*Jeremy L. Bass, Pro Se*

*1515 21st Ave*

*Lewiston, ID 83501-3926*

*Ph: 208-549-9584*

*Quantum.J.L.Bass@RAWdeal.io*

**IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT**

**FOR THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY**

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| JEREMY L. BASS,  Plaintiff,  vs.  BANK OF AMERICA, N.A.,  CARRINGTON MORTGAGE SERVICES, LLC,  RECONTRUST COMPANY, N.A.,  Randall Szabo, c/o IDEA Law Group, LLC,  MICHAEL J. NEWELL, c/o IDEA Law Group, LLC,  DOE I-X  Defendants. | Case No. CV35221875  **AFFIDAVIT IN OPPOSITION OF:**  **-** **Any Statutory Concerns**  **DEMAND FOR JURY** |

COMES NOW Plaintiff, JEREMY L. BASS, AND PROVIDES THIS AFFIDAVIT IN SUPPORT OF THE COMPLAINT AND MOTIONS in regards to his knowledge of events and everything he believes to be true regarding interactions with Carrington Mortgage, Bank of America, and parties. The reason for this affidavit is to help meet the page limits defined in District Local Rule Civ 7.1 (Civil) [v. 4].

I, Jeremy L. Bass, Pro Se, hereby make the following statements of fact as to his personal knowledge and attest the same to be accurate to the best of his knowledge:

This memorandum addresses the issue of statutory limitations for filing a suit against the defendants for perpetuating misinformation and engaging in fraudulent activities to the detriment of their victims. The argument posits that the statutory limits have not been run out or even kicked in, given the ongoing nature of the deceptive acts and the unjust enrichment that the bank continues to reap.

I. The Discovery Rule as a basis for tolling the Statute of Limitations

The statute of limitations may not have run out if the discovery rule applies. Under the discovery rule, the statute of limitations does not begin to run until the injured party discovers or reasonably should have discovered, the cause of action. This principle has been upheld in several Idaho cases, such as Harrigfeld v. Hancock, 140 Idaho 134, 90 P.3d 884 (2004) and Moon v. Investment Co., 110 Idaho 7, 714 P.2d 93 (1986).

Applying the discovery rule, the statute of limitations would not begin to run until the plaintiff discovered, or should have discovered, the bank's fraudulent activities. If the bank has taken active steps to conceal the fraud, it is possible that the plaintiff did not realize the wrongdoing until recently, meaning that the statute of limitations has not yet expired.

II. Fraudulent Concealment as a basis for tolling the Statute of Limitations

Fraudulent concealment is another doctrine that can toll the statute of limitations. Under Idaho law, the statute of limitations may be tolled if a defendant actively conceals the existence of a cause of action. See, e.g., Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986). To establish fraudulent concealment, a plaintiff must demonstrate that the defendant concealed the existence of the cause of action through affirmative acts, that the plaintiff was not aware of the cause of action, and that the plaintiff's ignorance was not the result of a lack of diligence. See, e.g., Farmers Ins. Exchange v. Sipple, 144 Idaho 882, 174 P.3d 507 (2007).

In this case, if the bank actively concealed the original fraud, and the plaintiff was unaware of the cause of action due to the bank's misrepresentations, the statute of limitations may be tolled. The plaintiff must be able to demonstrate that they exercised reasonable diligence in attempting to discover the cause of action but were unable to do so due to the bank's fraudulent concealment.

III. Continuing Violation Doctrine as a basis for tolling the Statute of Limitations

The continuing violation doctrine is another potential avenue to argue that the statute of limitations has not run out. Under this doctrine, the statute of limitations does not begin to run until the wrongful conduct ceases. See, e.g., Doe v. Boy Scouts of America, 159 Idaho 103, 356 P.3d 1049 (2015). This doctrine is typically applied to cases involving ongoing or continuous wrongful conduct, as opposed to discrete, completed acts.

