

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

JEREMY L. BASS,

Plaintiff,

v.

MICHAEL NEWELL, Esq. at IDEA LAW
GROUP LLC, CARRINGTON MORTGAGE
SERVICES, and BANK OF AMERICA,

Defendants.

Case No. CV35-22-1875

OPINION AND ORDER ON MOTION TO
DISMISS AND STRIKE THE SUMMONS
AND COMPLAINT

THIS MATTER is before the Court on Defendant's *Motion to Dismiss and Strike the Summons and Complaint*.¹ The Court heard oral arguments on the matter on January 26, 2023. The Plaintiff Jeremy Bass appeared pro se. The Defendant Michael Newell appeared pro se.² The Court, having reviewed the briefs submitted by the parties, having heard arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL BACKGROUND

In September of 2008, the Plaintiff Jeremy Bass entered into a loan agreement with Zion's Bank for the purchase of property located in Lewiston, Idaho. Shortly after entering into

¹ Filed January 17, 2023.

² The other named defendants did not appear in this matter as it appears they have not been served with a summons.

the agreement Bass's loan was sold by Zion's to Bank of America. Bass asserts that he made payments on the promissory note until 2019 when he went into forbearance on the loan.³

It was during this forbearance period that Bass alleges he received a notice from Carrington Mortgage, the servicer of the deed of trust, attempting to "trick" him into signing a new promissory note.⁴ Bass asserts that he did not sign the new note but instead sought clarification from Land Title which then provided him with a letter of full reconveyance showing that his debt had been satisfied. Bass has asserted that despite the existence of the letter of full reconveyance, the Defendant Michael Newell, brought forth a new deed of trust which Bass alleges exhibits his forged signature.⁵

On August 16, 2022, Newell sent Bass a Notice of Default and a sale of the property was set for December 30, 2022. On December 12, 2022, Bass sent Newell a cease and desist letter asserting that the loan had been paid in full and that there is no outstanding debt with Bank of America. Bass also demanded that the scheduled sale of the property be halted.⁶ On December 27, 2022, Bass filed a *Complaint* against Newell, Bank of America, and Carrington Mortgage Services, seeking injunctive and declaratory relief, as well as damages for breach of contract and breach of the duty of good faith and fair dealing.⁷ Additionally, Bass issued a request for a temporary restraining order. These documents, as well as a Summons, were served upon Idea Law Group, LLC on December 29, 2022. However, in the Summons, Bass only listed Bank of America as the named Defendant. Bass did not serve the above documents on Michael Newell⁸ or either of the other named defendants Bank of America or Carrington Mortgage Services. On

³ It is asserted by the Defendant that Bass continued to make payments into 2020. *Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint*, Exhibit C.

⁴ *Complaint*, at 2.

⁵ Newell is the trustee appointed to effectuate the foreclosure

⁶ *Opposition to Defendant's Motion to Dismiss on Statute of Limitations Grounds*, Exhibit B.

⁷ It appears from the *Complaint* that the basis for these damages is the alleged forgery of loan documents.

⁸ *Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint*, pg. 2, paragraph 11.

January 17, 2023, Newell filed a Notice of Limited Appearance and a Motion to Dismiss and Strike Summons and Complaint.

ANALYSIS

The Defendant Michael Newell has moved to dismiss the complaint and strike the summons issued by the Plaintiff asserting numerous errors in both the Complaint and the summons.

1. Objections concerning the temporary restraining order

Newell asserts that the Plaintiff may not seek a temporary restraining order without an affidavit or a verification of the facts in his complaint. Further, Newell asserts that a temporary restraining order may not be issued by this Court as: 1) Bass failed to serve the other named defendants; 2) no hearing has been set on the matter; 3) and no bond has been issued. At the January 26, 2022 hearing on this matter this Court denied Bass's request for a temporary restraining order on the record. Therefore these issues are now moot and need not be further address in this written opinion.

2. Indispensable parties

Newell argues that – due to the Plaintiff's allegations of forgery – the title company, closing agent, and notary are all indispensable parties who must be named in this suit. Newell asserts that there are no allegations in the complaint that the named Defendants knew of the alleged forgery and therefore the action cannot be maintained and the matter must be dismissed. Bass acknowledges that indispensable parties are not currently named in the complaint but requests more time to name and serve all necessary parties.⁹

I.R.C.P. 21, captioned "Misjoinder and nonjoinder of parties," provides that misjoinder, and inferentially nonjoinder, "is not ground for dismissal of an action." It further provides that "(p)arties may be dropped or added by order of

⁹ *Opposition to Defendant's Motion to Dismiss and Strike Summons and Complaint*, at 1.

the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”

Holmes v. Henderson Oil Co., 102 Idaho 214, 216, 628 P.2d 1048, 1050 (1981). While the Court agrees with Newell’s assertion that the above mentioned parties are necessary to be joined, this issue can be remedied by an order from the Court, pursuant to Idaho Rule of Civil Procedure 19(a)(2), joining the parties. The failure of Bass to name these parties is not grounds for dismissal of his action.

