Counterclaim and Demand for Jury Trial.

On December 6, 2022, J Rob filed a Declaration of Rob Clark in Support of Motion for Summary Judgment, Plaintiff’s Statement of Undisputed Facts, Declaration of Jonathon Franz in Support of Motion for Summary Judgment, Motion for Summary Judgment, Statement of Undisputed Facts, and Brief in Support of Motion for Summary Judgment.

On December 20, 2022, Thomases filed Declarations of Jonell A. Thomas, Doran Thomas, Paul W. Daughaty, and Brian T. Daniels in Opposition for Motion for Summary Judgment, a Cross Motion for Summary Judgment, and an Objection and Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment. On December 29, 2022, Thomases filed a Motion to Shorten Time.

On December 27, 2022, J Rob filed Second Declarations of Rob Clark and

⁷ These issues include: “Repair attempt made with 4.5’LVL; however, LVL does not connect to anything on one end; “Improper screws used to attach 2nd ledger to structure. Screw barely long enough to fully penetrate a single 2x” and “Misaligned bolts and steel columns out of plumb.” *Id.*

Jonathan Frantz Regarding Summary Judgment, and Plaintiff's Objection to Defendants Motion for Summary Judgment and Reply Brief.

After the January 3, 2022, hearing on the cross-motions for summary judgment, the Court took those motions under advisement.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to that Rule, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.* Idaho Rule of Civil Procedure 56(e) provides:

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
- (4) issue any other appropriate order.

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)).

"Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence

and the contention that such proof of an element is lacking.” *Heath v. Honker’s Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). “A material fact is one upon which the outcome of the case may be different.” *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

Once the moving party meets their burden of establishing the absence of a genuine issue of material fact, the burden shifts to the non-moving party to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party “must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact.” *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert*, 144 Idaho 225, 228, 159 P.3d 862, 865). “Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence.” *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Bamson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep’t of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

III. ANALYSIS

J Rob moves this Court for an order granting summary judgment on the following claims and issues:

1. That J Rob has provided Defendants with a benefit of:
 - a. \$375,937.52 by paying third-parties said sum for work they performed to property owned by Defendants; and
 - b. \$76,000.00 by performing labor framing the home located on the property owned by Defendants;And that the Defendants have appreciated the benefit; and that it would be unjust to allow the Defendants to retain said benefits without compensating Plaintiff;
2. That Defendants have breached their agreement, if any, to pay J Rob the foregoing amounts and that J Rob is entitled to damages for the foregoing amounts; and/or
3. That J Rob is entitled to recover the reasonable value of the services and materials provided to the Defendants and the reasonable value of the services and materials provided are in the foregoing amounts (Quantum Meruit);
4. That J Rob is entitled to foreclose on its workman's lien and this Court must order the sale of the property identified in the Complaint;
5. That J Rob's workman's lien was and is valid (and dismissing Count Four and Six of Defendants' counterclaims);
6. That Count Five of defendants' counterclaims [unjust enrichment/quantum meruit] should be dismissed with prejudice;
7. That Count Three of defendants' counterclaims [failure to comply with I.C. §45-525 and Idaho Cons. Prot. Act I.C. §48-601] be dismissed with prejudice; and
8. That Count One of defendants' counterclaims [breach of contract] be dismissed with prejudice.

Pl.'s Mot. For Summ. J., Statement of Undisputed Facts, and Br. In Supp. Thereon ("Br. In Supp. of Mot. for Summ. J.") 2-3. (list order altered).

The defendants seek dismissal of all claims asserted in plaintiff's *Lien Foreclosure Complaint* and the relief requested in the verified Answer and Affirmative Defenses and Counterclaim. Def.'s Cross-Mot. for Summ. J. 1-2.

A. Preliminary Matters

The Court first addresses two preliminary matters: (1) whether J Rob's Lien Foreclosure Complaint should be dismissed because J Rob did not comply with the

Idaho Contractor Registration Act and thus, is not a registered contractor, and (2) whether J Rob's Claim of Lien complied with Idaho Code § 45-507 such that it is not unlawful..

1. J Rob, LLC is a registered contractor under the Idaho Contractor Registration Act.

The defendants argue that the Court should deny J Rob's request for summary judgment "in its entirety and dismiss J Rob's Lien Foreclosure Complaint with prejudice because J Rob is not a registered contractor and has not complied with the Idaho Contractor Registration Act found at Idaho Code § 54-5201, et seq." Obj. to Pl.'s Mot. for Summ. J. 6. Defendants argue that because J Rob was not a registered contractor, Idaho Code § 54-5208 provides J Rob had no right to record a mechanics lien. *Id.* at 24. Defendants argue:

In his declaration Rob Clark says he is a member of J Rob. . . He says, "at all relevant times herein, J Rob has been a licensed contractor in the State of Idaho." See Declaration of Rob Clark at page 1, paragraph 2. Attached to his declaration as Exhibit 1 is what he asserts to be his contractor registration card issued by the State of Idaho. However, Exhibit 1 does not identify J Rob. Furthermore, J Rob is not a registered contractor, and neither is Emily A. Clarke who, until October 7, 2022, was the member of J Rob. Johnny Rob Clark did not become a member of J Rob until October 7, 2022.

.....
Emily A. Clark was the member of J Rob on January 5, 2017 when she submitted for reinstatement of J Rob after it was administratively dissolved on December 20, 2016; Emily A. Clark was the member of J Rob as set forth on the annual report filed December 8, 2018; Emily A. Clark was the member of J Rob as set forth on the annual report filed August 2, 2019; Emily A. Clark was the member of J Rob as set forth on the annual report filed August 3, 2020; and Emily A. Clark was the member of J Rob as set forth on the annual report filed August 3, 2021.

