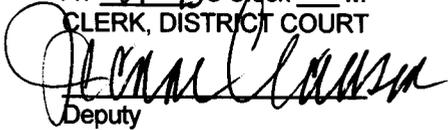


STATE OF IDAHO)
County of KOOTENAI) ss

FILED 7/16/19

AT 12:45 O'Clock P.M
CLERK, DISTRICT COURT


Deputy

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

NOLAN GARRETT,

Plaintiff,

vs.

**DAM FINE BREWING LLC, an Idaho
limited liability company, BLACK LODGE
BREWING, LLC, an Idaho limited liability
company, JOSHUA CANTEMESSA and
GINGER CANTEMESSA, husband and
wife, and the marital community
comprised thereof,**

Defendants.

Case No. **CV28-19-2395**

**MEMORANDUM DECISION
AND ORDER GRANTING
DEFENDANT BLACK LODGE
BREWING'S MOTION TO
DISMISS, AND DENYING
PLAINTIFF'S MOTION FOR
ATTORNEY FEES**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on Defendant Black Lodge Brewing, LLC's (Black Lodge) Motion to Dismiss. Black Lodge moves the Court to dismiss it from the action pursuant to I.R.C.P. 12(b)(6), arguing that Plaintiff Nolan Garrett (Garrett) has not plead sufficient facts to put Black Lodge on notice of the claims against it. The hearing on Black Lodge's Motion to Dismiss was held on July 11, 2019. At the conclusion of the hearing, the Court announced its decision that defendant Black Lodge's Motion to Dismiss was granted, and that defendant Black Lodge's request for attorney fees set forth in its memorandum was denied. Because oral argument in this case went well over the time scheduled for the hearing, and thus other counsel and parties in other

cases were waiting for their hearing, this Court stated it would issue a written decision detailing its reason for the decision it announced on the record.

On December 26, 2017, Garrett and Defendants Joshua and Ginger Cantamessa (the Cantamessas) and Defendant Dam Fine Brewing, LLC (Dam Fine), executed a Purchase Agreement (Agreement) for the sale of Garrett's interest in Cloudburst Brewing, LLC d/b/a DOWNDRAFT BREWING CO. (collectively Cloudburst), in the amount of \$250,000.00. Compl., ¶¶ 3.1, 3.3, Ex. A. Additionally, the Cantamessas executed a promissory note (Note) promising to pay Garrett the principal amount of \$250,000.00. *Id.* at ¶ 3.4, Ex. A. The Note provides that, beginning on February 1, 2018, the Cantamessas will pay \$2,000.00 per month to Garrett until the full amount, along with any accrued interest, is paid in full. *Id.* at ¶ 3.7. The Note also includes an acceleration clause, making the full amount payable upon demand in the event the Cantamessas default in making any payments. *Id.* at ¶ 3.8. Dam Fine granted Garrett a security interest in numerous pieces of brewing equipment to serve as collateral against the debt. *Id.* at ¶ 3.5. Perfection of the security interest was achieved by the filing of a financing statement on December 27, 2017. *Id.* at ¶ 3.6.

The Cantamessas made payments through August 2018, but made no payments from September through December 2018. *Id.* at ¶ 3.10. On January 8, 2019, Garrett and the Cantamessas executed an addendum to the Note, by which the Cantamessas agreed to make a lump sum payment in the amount of \$8,000.00 by March 2019. *Id.* at ¶ 3.10. The addendum further provided that the Cantamessas would make partial payments of \$1,000.00 per month through June 2019, and resume full monthly payments thereafter. *Id.* The Cantamessas made a lump sum payment of only \$6,000.00, and ceased making any payments thereafter. *Id.* at ¶¶ 3.11, 3.21.

In June of 2018, the Cantamessas began the process of rebranding Cloudburst Brewing as Black Lodge Brewing. Compl., ¶ 3.12. However, instead of rebranding Cloudburst as Black Lodge, the Cantamessas filed a Certificate of Organization Limited Liability Company for a new entity with the Idaho Secretary of State on February 6, 2019. *Id.* at ¶ 3.13. The new entity was named Black Lodge Brewing, LLC, and its governors were the Cantamessas. *Id.* at ¶ 3.14. Thereafter, Garrett received an email from Defendants stating that they did not intend to renew the lease at their current location, and would be moving their brewery operation to a new location. *Id.* at ¶¶ 3.16–3.17. As of April 1, 2019, Defendants were at least 90 days past-due on their payments towards the Note. *Id.* at ¶ 3.19. Garrett notified Defendants that he intended to invoke the acceleration clause, but received no response. *Id.* at ¶¶ 3.20–3.21.