3. Statute of Limitations

Newell asserts that there has never been an amendment to the contract signed by Bass. Further Newell argues that, as Bass entered into the mortgage in 2009, Bass’s asserted causes of action are barred by the Statute of Limitations. While not expressly stated by Newell, this Court finds this argument to be a motion to dismiss pursuant to I.R.C.P. 12(b)(6). Additionally, this Court has been presented with matters outside of the pleadings by both parties and therefore it must treat the motion to dismiss as a motion for summary judgment. *See Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 869, 406 P.3d 878, 881 (2017).

Summary judgment is proper 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. When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party. The moving party has the burden of establishing there is no genuine issue of material fact.

If the moving party has demonstrated the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment. The nonmoving party must present evidence contradicting that submitted by the movant, and which demonstrates a question of material fact. However, a mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.

Johnson v. Wal-mart Stores, Inc., 164 Idaho 53, 56, 423 P.3d 1005, 1008 (2018) (internal citations omitted).

A party asserting that a fact ... is genuinely disputed must support the assertion by ... citing to particular parts of materials in the record, ... or by showing that the materials cited do not establish the absence ... of a genuine dispute. Thus, the party opposing summary judgment must bring to the trial court's attention evidence that may create a genuine issue of material fact . Mere conclusory allegations will not raise a genuine issue of material fact.

Gordon v. U.S. Bank Nat'l Ass'n, 166 Idaho 105, 119, 455 P.3d 374, 388 (2019) (internal citations omitted).

The trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring the evidence to the court's attention.

Silicon Int'l Ore, LLC v. Monsanto Co., 155 Idaho 538, 552, 314 P.3d 593, 607 (2013).

Here, Bass asserts that the Statute of Limitations has not yet run on his claims for fraud or breach of contract as he only recently discovered the fraud that is the basis for these claims.¹⁰ While Bass asserts that his signature was forged as a basis for these claims, it does not appear to this Court that this assertion is supported in the record by any more than Bass's conclusory allegations. However, Newell has submitted copies of the Note and Deed of Trust, signed by Bass in 2009, to which Newell asserts no amendments were ever made. Based on the record presented this Court is constrained to find the only evidence of a signature by Bass which could have been forged dates back to 2009. Bass began to make payments to Zion's that year and continued to make payments on the Note until late 2020. It is inconceivable to this Court that Bass would do so believing that he did not actually enter into that agreement. Had he not entered

¹⁰ While Bass has not explicitly made a claim of fraud, he has raised allegations of forgery. Newell's motion to dismiss asserts that the statute of limitations has run on Bass's breach of contract and fraud claims.

into that agreement he would at least known or should have known of this alleged forged signature at that time. Bass's claims for both breach of contract and fraud are clearly barred by the statute of limitations.¹¹ Summary Judgment is appropriate and Bass's claims against Newell are dismissed.

4. Improper Summons and Service

Newell asserts that the summons issued by the Clerk of the Court is improper under the Idaho Rules of Civil Procedure. Newell asserts that the Summons should be stricken as it was not directed to him as a defendant and was not in the form provided in Idaho Rule of Civil Procedure 4(3)(b). The Summons served upon Idea Law Group listed only Bank of America as a named defendant. Therefore it failed to comply with Idaho Rule of Civil Procedure 4(a)(1)(G). Further, the summons issued appears to have been in the form required by Idaho Rules of Family Law Procedure 204 for use in family law proceedings rather than the proper form required pursuant to Idaho Rule of Civil Procedure 4(a)(3)(B). The Court finds that as to Defendant Michael Newell, the Summons as issued is improper and insufficient under the Idaho Rules of Civil Procedure and therefore it shall be stricken. The Court further finds that under Idaho Rule of Civil Procedure 4(c) service of process on Michael Newell is insufficient.

ORDER

IT IS HEREBY ORDERED that the Motion to Dismiss and Strike Summons and Complaint is GRANTED in part and DENIED in part, consistent with the above opinion.

DATED: February 17, 2023



MARK T. MONSON
District Judge

¹¹ The relevant Statute of Limitations are: 5 years for breach of contract, I.C. §5-216, and 3 years from the time of discovery by the aggrieved party, I.C. §5-218.

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing document was delivered via e-mail to:

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PATTY O. WEEKS
Clerk of the Court

By


Deputy Clerk