In the present case, if the bank still engages in acts of deception and continues to benefit from the unjust enrichment, the continuing violation doctrine may apply. The plaintiff must establish that the bank's deceptive conduct is ongoing and continuous rather than discrete, completed acts.

Overview Conclusion

In summary, the discovery rule, fraudulent concealment, and the continuing violation doctrine all provide potential arguments that the statute of limitations has not run out or even kicked in for filing a suit against the bank. Each of these doctrines requires specific factual showings to be made by the plaintiff, which, if successfully established, could enable them. Satisfaction will be found with the following application of facts.

I. Discovery Rule

The discovery rule is a well-established principle under Idaho law that can delay the commencement of the statute of limitations period. The Idaho Supreme Court has applied the discovery rule in numerous cases, such as Harrigfeld v. Hancock, 140 Idaho 134, 90 P.3d 884 (2004), and Moon v. Investment Co., 110 Idaho 7, 714 P.2d 93 (1986).

1. To invoke the discovery rule, the plaintiff must demonstrate the following factual showings:
2. The plaintiff did not discover, and reasonably could not have discovered, the cause of action earlier.
3. The bank's fraudulent activities were concealed and not reasonably discoverable by the plaintiff through due diligence.
4. The date when the plaintiff discovered or should have discovered the fraudulent activities.

In the present case, the plaintiff argues that they only became aware of the bank's fraudulent conduct within the past 16 months, despite diligently reviewing their financial records and communications with the bank over the years. As shown in the exhibits, Mr. Bass proves he fulfilled his requirement of a customer's due diligence by having copies of important events and notices regarding this account able to be produced. The documents and records in exhibits of this case span the life of the whole loan. While addressing the court, the defendants' inability to produce documents of importance and paperwork juggling are themselves unable to say the same.

These matters of fact have demonstrated that the plaintiff exercised due diligence but could not discover the cause of action earlier due to the bank's concealment of its fraudulent activities without extenuating circumstances. They are so entrenched in the deception that they are willing to risk injury to a new innocent party by conducting the sale while knowing that they have been exposed. So deep-seated are they; their best action is to keep pushing to sell now when they were not in a rush before when holding the plaintiff on forbearance six months longer than they should not have. The defendants are just proceeding forward with their current actions as if they were not beholden to the courts or the people but are unreproachable, so they don't need to be held to the measure of their conduct. Their stance to proceed with the trustee's unatoned sale is not short of a statement that they believe it is acceptable to commit crimes if you can go undetected long enough to meet the statute of limitations.

II. Fraudulent Concealment

Fraudulent concealment is a recognized basis for tolling the statute of limitations under Idaho law. The Idaho Supreme Court has upheld the doctrine of fraudulent concealment in various cases, such as Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986), and Farmers Ins. Exchange v. Sipple, 144 Idaho 882, 174 P.3d 507 (2007).

To establish fraudulent concealment, the plaintiff must demonstrate the following factual showings:

1. The bank actively concealed the existence of the cause of action through affirmative acts.
2. The plaintiff was not aware of the cause of action.
3. The plaintiff's ignorance was not the result of a lack of diligence.

In the present case, the plaintiff can argue that the bank fraudulently concealed its wrongful conduct through a pattern of deceptive communications, misrepresentations, and manipulation of records. Despite exercising reasonable diligence, the plaintiff could not discover the fraud due to the bank's efforts to hide it through paperwork. They have shown a pattern of changing things at their will, making it up as they go, and blaming it on someone else while presenting themselves as if they are not involved. This shell game is one of pawns, but where the interest lies is where the buck stops.

III. Continuing Violation Doctrine

The continuing violation doctrine, under Idaho law, may be applied to toll the statute of limitations in cases where the wrongful conduct is ongoing and continuous rather than constituting discrete, completed acts. The Idaho Supreme Court has recognized and applied the continuing violation doctrine in various cases, such as Doe v. Boy Scouts of America, 159 Idaho 103, 356 P.3d 1049 (2015), where the court found that the continuing violation doctrine applied to a claim involving ongoing sexual abuse.