.....
In this case the working agreement identified J Rob Builders and not J Rob Construction, LLC ("J Rob"). Nevertheless, J Rob has asserted it had an agreement with Thomas and Thomas Trust and filed and recorded a Mechanic's Lien against real property owned by Thomas Trust. After being put on notice that the lien was improper and J Rob was not a registered contractor as required by the Idaho Contractor

Registration Act, J Rob elected to file the Lien Foreclosure Complaint. Johnny Rob Clark wasn't even a member of J Rob at the time the Lien Foreclosure Complaint was filed nor was he at the time the working agreement was entered into with Thomas Trust on or about April 7, 2020.

Id. at 7.

J Rob responds that it is a licensed contractor, (Reply. Br. 3), stating that:

Rob Clark's full legal name is "Johnny Robert Clark" but he goes by "Rob Clark". . . [A]s can be seen from Exhibits B, C, D, E, F, & G of the Decl. of Daugharty, "J. Rob Clark" is shown as the registered agent for J Rob and is located at 4940 S. Greensferry Road in Coeur d'Alene, Idaho. That is the very same address listed and shown on the contractor registration card for J Rob. In fact, Exhibit G to the Decl. of Daugharty shows that "Johnny Robert Clark" is a "member" of J Rob.

Id. at 4. J Rob additionally claims that the reason that J Rob's contractor license is for "J Robb" and not "J Rob" is because of a "scrivener's error on the part of the state of Idaho," which Clark has contacted the State to fix. Reply Br. 3. (citing to 2nd Clark Decl. ¶ 5-9.). In *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 931, 277 P.3d 374, 378 (2012), the Idaho Supreme Court held.

Under the ICRA, it is "unlawful for any person to engage in the business of, or hold himself out as, a contractor within this state without being registered" according to the provisions of the Act. I.C. § 54–5204(1). Further, a contractor that does not register as required by the Act "shall be denied and shall be deemed to have conclusively waived any right to place a lien upon real property as provided for in chapter 5, title 45, Idaho Code." I.C. § 54–5208. The Act defines a contractor as "[a]ny person who in any capacity undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to, or does himself or by or through others, perform construction." I.C. § 54–5203(4)(a). A "person" is "any individual, ... limited liability company, ... or other entity or organization capable of conducting business, or any combination thereof acting as a unit." I.C. § 54–5203(6). Thus, the literal words of the statute unambiguously indicate that the Legislature intended to require limited liability companies engaged in the business of construction to register as contractors.

The crux of the argument regarding whether or not J Rob is a registered contractor, is that the Contractor registration cards provided show that Emily Clark is the

Member/Owner of J Rob, and not Johnny “Rob” Clark. Johnny “Rob” Clark is shown as the Registered Agent on all Annual Reports, but is never listed as a Member until October 7, 2022. The Contractor Registration Card provided shows that Johnny Clark is a Registered Entity Contractor, however the one-year period for which that card was valid postdates the time that J Rob was constructing the home. No other Contractor Registration Card has been provided.

Idaho Code § 54-5210(c) requires an applicant for registration as a contractor to submit “the name and address of each principal, member, partner, shareholder, or any other person claiming an ownership interest in the business entity for which registration is being applied for.” The Reinstatement Annual Report Form submitted after J Rob Construction was administratively dissolved in December 2016, for failure to file the required annual report form by the date due, only lists Emily Clark a Member. Daugharty Decl., Ex. B. While J. Rob Clark is listed as the Registered Agent, he is not listed as a Member.

Thus, while J Rob Construction, LLC has been registered since 2016, the only Member of J Rob during the applicable time was Emily Clark. Johnny Clark was just the registered agent. As such, defendants’ argument that J Rob as an LLC is not a registered contractor has no merit.

2. J Rob’s filed claim of lien substantially complies with Idaho Code § 45-507, thus, J Rob’s motion for summary judgment on this issue is granted.

The defendants allege in Count Six of their counterclaim that: “J Rob's failure to comply with all statutory requirements imposed upon contractors pursuant to Idaho law regarding mechanic's liens require a determination that the Mechanic's Lien recorded as Instrument No. 2888382000 on February 23, 2022, in the office of the Kootenai

County Recorder is invalid and/or illegal.” Answer. 9. ¶ 35. Defendants argue:

the Claim of Lien recorded by J Rob does not comply with the requirements of Idaho Code § 45-507(3)(4) and (5). First, the Claim of Lien identifies Doran Thomas and Jonelle [sic] Thomas as owners of the property and persons contracted with. . . . Second, there is no required proof the disclosure required by Idaho Code § 45-525 and acknowledgement of receipt. . . . Third, the verification does not comply with the requirements of Idaho Code § 45-507(4). Finally, the Claim of Lien was not mailed to Thomas Trust as required by Idaho law as the owner of the property. J Rob knew Thomas Trust was the owner of the real property there is simply no justification for this failure to comply with the requirements of Idaho Code § 45- 507.

Obj. to Pl.’s Mot. for Summ. J. 23-24.

In response, J Rob asserts that the relevant part of the filed lien, “clearly states . . . that the ‘Name of the owner or reputed owner’ is ‘Jonell A. Thomas, Trustee of the Thomas Family Spendthrift Trust,’”⁸ that “at the time the lien was filed and at the time this lawsuit was filed, there was no requirement to provide proof of the disclosure required by I.C. 45-525,” and finally that the language used in the lien has been approved by the Idaho Supreme Court as an adequate replacement for the word “just.”

