

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

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Deputy

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

**BANK OF AMERICA, N.A., SUCCESSOR IN )  
INTEREST TO FIA CARD SERVICES, N.A., )**

*Plaintiff,* )

vs. )

**NORMAN M. CHAMBERS,** )

*Defendant.* )

Case No. **CV 2015 1336**

**MEMORANDUM DECISION AND  
ORDER ON COURT TRIAL, AND  
NOTICE OF HEARING**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court following a trial to the Court on December 7, 2015. At trial, Michael J. Archibald, counsel for plaintiff Bank of America (BOA), appeared, as did defendant Norman M. Chambers (Chambers), *pro se*.

This is a debt collection action filed by BOA on February 19, 2015. BOA alleges that Chambers entered into a contract with BOA, defaulted on that contract and owes \$11,612.66. Complaint, pp. 1-2. The Complaint does not allege when then last payment was made by Chambers. Chambers filed his *pro se* Answer on March 23, 2015. In that Answer, Chambers did not address when he last made payment. Instead, Chambers claimed: he did not enter into a contract with BOA; that his real name is Norman M. Chambers, III, and he is being sued as Norman M. Chambers; that he owes nothing and that he has limited income. Answer, p. 1.

On June 5, 2015, this Court held a scheduling conference. Counsel for BOA appeared telephonically and Chambers appeared in person, *pro se*. Trial was

scheduled for December 7, 2015.

Neither BOA nor Chambers presented any pre-trial briefing or proposed findings, in contravention of this Court's scheduling order. Scheduling Order, p. 5, ¶¶ 8-9.

At trial on December 7, 2015, BOA offered Exhibit 1, which was admitted. Exhibit 1 contained Chambers' signature, and Chambers admitted his signature appears on that document. Exhibit 1 establishes the account and contract. That finding will not change as a result of this decision.

The last account balance shown by BOA was in September 2008, in the amount of \$20,245.36, when the account had been charged-off. Exhibit 4. The unverified Complaint claims \$11,612.66 was due on January 30, 2015, at the time the Complaint was signed. Complaint, p. 1. The Affidavit of Gerald R. Hutchinson claims \$11,395.66 is due as of November 16, 2015. Exhibit 4.

At the conclusion of trial, the Court indicated that BOA had failed to prove this debt fell into the time period allowed by the statute of limitations, as BOA had failed to prove its lawsuit had been filed within five years of the making of the contract (I.C. § 5-216), or, most pertinently, within five years of the last "last item proved", which means the last charge made by Chambers or the last payment made by Chambers. I.C. § 5-222. Without stating the reason on the record, the reason the Court felt it was BOA's burden to prove compliance with the statute of limitation, was the Court needed to have jurisdiction in order to proceed. After further research and consideration, the Court finds that such finding pronounced orally at the conclusion of the Court trial, was in error, and that the Court finds that it, on its own motion must consider whether or not to order a new trial, and the parties are entitled to notice and an opportunity to be heard regarding that decision.

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## II. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 59(a) governs grounds for a new trial. It provides in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues in an action for any of the following reasons:

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7. Error in law, occurring at the trial. . . . Any motion based on subdivisions 6 or 7 must set forth the factual grounds therefor with particularity. On a motion for new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

I.R.C.P. 59(a). Pursuant to Idaho Rule of Civil Procedure 59(d), the Court, on its own initiative, “may order a new trial for any reason for which it might have granted a new trial on motion of a party.” I.R.C.P. 59(d). Such order must be made “[n]ot later than fourteen (14) days after entry of judgment” and “shall be made only after giving the parties notice and an opportunity to be heard on the matter, and the court shall specify in the order the grounds therefor.” *Id.*

## III. ANALYSIS

Subject matter jurisdiction is “the power to determine cases over a general type or class of dispute.” *Bach v. Miller*, 144 Idaho 142, 145, 158 P.3d 305, 308 (2007). The Idaho Constitution grants Idaho district courts original jurisdiction over all matters at law and in equity. Idaho Const. art. V, § 20. “[S]ubject matter jurisdiction can never be waived or consented to, and a court has a *sua sponte* duty to ensure that it has subject matter jurisdiction over a case.” *State v. Urrabazo*, 150 Idaho 158, 163, 244 P.3d 1244, 1249 (2010)(*overruled on other grounds, Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 265 P.3d 502 (2011)). If this Court lacks subject matter jurisdiction, it must dismiss this case. I.R.C.P. 12(g)(4). The Idaho Supreme Court has

cautioned the consequences of rendering a decision where a court does not have subject matter jurisdiction: “[J]udgments and orders made without subject matter jurisdiction are void and ‘are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States Constitution.’” *Urrabazo*, 150 Idaho at 163, 244 P.3d at 1249 (citing *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-27, 586 P.2d 1068, 1070-71 (1978)). Moreover, whether a district court has subject matter jurisdiction is not dependent upon the merits of the action. *Bagley v. Thomason*, 155 Idaho 193, 307 P.3d 1219, 1222 (2013).

In the present case, the Court finds it has the jurisdiction to hear the subject matter of the dispute, the breach of contract. The Court further finds that any defect in any statute of limitation does not deprive the Court of jurisdiction to hear this case.

The applicable statute of limitations must be affirmatively set forth by the defendant. I.R.C.P. 8(c). The affirmative defense of the statute of limitation, and the particular statute which is applicable, must be asserted in a responsive pleading. *Modern Mills, Inc. v. Havens*, 112 Idaho 1101, 739, P.2d 400 (Ct. App. 1987). The statute of limitation is an affirmative defense which must be pleaded and proved by the defendant and the defendant has the burden of proving every element necessary to establish such a defense. *Hawley v. Green*, 1117 Idaho 498, 788 P.2d 1321 (1990). In this case, Chambers did not allege the statute of limitation in his Answer, nor did he mention the statute of limitation at trial. Thus, Chambers has failed to meet his burden on the issue of statute of limitation.

As such, the Court is now of the opinion that it erred in its announcement at the end of the court trial that Chambers’ prevailed. The Court committed an error of law in that announcement that Chambers had prevailed. The parties must be given notice of

this Court's decision that it might possible grant a new trial, and an opportunity to be heard.

**IV. CONCLUSION AND ORDER.**

For the reasons stated above,

IT IS HEREBY ORDERED the Court's ruling on the record on December 7, 2015, that plaintiff Bank of America has prevailed on its claim and is entitled to judgment against defendant Chambers in the amount of \$11,395.66, is RESCINDED.

IT IS FURTHER ORDERED that a hearing is scheduled for December 21, 2015 at 10:00 a.m., at which the parties can argue whether or not a new trial should be ordered. If the parties or counsel wish to participate in such hearing telephonically, they can make arrangements with the Court's Deputy Clerk of Court by calling Ms. Clausen at 208 446-1103.

Entered this 7<sup>th</sup> day of December, 2015.

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John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of December, 2015, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Party Pro Se</u>
Sean Beck	801-302-3612	Norman M. Chambers, Pro Se 8244 N. Ridgewood Dr. Apt. No 1 Hayden, ID 83835

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Jeanne Clausen, Deputy Clerk