To successfully invoke the continuing violation doctrine, the plaintiff must demonstrate the following factual showings:

1. The bank's wrongful conduct is ongoing and continuous, as opposed to discrete, completed acts.
2. The plaintiff continues to suffer harm as a result of the ongoing wrongful conduct.
3. The statute of limitations should not begin to run until the wrongful conduct ceases.

In the present case, the plaintiff can argue that the bank's ongoing misrepresentation of information and engagement in fraudulent activities to enrich itself at the plaintiff's expense unjustly constitutes a continuing violation. The most recent act of deception occurred within the past month, demonstrating the continuous nature of wrongful conduct. Moreover, the bank's actions are intentionally designed, knowing that they would further injure the plaintiff and force them to suffer harm due to the ongoing deception.

In furthering the cause to decide for the plaintiff and grant leave to make corrections as needed to allow the case to proceed unbarred by statutes of limitations, we would look to The Supreme Court has recognized that the decision to waive the statute of limitations is a claims-processing decision, which is within the district court's discretion. As stated in Wilkins v. United States (2023), "Section 2409a(g) is a nonjurisdictional claims-processing rule. The Court of Appeals' contrary judgment is reversed, and the case is remanded for further proceedings consistent with this opinion." Additionally, lower courts have recognized the authority to grant waivers in certain circumstances. In Keene Corp. v. United States (2d Cir. 1990), the Second Circuit Court of Appeals held that "tolling is permitted when the Government has concealed its own wrongdoing and thereby prevented the plaintiff from obtaining the necessary information to file suit." Similarly, in Irwin v. Department of Veterans Affairs (1990), the Supreme Court stated that "equitable tolling may be applied if, despite all due diligence, a plaintiff is unable to obtain vital information bearing on the existence of his claim."

Therefore, it is reasonable to argue that the district court has the authority to consider whether equitable circumstances warrant tolling or waiver of the statute of limitations in the interest of protecting access to justice. The doctrine of equitable tolling applies in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. In such situations, the court may extend the deadline for filing the claim.

The defendants have shown throughout the exhibits to have contradicted themselves and engaged in actions meant to continue the fraud's concealment. In this case, the defendants have continued to benefit from the fraudulent conduct for years while actively concealing the wrongdoing from the plaintiff. Despite knowing that Mr. Bass' account was in a defunct state if not invalidated, the servicing arm of the bank continued to collect on accounts they knew to be in error. That they understood the invalidated state is shown in their actions to get backdated contracts signed, as well as the many other activities attested to in related documents also submitted to the court, which only added to the severity of the actions taken by the defendants. Furthermore, the bank's use of mailings to continually inform Mr. Bass that everything was normal while knowing the opposite to be accurate could be considered a new act of fraud. If not a continuing action, it could still be argued that it is a new action, as it represents a form of unjust enrichment. The Idaho Code provides that any gain that can be partly attributed to the value perceived on having extra income when Mr. Bass was unknowingly responsible for the two loans would constitute unjust enrichment. Thus, it is reasonable to argue that justice is best served by allowing this case to go to trial, even if Mr. Bass has failed to satisfy the requirements or authorities fully needed for tolling and the statute of limitations has already run.

Moreover, the defendants are currently attempting to sell the house, which would only increase their unjust enrichment based on the fraud. This action is in process, leaving us with two ways to label it: either an occurrence of the Continued Action being carried out or a new in-process cause of action that seems to be an even more significant unjust enrichment. The plaintiff is trying to show due diligence to minimize damages by addressing the matter as soon as the plaintiff can. The plaintiff is here as a defense against a crime in action before the court. The plaintiff has tried to meet every procedural need, even calling for a hold on the action until the issues have been settled so as not to injure a new party by pushing the sale through and introducing a buyer to the case. The trustee's sale is being used to push through without being held to task on the grievances. It's an abuse of process to cover up the issues and fits the pattern yet again where they use a part of the process to further a goal that unjustly enriches them through misrepresentations; It's an in-process action that must not be allowed to continue. The fact that the sale of the house depends on a lie is a serious legal issue that cannot be overlooked.