On April 4, 2019, Garrett filed a Complaint against Damn Fine, the Cantamessas, and Black Lodge (also referred to collectively as Defendants) for breach of contract and foreclosure of security interest. On May 14, 2019, Defendants filed Defendants' Answer to Plaintiff's Complaint, Affirmative Defenses, and Counterclaims. Defendants' Counterclaim alleges breach of contract, intentional misrepresentation, negligent misrepresentation, and promissory estoppel.

On May 17, 2019, Black Lodge filed a Motion to Dismiss, followed by an Amended Motion to Dismiss, filed on May 22, 2019. The Amended Motion to Dismiss requests the Court dismiss Plaintiff's action against Black Lodge pursuant to Idaho Rule of Civil Procedure (I.R.C.P.) 12(b)(6). On May 22, 2019, Garrett filed Plaintiff/Counterclaim Defendant's Answer to Counterclaims. On June 13, 2019, Black Lodge filed Memorandum in support of Defendant Black Lodge Brewing, LLC's Motion to Dismiss, and declarations of Ginger Cantamessa, Christi Disparte, and Ryan French

in support of Black Lodge's Motion to Dismiss. On June 20, 2019, Garrett filed Response to Defendant Black Lodge Brewing, LLC's Motion to Dismiss and Plaintiff's Motion to Amend Complaint Under I.R.C.P. 15(a)(2).¹ In support of the Response, Garrett additionally filed declarations of Collette C. Leland, Nolan Garrett, and Craig Hunter (the records custodian of Craig Hunter/Coldwell Banker Schneidmiller Realty) in support of his response to the Motion to Dismiss. Finally, on July 3, 2019, Black Lodge filed Reply in Support of Motion to Dismiss, along with the Declaration of Joshua Cantamessa in Support of Reply in Support of Motion to Dismiss, and the supplemental declarations of Ginger Cantamessa and Christi Disparte.

II. STANDARD OF REVIEW

The court must read a motion to dismiss under Idaho Rule of Civil Procedure 12(b)(6) "in conjunction with Rule 8(a), which sets forth the requirements for pleading a claim and calls for 'a short and plain statement of the claim showing that the pleader is entitled to relief' and a demand for relief." *Harper v. Harper*, 122 Idaho 535, 536, 835 P.2d 1346, 1347 (Ct. App. 1992) (citing I.R.C.P. 8(a)). The court looks only at the pleadings to determine whether a claim for relief has been stated when considering a Rule 12(b)(6) motion to dismiss. *Allied Bail Bonds, Inc. v. Cty. of Kootenai*, 151 Idaho 405, 409, 258 P.3d 340, 344 (2011); *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002). Under Rule 12(b)(6), "[a]fter viewing all facts and inferences from the record in favor of the non-moving party, the Court will ask whether a claim for relief has been stated." *Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 868–69, 406

¹ Garrett's Motion to Amend Complaint Under I.R.C.P. 15(a)(2) has not at this time been noticed up for hearing. In his Motion to Amend Complaint, Garrett did not indicate whether oral argument on that motion was requested, violating I.R.C.P. 7(b)(3)(A) and (D). Garrett's Motion to Amend Complaint is part of Garrett's Response to Defendant Black Lodge Berwing, LLC's Motion to Dismiss, violating I.R.C.P. 7(b)(3)(A).

P.3d 878, 880–81 (2017) (quoting *Losser v. Bradstreet*, 145 Idaho 670, 673, 183 P.3d 758, 761 (2008)). “Dismissal ‘for failure to state a claim should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.’” *Id.* at 869, 406 P.3d at 881 (quoting *Taylor v. Maile*, 142 Idaho 253, 257, 127 P.3d 156, 160 (2005)) (internal quotations omitted).