Pl.’s Obj. to Def.’s Mot. for Summ J. and Reply Br. (“Pl.’s Obj. and Reply”) 15-16. J Rob further argues:

I.C. §45-525(4) sets forth the consequence of failing to provide the required notices: the act constitutes an unlawful and deceptive act or practice under the Idaho Consumer Protection Act. Nowhere in the law does it state that a failure to provide the disclosure invalidates a lien. To the contrary, the Idaho laws do specify in Idaho Code 54-5208 that if a contractor is not registered they are denied lien rights as set forth in I.C. title 45, chapter 5. It does not specify that a failure to provide a notice of lien rights amounts to a waiver of lien rights; nor is there any case law to support that position. Contrary, the lien rights statutes support the fact that¶ the Idaho legislature is demonstratively aware of how to write a law denying a contractor his/her/its lien rights. Yet, that was specifically not added into Title 45, Chapter 5. As such, denial of lien rights for failing to provide the required disclosure is not grounds to support a declaration invalidating J Rob’s lien, even had J Rob failed to

⁸ Citing to Frantz Decl., Ex. 3.

make the disclosure.

Pl.'s Br. in Supp. of Mot. for Summ. J. 12.

At the time that this lawsuit was initiated, Idaho Code § 45-507 provided:

- (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated.
- (2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.
- (3) The claim shall contain:
 - (a) A statement of his demand, after deducting all just credits and offsets;
 - (b) The name of the owner, or reputed owner, if known;
 - (c) The name of the person by whom he was employed or to whom he furnished the materials; and
 - (d) A description of the property to be charged with the lien, sufficient for identification.
- (4) Such claim must be verified by the oath of the claimant, his agent, or his attorney to the effect that the affiant believes the same to be just.
- (5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by an officer authorized by law to serve process delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.
- (6) For purposes of this chapter, owner or reputed owner does not include a trustee of a deed of trust as defined and required by chapter 15, title 45, Idaho Code.
- (7) In any court proceeding regarding a lien filed pursuant to this section, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

Idaho Code § 45-507. The defendants claim that J Rob did not comply with subsections (3), (4) and (5). Obj. to Pl.'s Mot. for Summ. J. 23-24. To create a valid lien, "the claimant must substantially comply with the statutory requirements."

ParkWest Homes LLC v. Bamson, 149 Idaho 603, 605, 238 P.3d 203, 205 (2010).

a. J Rob Substantially Complied with Idaho Code § 47-507(3).

Idaho Code § 47-507(3) provides that "the claim shall contain:

- (a) A statement of his demand, after deducting all just credits and offsets;

- (b) The name of the owner, or reputed owner, if known;
- (c) The name of the person by whom he was employed or to whom he furnished the materials; and
- (d) A description of the property to be charged with the lien, sufficient for identification.”

The Lien provides that the persons indebted to the claimant are Doran Thomas and Jonelle Thomas. *Id.* at ¶ 3. The name of the owner listed on the Claim of Lien is Jonell A. Thomas, Trustee of the Thomas Family Spendthrift Trust. *Id.* at ¶ 5. Attached to the Claim of Lien is the description of the real property. *Id.* Thus, the crux of the argument is if J Rob’s claim contained a statement of his demand, after deducting all just credits and offsets. The Idaho Supreme Court has addressed this issue.

A lien is not invalidated simply because the claimant is not entitled to the amount claimed due in the claim of lien, *Barber v. Honorof*, 116 Idaho 767, 769, 780 P.2d 89, 91 (1989); *Guyman v. Anderson*, 75 Idaho 294, 296, 271 P.2d 1020, 1021 (1954), even when the discrepancy is substantial, *Electrical Wholesale Supply Co. v. Nielson*, 136 Idaho 814, 824–25, 41 P.3d 242, 252–53 (2001) (lien held valid where claim of lien demanded \$51,571.00, and only \$1,069.2 was found to be due). If an error in the amount of the claim does not invalidate the lien, it would be incongruous to read into Idaho Code § 45–507(3) a provision invalidating the lien if the claimant does not state that all just credits and offsets had been deducted when calculating the amount of the demand.

ParkWest, 149 Idaho at 606, 238 P.3d at 206. J Rob’s briefing contains the reasons set forth for the amount claimed in its Claim of Lien. As the Idaho Supreme Court stated, a lien will not be invalidated simply because the claimant is not entitled to the amount claimed. This Court finds that J Rob substantially complied with the provisions of Idaho Code § 47-507(3).

b. J Rob Substantially Complied with Idaho Code § 47-507(4).

Idaho Code § 47-507(4) provides that the “claim must be verified by the oath of the claimant, his agent, or his attorney to the effect that the affiant believes the same to be just.” Here, the Claim of Lien filed by J Rob provides:

I, Johnny Rob Clark, being first duly sworn, says: am the agent for the claimant above named; have read or heard of the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

Frantz Decl. Ex. 3. It additionally provides that the Claim of Lien was “Subscribed and sworn to before me this 23rd day of February, 2022.” *Id.* It lists Barbara Cooley as the Notary Public. *Id.*

In an unpublished opinion, Idaho’s Court of Appeals has discussed the case law related to this issue:

The purpose of the verification requirement in I.C. § 45–507 is to frustrate the filing of frivolous claims. *ParkWest Homes*, 149 Idaho at 606, 238 P.3d at 206; A verification is a formal declaration made in the presence of an authorized officer, such as a notary public. *First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc.*, 154 Idaho 626, 632, 301 P.3d 632, 638 (2012); *ParkWest Homes*, 149 Idaho at 607, 238 P.3d at 207; *BMC West*, 144 Idaho at 897, 174 P.3d at 406. An acknowledgement is not a verification by oath. *ParkWest Homes*, 149 Idaho at 607, 238 P.3d at 207; . . . Thus, for verification of a claim of lien to be valid, it must state that the person signing the lien was first sworn by a person authorized to administer oaths, such as a notary public. *First Fed. Sav. Bank*, 154 Idaho at 632, 301 P.3d at 638; see also *ParkWest Homes*, 149 Idaho at 607, 238 P.3d at 207 (stating that the notarized statement in *ParkWest Homes*' claim of lien that it had been “[s]igned and sworn to before [the notary]” was “the form of a written oath set forth in Idaho Code § 51–109(2)” and was sufficient to be “verified by the oath of” *ParkWest Homes*' agent). If the notary public or other person authorized to administer oaths does not specifically certify in the claim of lien that the claimant was first sworn before him or her, the lien fails to comply with the verification requirement of I.C. § 45–507(4) and is therefore void. *First Fed. Sav. Bank*, 154 Idaho at 632, 301 P.3d at 638.

Allied Gen. Fire & Sec., Inc. v. St. Luke's Reg'l Med. Ctr., No. 41045, 2014 WL 1778267, at *2 (Idaho Ct. App. May 1, 2014). While that case is not binding on this Court, the cases cited therein are binding on this Court. For a verification of a claim of lien to be valid, it must state that the person signing the lien was first sworn by a person authorized to administer oaths, such as a notary public. *First Fed. Sav. Bank of Twin*

Falls v. Riedesel Engineering, Inc., 154 Idaho 626, 632, 301 P.3d 632, 638 (2012); see also *ParkWest Homes*, 149 Idaho at 607, 238 P.3d at 207 (stating that the notarized statement in ParkWest Homes' claim of lien that it had been "[s]igned and sworn to before [the notary]" was "the form of a written oath set forth in Idaho Code § 51–109(2)" and was sufficient to be "verified by the oath of" ParkWest Homes' agent). In the present case, the exact wording used was that wording which was approved in *Parkwest Homes*, "[s]igned and sworn to before [the notary]." Further, the Idaho Supreme Court has found substantial compliance with the exact wording of J Rob's verification:

Idaho Code § 45–507(4) states that the claim of lien must be verified "to the effect that the affiant believes the same to be just." ParkWest's claim of lien stated, "I have read said mechanic's lien and know the contents thereof; the same is true of my knowledge." The district court held that the use of the word "true" instead of "just" rendered the lien invalid. The purpose of this verification requirement is "a desire to frustrate the filing of frivolous claims." *Layrite Products Co. v. Lux*, 86 Idaho 477, 484–85, 388 P.2d 105, 109 (1964). The word "just" is defined as "[v]alid within the law; lawful: *just claims*," and the word "true" is defined as "exact; precise; accurate; correct: *a true balance*." Dictionary.com. *The American Heritage Dictionary of the English Language, Fourth Edition*, Houghton Mifflin Company, 2004 (accessed June 14, 2010); and Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. (accessed June 14, 2010) (italics in originals). The district court did not seek to explain how, in this context, the word "true" differed materially from the word "just." ParkWest's statement that the claim of lien was "true" substantially complied with Idaho Code § 45–507(4).

ParkWest, 149 Idaho at 606, 238 P.3d at 206. Therefore, the Court finds that the Claim of Lien was properly verified, and this Court finds that J Rob substantially complied with the provisions of Idaho Code § 47-507(4).

c. J Rob Substantially Complied with Idaho Code § 47-507(5).

Idaho Code § 47-507(5) provides that:

A true and correct copy of the claim of lien shall be served on the

owner or reputed owner of the property . . . by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such . . . mailing shall be made no later than five (5) business days following the filing of said claim of lien.”

The lien was mailed to Doran Thomas and Jonelle Thomas, at the address of the property, 1159 W. Cayote Ln. in Post Falls, ID 83854, the day after the Claim of Lien was filed. Frantz Decl. Ex. 4.

The defendant’s contention with this provision is that the Claim of Lien was sent to the address of the Trust, and not the Thomases’ address.

In response, J Rob states:

Idaho Code §55-601 requires that each and every deed set forth the grantee’s “complete mailing address.” In 2019, Doran Thomas and Jonell Thomas deeded the property at issue to Jonell as trustee. They set forth their mailing address as: “11559 W. Cayote Lane, Post Falls, Idaho 83854” in that deed. See 2nd Decl. Clark, Ex. 1 (the quitclaim deed setting forth their address). Moreover, that is the very same address that the Defendants continue to keep on file with the Kootenai County Assessor’s Office for tax notices and bills. *Id.* at ¶¶ 17-21, Exhibit 2.

While Doran Thomas and Jonell Thomas claim that J Rob should have sent it to where they were living (and claiming that J Rob was aware of that address), J Rob was not aware of the address used by Jonell Thomas *in her capacity as trustee*. J Rob was never provided any mailing address as it relates to the Thomases’ trust. As such, the last known address for Jonell Thomas as trustee was at the address listed in the tax records; which was that very same address that Doran Thomas and Jonell Thomas set forth in the deed when they granted the property from themselves to themselves as trustees.

Pl.’s Obj. to Def.’s Mot. for Summ. J. 12-13. The Court agrees with J Rob’s assertion: the last known address for the Thomas Trust was 1159 W. Cayote Ln. in Post Falls, ID 83854. As the claim was sent to the last known address of the owner, the Thomas Trust, this Court finds J Rob substantially complied with Idaho Code § 47-507(5).

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A. Motions for Summary Judgment on J Rob's *Lien Foreclosure Complaint*

1. There are issues of material fact related to J Rob's Unjust Enrichment claim, therefore both J Rob's and the defendants' Motions for Summary Judgment on this issue must be denied.