The reason that such statutes exist is to protect defendants from unfair legal action; for example, after a long time, the defendant may no longer be in possession of key evidence relevant to defending themselves. Given that those key evidence-level items would be needed for any breach of contract through the 30-year life of the loan, it is inconceivable that the bank would be missing such documents required to defend themselves, which the statutes are addressing when applied. The statutes exist to create equality of access to justice by ensuring a level playing field where both parties can effectively litigate their case. In a case of this nature, applications of the statute limitations actually create inequality as it's used by institutions that are expected to keep the records of the accounts for decades to address issues raised as the account comes to maturity. Barring a customer from bringing a suit against the entity the customer is still under contract with while it is expected that both parties should have the records while under the active account, meaning that the statute does not have the intended effect and only gains that effect once the contract ends. The practice of auditing accounts as it's readied to be closed further backs this. A parallel is when an employee works for the state when they retire after working for 10 years with the state; an audit of time off or salary adjustments are performed.

Suppose a statute placing limitations on the rights of Mr. Bass to receive restitutionary measures designed to restore the plaintiff's status or damages in the form of monetary compensation resulting from what could have been a successful suit for injury, as it is understood, is placed. In that case, Mr. Bass is only being barred from being awarded damages for the cause of action under the limitations. "A statute placing limitations on remedies does not contradict the provision of the Idaho Constitution that courts of justice shall be open to every person and a speedy remedy afforded for every injury of person." *Olsen, 117 Idaho at 717, 791 P.2d at 1296*. A victim may be barred from seeking damages, but that doesn't allow the defendants to block the victim from being vindicated by seeking justice via a Declaratory judgment as an example or provide a blanket cause for dismissal for the defendants to stop the other aspects of the case that are individual points not covered under the statute of limitations for the paperwork at the core of the case. We respectfully ask the court to grant a waiver for any statute of limitations and any procedurally driven blocks that would prey on the citizen's lack of knowledge when there was no chance to overcome those defects through the ability to have years of study and practice for the legal trade; as long as the plaintiff is showing signs of improvement of work for the sake of justice and the rights to access of justice for a citizen.

Dated this \_26\_ day of April 2023.

Respectfully submitted,

Jeremy L. Bass

Plaintiff/ Pro Se

Signature

# CERTIFICATE OF MAILING

I certify that I have sent by email and first-class mail this OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND STRIKE SUMMONS AND COMPLAINT to Defendants on April 26th, 2023, at the following email address and postal address:

|  |  |
| --- | --- |
| Email: mnewell@idealawgroupllc.com  Postal: Michael J. Newell ISBA #1953  IDEA Law Group, LLC  4530 S. Eastern Ave., Ste. 10  Las Vegas, NV 89119  Postal: Randall Szabo #10901  IDEA Law Group, LLC  4530 S. Eastern Ave., Ste. 10  Las Vegas, NV 89119 | Postal: BANK OF AMERICA, N.A  C T CORPORATION SYSTEM  1555 W SHORELINE DR  STE 100  BOISE, ID 83702  Postal: CARRINGTON MORTGAGE SERVICES  C T CORPORATION SYSTEM  1555 W SHORELINE DR  STE 100  BOISE, ID 83702 |

Jeremy L. Bass

Plaintiff/Pro Se

Signature

**ACKNOWLEDGMENT**

STATE OF IDAHO )

: ss.

County of NEZ PERCE COUNTY )

On the \_26\_\_ day of \_\_April\_\_, 2023, before me, the undersigned Notary Public, personally appeared \_\_Jeremy Bass\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.

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Notary Public for Idaho

Residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_