III. ANALYSIS

A. Defendant Black Lodge’s Motion to Dismiss is granted.

The first issue before the Court is whether Garrett's Complaint placed Black Lodge on notice of the claims against it. Black Lodge asserts that Garrett “did not plead any causes of action against Black Lodge,” and the statements made in the Complaint that do include Black Lodge are “not enough to provide Black Lodge with notice regarding [Garrett’s] claims.” Mem. in Supp. of Def. Black Lodge Brewing, LLC’s Mot. to Dismiss, 2. Garrett argues that he “has pled sufficient facts to put Black Lodge on notice that Garrett intends to recover any collateral or proceeds of collateral held by Black Lodge.” Resp. to Black Lodge Brewing, LLC’s Mot. to Dismiss, 1. The Court will look only to the pleadings in determining whether a claim for relief has been stated in this matter.

The Court will begin by reviewing the procedural rules related to pleadings. First, I.R.C.P. 8(a)(2) states “[a] pleading that states a claim for relief must contain...a short and plain statement of the claim showing that the pleader is entitled to relief.” I.R.C.P. 8. Next, I.R.C.P. 8(d) states “[e]ach allegation must be simple, concise, and direct. No technical form is required.” Lastly, I.R.C.P. 8(e) states “[p]leadings must be construed so as to do justice.” *Id.* In *Brown v. City of Pocatello*, the Supreme Court of Idaho provided the following relevant explanation:

“Under notice pleading, ‘a party is no longer slavishly bound to stating particular theories in its pleadings.’” *Seiniger Law Office, P.A. v. N. Pac. Ins. Co.*, 145 Idaho 241, 246, 178 P.3d 606, 611 (2008) (quoting *Cook v. Skyline Corp.*, 135 Idaho 26, 33, 13 P.3d 857, 864 (2000)). A complaint must merely state claims upon which relief may be granted, and pleadings should be liberally construed in the interest of securing “a just, speedy and inexpensive resolution of the case.” *Id.* The technical rules of pleading have long been abandoned in Idaho, and the “general policy behind the current rules of civil procedure is to provide every litigant with his or her day in court.” *Clark v. Olsen*, 110 Idaho 323, 325, 715 P.2d 993, 995 (1986). “Though this Court will make every intendment to sustain a complaint that is defective, e.g., wrongly captioned or inartful, a complaint cannot be sustained if it fails to make a short and plain statement of a claim upon which relief may be granted.” *Gibson v. Ada County Sheriff's Dep't*, 139 Idaho 5, 9, 72 P.3d 845, 849 (2003). “The key issue in determining the validity of a complaint is whether the adverse party is put on notice of the claims brought against it.” *Id.*

148 Idaho 802, 807, 229 P.3d 1164, 1169 (2010).

Garrett puts forth two claims for relief in his complaint: breach of contract and foreclosure of a security interest. First, “[t]he 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.” *Mosell Equities, LLC v. Berryhill & Co.*, 154 Idaho 269, 278, 297 P.3d 232, 241 (2013) (citing *O'Dell v. Basabe*, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991) (“plaintiff has the burden of proving the existence of a contract and the fact of its breach”)). Here, as it relates to Garrett’s first claim for relief, Garrett alleges that the Agreement and Note are existing, valid, enforceable contracts between himself, the Cantamessas, and Dam Fine (Compl., ¶¶ 4.2–4.7); the Cantamessas breached the Note by failing to make the required payments (¶ 4.8); and the breach caused damages in the amount of \$236,000.00, plus interest (¶¶ 4.9–4.11). Garrett has pleaded sufficient facts to put the Cantamessas and Dam Fine on notice of the breach of contract claim. Garrett has failed to plead sufficient facts, or any facts for that matter, that would put Black Lodge on notice of a claim

against it for breach of contract. Additionally, the Complaint clearly indicates that Black Lodge was not in existence at the time the Agreement and Note were signed, and therefore Black Lodge was not a party to the Agreement or Note; it has not been alleged by Garrett that Black Lodge became a party to the Agreement or Note at any point in time thereafter. Therefore, because it appears beyond doubt that Garrett can prove no set of facts in support of his claim against Black Lodge that would entitle him to relief, the Court finds that Black Lodge should be dismissed as a defendant from Garrett's breach of contract claim.