J Rob claims that it is entitled to an Order from this Court granting summary judgment for the amount of \$451,937.52, the total benefit it claims was provided to defendants. Pl.'s Mot. for Summ. J., Statement of Undisputed Facts, and Br. in Supp. Thereof ("Pl.'s Br. in Supp. of Mot. for Summ. J.") 5. J Rob argues:

[I]t is undisputed that J Rob hired and paid for \$375,937.52 of third-party bills for work and materials delivered to and performed on the Defendants' property. The Defendants sought this benefit and certainly accepted it. The benefits were appreciated by the Defendants as they were all performed on or for the Defendants' property. It would be inequitable to allow the Defendants to retain those benefits without paying J Rob the value of those services and the cost of those materials.

Additionally, it is undisputed that J Rob performed framing at the preapproved rates, and that J Rob provided \$76,000.00 in labor doing the framing, pan decking, and metal fab installation. Again, there is no dispute that this labor was provided for the construction of the Defendants' home. The Defendants sought this benefit and certainly accepted it. The benefits were appreciated by the Defendants as they were all performed on or for the Defendants' property. It would be inequitable to allow the Defendants to retain those benefits without paying J Rob the value of those services and the cost of those materials.

Id.

The defendants assert that J Rob has, "no valid or viable claim for unjust enrichment" Obj. to Pl.'s Mot. for Summ. J. 13. Defendants claim they have:

been required to fix the construction deficiencies caused by J Rob at the Thomas Trust property. In fact, Thomas Trust has paid more than \$353,614.57 to replace and/or repair J Rob's work. Clearly, the issue of whether any real benefit was conferred (or the actual value of any alleged benefit) remains at issue. . .

Id. Additionally, defendants claim that, "J Rob has unclean hands and should

not be allowed to assert any claim for equitable relief.” *Id.* 14.

Unjust enrichment imposes a contractual obligation by law for, “the purpose of bringing about justice and equity without reference to the intent of the agreement of the parties, and, in some cases, in spite of an agreement between the parties.” *Litster Frost Inj. Laws., PLLC v. Idaho Inj. L. Grp., PLLC*, 171 Idaho 1, 6, 518 P.3d 1, 17–18 (2022), as amended (Sept. 2, 2022), reh’g denied (Oct. 14, 2022). (quoting *Turcott v. Estate of Bates*, 165 Idaho 183, 190, 443 P.3d 197, 204 (2019)).

To determine if a party is entitled to [unjust enrichment], the district court must evaluate whether: (1) there was a benefit conferred upon one party by the other; (2) the receiving party appreciated the benefit conferred; and (3) the receiving party accepted the benefit under circumstances that would be “inequitable” for it to retain the benefit without payment to the conferring party for “the value thereof.” *Turcott*, 165 Idaho at 190, 443 P.3d at 204. Importantly, the amount of relief a party is entitled to in restitution “is not the actual amount of the enrichment, but the amount of the enrichment which, *as between the two parties* it would be unjust for one party to retain.” *Turcott*, 165 Idaho at 190, 443 P.3d at 204 (emphasis added)

Id.

Here, there is an issue of material fact related to if there was a benefit conferred upon the Thomases and the Thomas Trust by J Rob. Both sides have claimed that their benefit conferred upon the other party exceeds the benefit received. With such discrepancy, summary judgment cannot be granted to either party on this claim.

Apart from stating that, “J Rob has unclean hands and should not be allowed to assert any claim for equitable relief,” (Obj. to Pl.’s Mot. for Summ. J. 14), the defendants have not further pled any factors related to the unclean hands doctrine related to unjust enrichment. With such, the Court does not agree with the defendants blanket assertion. The Idaho Supreme Court has held:

The unclean hands doctrine “stands for the proposition that a litigant may be denied relief by a court of equity on the ground that his conduct has been *inequitable, unfair and dishonest, or fraudulent and*

deceitful as to the controversy in issue.” Ada Cnty. Highway Dist. v. Total Success Investments, LLC, 145 Idaho 360, 370, 179 P.3d 323, 333 (2008) (quotations omitted) (quoting *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 145, 657 P.2d 1, 9 (1983)). For the doctrine to apply, “[t]he conduct must be intentional or willful, rather than merely negligent.” *Grazer v. Jones*, 154 Idaho 58, 68, 294 P.3d 184, 194 (2013).

In determining if the clean hands doctrine applies a court has discretion to evaluate the relative conduct of both parties and to determine whether the conduct of the party seeking an equitable remedy should, in the light of all the circumstances, preclude such relief. A trial court's decision to afford relief based on the unclean hands doctrine, or to reject its application, will not be overturned on appeal absent a demonstration that the lower court abused its discretion.

Ada Cnty. Highway Dist., 145 Idaho at 371, 179 P.3d at 334 (alterations omitted) (quoting *Sword v. Sweet*, 140 Idaho 242, 251, 92 P.3d 492, 501 (2004)).

Countrywide Home Loans, Inc. v. Sheets, 160 Idaho 268, 273, 371 P.3d 322, 327

(2016). Due to the issues of material facts, both J Rob's motion for summary judgment and the defendant's motion for summary judgment on this issue is denied.

2. Because there are issues of Material Facts related to the J Rob's claim for Quantum Meruit, both the defendants and J Rob's Motion for Summary Judgment on this issue are denied.

J Rob claims that it is entitled to summary judgment, “for the reasonable value of the services and materials delivered and performed.” Pl.'s Br. in Supp. of Mot. for Summ. J. 6. J Rob claims:

the parties had an understanding that J Rob would act as a general contractor for the construction of the Defendants' house. No other terms were discussed. Instead, the conduct of the parties show that for a number of months, J Rob would send bills for J Rob's third-party/subcontract/supplier expenses and the Defendants would pay J Rob. . . the parties performed this way for the duration of several months during which the Defendants paid J Rob more than \$230,000.00. . .

