

**IN THE SUPREME COURT  
FOR THE STATE OF NORTH DAKOTA**

Specialized Contracting, Inc., a North  
Dakota corporation, )

Plaintiff, )

vs. )

St. Paul Fire & Marine Ins. Company,  
a foreign insurance company, )

Defendant  
and Third Party Plaintiff, )

vs. )

City of Valley City, a municipal  
corporation, )

Third Party Defendant  
and Third Party Plaintiff / Appellee, )

vs. )

Geo. E. Haggart, Inc., a North Dakota  
Corporation, )

Third Party Defendant, )

and )

Kadmas, Lee & Jackson, Inc., a North  
Dakota corporation, )

Third Party Defendant / Appellant. )

**Supreme Court No. 20120195**

Barnes County District Court  
No. 02-07-C-00258

---

**REPLY BRIEF OF APPELLANT**

---

APPEAL FROM THE JUDGMENT ON THIRD PARTY DEFENDANT  
AND THIRD PARTY PLAINTIFF CITY OF VALLEY CITY'S  
DUTY TO DEFEND CLAIMS AGAINST THIRD PARTY DEFENDANTS  
GEO. E. HAGGART, INC., AND KADRMAS, LEE & JACKSON, INC.  
DATED APRIL 5, 2012  
IN THE BARNES COUNTY DISTRICT COURT,  
SOUTHEAST JUDICIAL DISTRICT

THE HONORABLE JAY A. SCHMITZ, PRESIDING

Michael J. Maus (I.D. #03499)  
MAUS & NORDSVEN, P.C.  
137 First Avenue West  
P.O. Box 570  
Dickinson, ND 58602-0570  
(701) 483-4500

ATTORNEYS FOR THIRD PARTY  
DEFENDANT / APPELLANT KADRMAS,  
LEE & JACKSON, INC.

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
Table of Authorities .....	ii
	<b><u>¶ No.</u></b>
Statement of Facts .....	1
Law and Argument .....	2
Certificate of Service .....	6

## TABLE OF AUTHORITIES

¶ No.

### Cases

<u>Bye v. Federal Land Bank Ass'n of Grand Forks</u> , 422 N.W.2d 397 .....	3
<u>Kuhn v. Kuhn</u> , 301 N.W.2d 148 (N.D. 1981) .....	3
<u>Vorachek v. Citizens State Bank of Lankin</u> , 421 N.W.2d 45, 49 (N.D. 1988) .....	3

## STATEMENT OF FACTS

[¶1] Valley City misstates the facts as it pertains to KLJ's control over the actions of SCI. In paragraph 32 of its Statement of Facts, Valley City states that "KLJ required SCI to remove sections of the pavement..." Appellee's Brief, ¶ 32. In paragraph 33, Valley City states, "KLJ required SCI to remove and replace this cement work ..." Appellee's Brief, ¶ 33. These statements do not correctly describe KLJ's role in the process. KLJ was retained by Valley City as a consultant. KLJ recommended to the City that SCI's work was inadequate. It had no authority to require SCI to remove pavement or cement work. These were decisions made by the City. As described by the City, the City is distancing itself from responsibility for its decisions.

## LAW AND ARGUMENT

[¶ 2] Valley City argues that KLJ did not appeal from certain non-appealable orders, such as the Order for Summary Judgment, the Directed Verdict Order, and the Order to Adjudicate the Duty to Defend Claim. These Orders became part of the Judgment which is appealable.

[¶ 3] Valley City argues that the Court does not have jurisdiction to hear the issues aside from the duty to defend. In support of its argument Valley City cites Bye v. Federal Land Bank Ass'n of Grand Forks, 422 N.W.2d 397. Bye sets forth an exception to the rule regarding appellate jurisdiction in instances where an appellant who failed to perfect an appeal may nevertheless be included when the rights of all appellants are connected or if the erroneous decision of the trial court forms the basis for all of the parties' rights. Vorachek v. Citizens State Bank of Lankin, 421 N.W.2d 45, 49 (N.D. 1988), *citing* Kuhn v. Kuhn, 301 N.W.2d 148 (N.D. 1981).

[¶ 4] In this instance, the duty to defend claim was inextricably connected to the other issues in this case. Effectively, one could not be ruled upon without the other's being involved. The various parties' rights concerning the issue are all connected to the same erroneous judgment of the District Court. As such, all of the issues should be considered by the Court.

[¶ 5] Respectfully submitted this 6th day of September, 2012.

MAUS & NORDSVEN, P.C.  
137 First Avenue West, P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500

By: \_\_\_\_\_



Michael J. Maus #03499

[maus@mnattys.com](mailto:maus@mnattys.com)

ATTORNEYS FOR THIRD PARTY  
DEFENDANT / APPELLANT KADRMAS,  
LEE & JACKSON, INC.

## CERTIFICATE OF SERVICE

[¶ 6] I hereby certify that on the 6th day of September, 2012, I served the foregoing **REPLY BRIEF OF APPELLANT** on the following by electronic mail transmission, per N.D. Sup. Ct. Administrative Order 14(D):

Daniel L. Gaustad #05282  
[dan@grandforkslaw.com](mailto:dan@grandforkslaw.com)

Ronald F. Fischer #03707  
[rfischer@grandforkslaw.com](mailto:rfischer@grandforkslaw.com)

Douglas W. Gigler #04984  
[dgigler@nilleslaw.com](mailto:dgigler@nilleslaw.com)

Kenneth L. Beach #06078  
[ken.beach@valleycitylaw.com](mailto:ken.beach@valleycitylaw.com)

MAUS & NORDSVEN, P.C.  
137 First Avenue West, P.O. Box 570  
Dickinson, ND 58602-0570  
Telephone: (701) 483-4500

By: \_\_\_\_\_

  
Michael J. Maus #03499  
[maus@mnattys.com](mailto:maus@mnattys.com)

ATTORNEYS FOR THIRD PARTY  
DEFENDANT / APPELLANT KADRMAS,  
LEE & JACKSON, INC.