Garrett's second claim for relief is foreclosure of security interest. Garrett has established that he has attached and perfected a security interest in the collateral, being the brewing equipment.² Compl., ¶¶ 5.1–5.6, Ex. C; see I.C. §§ 28-9-203, 28-9-310. Therefore, in the event of default, pursuant to I.C. § 28-9-609, Garrett has the right to take possession of the collateral in which he has a security interest, wherever it may be located, unless an exception applies.³ I.C. § 28-9-609; see *generally* I.C. § 28-1-201 (a buyer in the ordinary course of business is one exception where a buyer would not take subject to a security interest). Further, Garrett can take possession of the

² Under Garrett's second claim for relief, Foreclosure of Security Interest, Garrett explains that a security interest successfully attached to the collateral, being the brewing equipment, when it became enforceable against the Cantamessas and Dam Fine, as value was given to Dam Fine, Dam Fine had rights in the collateral, and the Cantamessas authenticated a security agreement that described the collateral. Compl., ¶¶ 5.1–5.4; see I.C. §§ 28-9-203, 28-9-310.

³ Idaho Code Section 28-9-609, titled "SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT," reads:

(a) After default, a secured party:

- (1) May take possession of the collateral; and
- (2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 28-9-610.

(b) A secured party may proceed under subsection (a) of this section:

- (1) Pursuant to judicial process; or
- (2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

collateral, and any rightful proceeds stemming from an unauthorized disposition of collateral, either pursuant to the judicial process or non-judicially, if the possession can be completed without breaching the peace. I.C. § 28-9-609.

In the Complaint, Garrett states that he has reason to believe that Defendants will move the collateral in which he holds a security interest. Compl., ¶ 3.22. However, Garrett does not allege that the collateral has been moved to the location of Black Lodge, nor does Garrett provide any indication that Defendants' plan to move the collateral to Black Lodge. Next, Garrett states he received an email from Defendants stating that they would be moving their business to downtown Coeur d'Alene when their current lease expires. *Id.* at ¶ 3.18. Again, Garrett does not mention that the collateral in which he holds a security interest will be possessed by Black Lodge. Garrett further states, "[t]o the extent the Cantamessas and Dam Fine have transferred the Collateral or proceeds therefrom to Black Lodge Brewing, Garrett is entitled to enforce his security interest against Black Lodge." *Id.* at ¶ 5.12. This is the first and only statement that even hints at alleging the collateral may be in possession of Black Lodge. However, it clearly remains a purely speculative statement which in no way puts Black Lodge on notice of the claim against it, and thus is insufficient. The statement seemingly attempts to allege that *if* Black Lodge either purchased the brewing equipment from Dam Fine without Garrett's authorization, or *if* Dam Fine disposed of any item of collateral without Garrett's authorization and allowed those proceeds to benefit Black Lodge, *then* Garrett has the right to repossess the collateral and take the identifiable proceeds from the unauthorized disposition. Garrett would indeed have the right to take those actions should either of those circumstances occur. However, no allegations have been made and no evidence of any kind has been provided to the Court within the

pleading and accompanying attachments that would indicate either one of those circumstances has occurred.

During oral arguments on this matter, counsel for Garrett stated she would be happy to voluntarily dismiss Black Lodge as a defendant in this matter as soon as the defendants provide credible proof that the brewing equipment and any unauthorized proceeds linked to the brewing equipment are not being used to benefit Black Lodge. Mot. Hr'g, July 11, 2019, 3:31 P.M. Counsel for Garrett fails to understand the import of the Idaho Rules of Civil Procedure. Even traditional notions of pleading do not simply allow for a party to be made a defendant to an action and thereafter require that very defendant to provide proof to the plaintiff as to why they should not have been made a party to the action. The Idaho Rules of Civil procedure make those long standing notions clear; the plaintiff must have a good-faith basis for bringing a claim against a defendant in the first place – one which is supported by sufficient allegations contained in the pleading so as to put the adverse party on notice of the claims brought against it. I.R.C.P. 8, 11. In this case, Garrett, in his complaint had to include a short and plain statement as to why he is entitled to relief against defendant Black Lodge. *Id.* Garrett has completely failed in this regard.