J Rob paid \$375,937.52 for third-party bills for work and materials delivered to and performed on the Defendants' property. . . [and]

performed \$76,000.00⁹ in labor doing the framing, pan decking, and metal fab installation for the construction of the Defendant's home.

Id.

The defendants claim that J Rob does not have a "valid or viable claim for quantum meruit" because the "issue of what, if any, reasonable value of J Rob's services actually rendered . . . or materials actually provided for and utilized on the Thomas Trust property remains at issue" as the Thomas Trust had actually paid more \$500,000 to J Rob as of July 2021 and they claim it has since paid more than \$353,614.57 to repair J Rob's work. Obj. to Pl.'s Mot. for Summ. J. 16. Further claiming that because the defendants have alleged that J Rob is in breach of the working agreement, "there is ample evidence in the record to support the assertion that J Rob has unclean hands and . . . should not be allowed to assert any claim for equitable relief." *Id.* at 17

Quantum meruit relates to an "implied-in-fact contract." *Clayson v. Zebe*, 153 Idaho 228, 235, 280 P. 3d 731, 738 (2012). An "implied-in-fact contract is 'one where the terms and existence of the contract and manifested by the conduct of the parties....'" *Id.* "The measure of damages under an implied-in-fact contract is quantum meruit, which 'permits a party to recover the reasonable value of services rendered or material provided on the basis of an implied promise to pay.'" *Id.*

Actions seeking relief in quantum meruit are based on principles that imply a contract between the parties. Thus, quantum meruit is the appropriate recovery under a contract implied-in-fact, when there is no express agreement between parties but their conduct evidences an agreement. *Barry v. Pac. W. Const., Inc.*, 140 Idaho 827, 834, 103 P.3d 440, 447 (2004) (citing *Peavey v. Pellandini*, 97 Idaho 655, 658, 551 P.2d 610, 613 (1976)). We have held that "[a]n implied-in-fact contract is defined as one where the terms and existence of the

⁹ This amount is "based on the agreed value of the framing services (broken out by hours)." Pl.'s Br. in Supp. of Mot. for Summ. J. 6.

contract are manifested by the conduct of the parties with the request of one party and the performance by the other often being inferred from the circumstances attending the performance.” *Clayson v. Zebe*, 153 Idaho 228, 233, 280 P.3d 731, 736 (2012) . . . Thus, the general rule is: “where the conduct of the parties allows the dual inferences that one performed at the other’s request and that the requesting party promised payment, then the court may find a contract implied-in-fact.” *Id.* (quoting *Gray v. Tri-Way Const. Servs., Inc.*, 147 Idaho 378, 387, 210 P.3d 63, 72 (2009)). Thus, for a court to act in equity and award damages based on quantum meruit, there must be facts supporting the dual inferences of a request by one party and performance by the other. Such damages are measured by “the reasonable value of the services rendered or of goods received, regardless of whether the defendant was enriched.” *Barry*, 140 Idaho at 834, 103 P.3d at 447 (citing *Erickson v. Flynn*, 138 Idaho 430, 434-35, 64 P.3d 959, 963-64 (Ct. App. 2002)).

Turcott v. Est. of Bates, 165 Idaho 183, 189–90, 443 P.3d 197, 203–04 (2019).

Quantum meruit and unjust enrichment are “simply different measures of equitable recovery.” *Id.* (quoting *Farrell v. Whiteman*, 146 Idaho 604, 612, 200 P.3d 1153, 1161 (2009)).

This Court finds it can be found from the record that an implied-in-fact contract existed. The conduct of the parties show that J Rob built on the property at the request of the defendants, and was paid periodically for the first few months. However, for the same reason that a claim for unjust enrichment cannot be found on these motions for summary judgment, here, there are issues of material fact related to the amount, if any, would be awarded under a quantum meruit claim. Therefore, both J Rob’s and the defendant’s Motion for Summary Judgment on J Rob’s quantum meruit issue are hereby denied.

3. Because there are disputes of material fact regarding J Rob’s Claim for Breach of Contract, both the defendant’s and J Rob’s Motion for Summary Judgment on this issue are denied.

J Rob argues that it is entitled to summary judgment on its claim for a breach of contract in the amount of \$451,937.52 because the defendants’ failure to pay

constituted a material breach. Pl.'s Br. in Supp. of Mot. for Summ. J. 9.

To the extent that the parties' understanding is construed as an express contract, then there is no dispute that the Defendants materially breached the contract when they failed to reimburse J Rob for the payments which J Rob issued to subcontractors for work performed and when the Defendants failed to pay J Rob for time spent framing the home. In such an event, the damages for such failure is the amount that J Rob was supposed to be paid, which includes the amounts J Rob was to be reimbursed from paying third-party subcontractors and the amount which J Rob was to be paid for framing the property.

Id. at 7-8. J Rob also contends that all of the alleged defects brought forth in the defendant's counterclaim do not qualify as a material breach, as the defects require additional labor which "can be remedied appropriately and/or remain simply unfinished," thus, not defeating all of the work performed on the property by J Rob and the third-party subcontractors. *Id.* at 8.

To the contrary, the sole purpose of J Rob in performing and paying its subcontractors was to earn a fee and be paid by Defendants. When Defendants announced that they would not and/or were unable to pay J Rob further amounts, it completely defeated the entire purpose for why J Rob was performing its services and paying third-parties to perform work on the Defendants' property. Said another way, the Defendants' failure to pay J Rob constituted a material breach which relieved J Rob of any further obligations to perform.

Id.

In response, the defendants claim that J Rob "has no valid or viable claim for breach of contract" because "the only agreement in writing is the working agreement," (Obj. to Pl.'s Mot. for Summ. J. 1.), and that "genuine issues of material fact exist which preclude summary judgment . . . on the alleged oral agreement." *Id.* at 19.

"The elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages." *Path to Health, LLP v. Long*, 161 Idaho 50, 57, 383 P.3d

1220, 1227 (2016) (quoting *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013)). A material breach “touches the fundamental purpose of the contract, defeating the object of the parties entering into the agreement.” *McGimpsey v. D&L Ventures, Inc.*, 165 Idaho 205, 215, 443 P.3d 219, 229 (2019) (quoting *Borah v. McCandless*, 147 Idaho 73, 79, 205 P.3d 1209, 1215 (2009)). As the Idaho Supreme Court has explained:

The prima facie case in a lien foreclosure action includes a showing that the plaintiff substantially performed the construction contract from which the claim of lien arose. “Although the statute, I.C. § 45–501, does not specifically require substantial performance of a contract before a lien attaches, it is inherent in the law that a person may not enforce collection under a contract which has not been performed.” *Nelson v. Hazel*, 89 Idaho 480, 489, 406 P.2d 138, 144 (1965).

In *Nelson*, this Court adopted the following explanation of substantial performance of a construction contract:

“There is a substantial performance of a contract to construct a building where the variations from the specifications or contract are inadvertent and unimportant and may be remedied at a relatively small expense and without material change of the building; but where it is necessary, in order to make the building comply with the contract, that the structure, in whole or in material part, must be changed, or there will be damage to parts of the building, or the expense of such repair will be great, then it cannot be said that there has been a substantial performance of the contract.” *White v. Mitchell*, 123 Wash. 630 at 637, 213 P. 10 at 13 (1923).

Id. at 488, 406 P.2d at 143–44.

This Court subsequently explained the holding in *Nelson*, explaining: The question of whether the contractor's performance is “substantial” and whether the defect is “minor” is one of degree, “turning upon circumstances such as the particular structure involved, its intended purposes, and the nature and relative expense of the repairs, as well as equitable considerations.” [*Eldred v. C.L. Folkman Co.*, 93 Idaho 131, 133, 456 P.2d 775, 777 (1969)]. Whether a contractor has substantially performed a contract is a question of fact.

...

In certain instances, such as the case at bar, there can be components of the construction which are not performed in a workmanlike manner, but such a finding does not mean that the project as a whole was not completed in a workmanlike and

timely manner. If the defective portions of the construction are not such as to destroy the important essential benefits for which the parties contracted, then there still may be substantial performance.

Ervin Const. Co. v. Van Orden, 125 Idaho 695, 702 03, 874 P.2d 506, 513–14 (1993) (some citations omitted).

Perception Const. Mgmt., Inc. v. Bell, 151 Idaho 250, 254–55, 254 P.3d 1246, 1250–51 (2011).

As discussed above, because there is a contract implied-in-fact from the conduct of the parties, this Court disagrees with the defendant's contention that the only agreement that the parties have is the working agreement. Also, as the Idaho Supreme Court has stated, whether a contractor has substantially performed a contract is a question of fact. Here, there is a dispute of that material fact that precludes this Court from deciding this issue on summary judgment. Therefore, both the defendants' and J Rob's motions for summary judgment on the issue of breach of contract are denied.

C. Motions for Summary Judgment on Defendants' Counterclaims

1. Because there is an issue of material fact regarding the defendant's breach of contract claim, all motions for summary judgment regarding this issue is denied.

Count One of the defendants Counterclaim alleges breach of contract. Answer. 7-8. The defendants claim that J Rob breached the working agreement because J Rob could not serve as the general contractor as he lacked the registration as required by the Idaho Contractor Registration Act, and that J Rob did not provide the pre-paid credit of monthly rent as agreed to in the working agreement. Obj. to Pl.'s Mot. for Summ J. 19.

J Rob's motion for summary judgment on this issue and reply brief regarding the same focuses on the breach being that J Rob did not serve as the general contractor, which it claims "is undisputed." Pl.'s Br. In Supp. of Mot. for Summ. J. 9. J Rob argues

that, “there are no allegations by which J Rob could be found to have breached the alleged ‘working agreement’ (because it did in fact serve as general contractor until the Defendants materially breached the agreement). *Id.* at 9-10.

In his Declaration, defendant Doran Thomas claims that:

7. The working agreement provided that the Thomas Trust would essentially front \$70,000.00 in return for a year on a rent-free basis in two units of townhome J Rob was building. . . The Thomas family moved into the units on or about June 1, 2020.

8. . . . Sometime in or about June of 2021 the new owner contacted us about rental payments.

Doran Decl. 3, ¶¶ 7, 8. By their own admission, the defendants assert that J Rob provided the Thomas family rent-free living in two town houses from June 2020 to June 2021, when the new owners of the townhouses contacted the Thomas family regarding rent. However, for the same reasons as set forth above, there are disputes of material fact related to if the breach of contract claimed by both parties was “substantial,” and thus excused performance. This question of fact precludes this Court from granting summary judgment on defendants’ counterclaim of breach of contract.

With such disputes of material fact, both J Rob’s and the defendants’ Motion for Summary Judgment on the defendant’s counterclaim of breach of contract are denied.

2. Because the defendants have not pled all elements of their Slander of Title Claim, J Rob’s Motion for Summary Judgment on this issue is granted.