In conclusion, there are no allegations and no evidence contained in Garrett's Complaint that would support a claim of foreclosure of security interest against Black Lodge. In turn, Black Lodge has not been put on notice of the claim brought against it. Therefore, because it appears beyond doubt that Garrett can prove no set of facts in support of his claim against Black Lodge that would entitle him to relief, the Court finds that Black Lodge should also be dismissed as a defendant from Garrett's foreclosure of security interest claim.

Finally, counsel for Garret made the claim that Black Lodge's motion to dismiss was really a motion for summary judgment, and wrote: "The Court should therefore defer a hearing on the Motion to allow time for Plaintiff Nolan Garrett to conduct discovery." Resp. to Black Lodge Brewing, LLC's Mot. to Dismiss, 1. Again, counsel has forsaken the Idaho Rules of Civil Procedure. No motion for a continuance was made. No motion was made under I.R.C.P. 56(d). The Court has taken care to consider no matters outside the pleadings. This is a motion to dismiss and the Court has treated it as such. Counsel for Garrett claims, "The Court should grant Garrett leave under I.R.C.P. 15 to amend his Complaint." *Id.* at 11. If counsel for Garrett truly felt that way, the Court wonders why counsel for Garrett never noticed any motion to amend complaint for hearing.

B. Defendant Black Lodge's request for attorney fees is denied.

Black Lodge requested attorney fees against Garrett for violating I.R.C.P. 11. Mem. in Supp. of Def. Black Lodge Brewing, LLC's Mot. to Dismiss, 16, 17. Black Lodge has failed to follow the applicable rules which would allow a court to award attorney fees. Idaho Rule of Civil Procedure 11(c)(2) reads:

Motion for sanction. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21, days after service or within another time the court sets. If warranted, the court may award to the prevailing party on the motion, reasonable expenses, including attorney's fees and costs incurred for the motion.

Defendant Black Lodge did not file a separate motion for sanctions. When this was pointed out by the Court to counsel for Black Lodge, the response from counsel was "I.R.C.P. 11 allows sanctions sua sponte, that means that we do not have to file a motion to receive sanctions. The Court can do it on its own." Mot. Hr'g, July 11, 2019,

3:39 P.M. Mot. Hr'g, July 11, 2019, 3:39 P.M. While that is true under I.R.C.P. 11(c)(1) and (3), that amounts to counsel asking the Court to do counsel's work for them, because counsel forgot to do their job correctly. This Court is not inclined to do so. Attorney fees are denied because counsel for Black Lodge failed to follow the applicable rules.

V. CONCLUSION AND ORDER

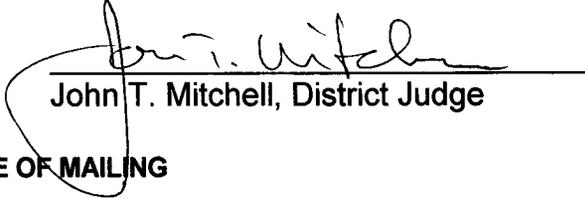
Because at this time Garrett can provide no set of facts in support of his two claims against Black Lodge, Black Lodge's request to be dismissed as a defendant in this matter is GRANTED. Because counsel for Black Lodge failed to follow I.R.C.P. 11(c)(2) by making a separate motion for attorney fees, the request for attorney fees is DENIED.

For the reasons stated above,

IT IS HEREBY ORDERED defendant Black Lodge's Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED the request for attorney fees made by Black Lodge in its memorandum is DENIED.

Entered this 16th day of July, 2019.

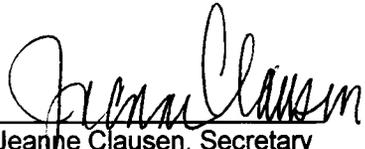

John T. Mitchell, District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of July, 2019 a true and correct copy of the foregoing was mailed, postage prepaid, or sent by interoffice mail or facsimile to:

Collette Leland
250 Northwest Blvd, Ste 206
Coeur d'Alene, ID 83814
ccl@winstoncashatt.com ✓

Ryan Yahne/Christi
Disparte/Whitny Norton
522 W. Riverside, Ste 700
Spokane, WA 99201
ryan@pyklawyers.com ✓

By 
Jeanne Clausen, Secretary