The defendants allege in Count four of their counterclaim that J Rob is not a registered contractor as required by the Idaho Contractor Registration Act and therefore had no right to record a mechanic's lien, stating “the recording of the mechanic's lien against Thomas Trust was improper and resulted in a slander of title.” Obj. to Pl.’s Mot. for Summ J. 20. Further claiming the mechanic’s lien affected their ability to refinance

the property. *Id.*

J Rob responds that it was entitled to file a lien, (Pl.'s Br. In Supp. of Mot. for Summ. J. 10.), and that the lien complied with all requirements because it is authorized by statute, filed within 90 days from the last day work was provided, mailed by certified mail to the Defendant, and the foreclosure was commenced within 6 months of filing the lien. *Id.*

"Slander of title requires proof of four elements: (1) publication of a slanderous statement; (2) its falsity; (3) malice; and (4) resulting special damages." *Porter v. Bassett*, 146 Idaho 399, 405, 195 P.3d 1212, 1218 (2008) (quoting *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003)). "Malice has been generally defined by Idaho courts as a reckless disregard for the truth or falsity of a statement. An action will not lie where a statement in slander of title, although false, was made in good faith with probable cause for believing it." *Weitz v. Green*, 148 Idaho 851, 862, 230 P.3d 743, 754 (2010), holding modified by *Latvala v. Green Enterprises, Inc.*, 168 Idaho 686, 485 P.3d 1129 (2021) (quoting *Hogg v. Wolske*, 142 Idaho 549, 557, 130 P.3d 1087, 1095 (2006) (internal citation omitted).

Here, there has not been any showing from the defendant's that J Rob filed their Claim of Lien with malice. (See Answer, 9 ¶ 29: "J Rob has slandered Counterclaimants' title to the real property described in paragraph I of this Counterclaim;" Obj. to Pl.'s Mot. for Summ. J. 20: "J Rob recorded a mechanic's lien which affected Thomas Trust's ability to refinance the property.") It is clear from the record that J Rob has a good faith belief that it is entitled to compensation. With such, the Court cannot find that J Rob filed its Claim of Lien maliciously.

As all of the elements of slander of title have not been proven by the defendants,

J Rob's motion for summary judgment on the defendant's counterclaim of slander of title is granted and the defendant's counter-claim for slander of title is dismissed.

3. Because there are issues of material fact in dispute regarding the value of services conferred, both the Defendant's and J Rob's Motion for Summary Judgment on Defendant's Counterclaim for Unjust Enrichment / Quantum Meruit are denied.

The defendants allege in Count five of their Counterclaim that "[t]he reasonable value of the services and labor performed by J Rob is much less than the amount Counterclaimants have paid J Rob and J Rob has failed to comply with all applicable statutory requirements imposed upon contractors pursuant to Idaho law." Answer. 9.

J Rob, however, claims it has "undisputedly proved that it has provided more services and value than what it was paid" because there is "no dispute" that it has only been paid \$235,525.78, yet it has paid third parties \$375,937.52. Pl.'s Br. In Supp. of Mot. for Summ. J. 10.

The defendants contest, claiming they paid more than \$500,000.00 to J Rob as of July 2021 and has since been required to "fix the construction deficiencies caused by J Rob" at a cost of more than \$353,614.57. Obj. to Pl.'s Mot. for Summ. J. 21.

Both quantum meruit (implied-in-fact contracts) and unjust enrichment (implied-in-law contracts) are "measures of equitable recovery." *Farrell v. Whiteman (Farrell I)*, 146 Idaho 604, 612, 200 P.3d 1153, 1161 (2009) (citing *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 132 Idaho 754, 767, 979 P.2d 627, 640 (1999)). "The application of equitable remedies is a question of fact because it requires a balancing of the parties' equities." *Farrell v. Whiteman (Farrell II)*, 152 Idaho 190, 194, 268 P.3d 458, 462 (2012) (citing *O'Connor v. Harger Const., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008)).

Clayson v. Zebe, 153 Idaho 228, 232, 280 P.3d 731, 735 (2012).

As with J Rob's claims for Unjust Enrichment and Quantum Meruit, questions of material facts related to the value of services provided and retained precludes summary judgment by both sides on defendant's counterclaim of quantum meruit. With such

dispute of material facts, both the defendants and J Rob's motion for summary judgment on that issue are denied.

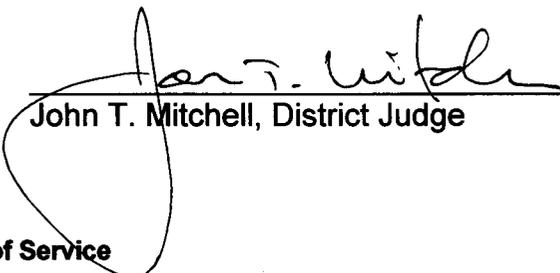
IV. CONCLUSION AND ORDER.

For the foregoing reasons, plaintiff's motion for summary judgment is granted as to J Rob's substantial compliance as to its claim of lien and as to defendant's counterclaim of slander of title, and denied in all other aspects. Defendants' motion for summary judgment is denied.

IT IS HEREBY ORDERED plaintiff's motion for summary judgment is **GRANTED** in part (as to J Rob's substantial compliance as to its claim of lien and as to defendant's counterclaim of slander of title) and **DENIED** in part (as to all other aspects).

IT IS FURTHER ORDERED defendant's motion for summary judgment is **DENIED**.

Entered this 30th day of January, 2023.


John T. Mitchell, District Judge

Certificate of Service

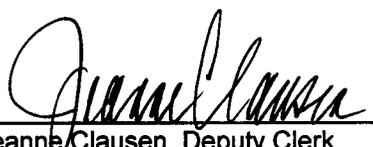
I certify that on the 30th day of January, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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