

8-24-2011

## Moore v. Murphy Respondent's Brief Dckt. 38618

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IN THE SUPREME COURT OF THE STATE OF IDAHO

ALBERT RAY MOORE,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	Supreme Court Docket No. 38618-2011
	)	
THOMAS MURPHY,	)	Ada County District Court No. 2010-12312
	)	
Defendant/Respondent.	)	
	)	
_____	)	

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**BRIEF OF RESPONDENT**

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Appeal from the District Court  
of the Fourth Judicial District of the State of Idaho  
In and For the County of Ada

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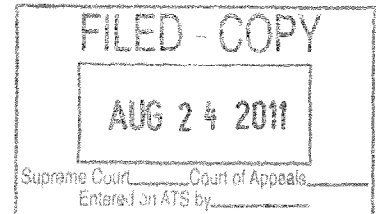
Honorable Ronald J. Wilper  
Presiding Judge

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## ISSUES PRESENTED

Appellant, Albert Moore, in his pro se brief, has stated the sole issue on appeal as “Fraud, Mr. Murphy’s only objective was to defraud Plaintiff of his moneys.” (Appellant’s Opening Brief, hereinafter “AOB,” p. 5.) However, in the argument section of the Opening Brief, Appellant states there was a breach of contract.<sup>1</sup>

Respondent, Thomas Murphy, restates the issue on appeal as whether the district court properly granted summary judgment to the defendant.

## STATEMENT OF THE CASE

On June 21, 2010, Moore filed a complaint in Ada County District Court alleging a breach of a three hundred dollar (\$300.00) contract and requesting consequential damages, pain and suffering damages, and punitive damages totaling \$517,888.77. (R. pp. 11-12.)

Murphy filed an Answer (R. pp. 26-27) and thereafter filed a Motion for Summary Judgment. (R. pp. 42-43.) After oral argument, the district court granted summary judgment for Mr. Murphy, concluding that there were no genuine issues of material fact and that there was no breach of the contract. (R. pp. 91-94; attached hereto as Appendix.) The decision also rejected any claims for consequential or punitive damages, holding that even if there had been a breach of contract the damages would be limited to the \$300 paid by Moore.

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<sup>1</sup>Appellant does not appear to raise on appeal the denial of consequential or punitive damages should a breach of contract be found.

## STATEMENT OF FACTS

In August 2008, Moore hired Murphy, a licensed private investigator, to investigate the jurisdiction of the Meridian City Police Department in regard to Moore's arrest by the Ada County Sheriff's Department outside the Kit Cat Club, in Meridian, Idaho, on April 28, 2007. There was no written contract between Moore and Murphy; however, Moore forwarded a \$300.00 check to Murphy, in advance, for the services to be rendered.

In October 2008, Mr. Murphy conducted his investigation and presented a report to Mr. Moore setting forth in detail his findings – that the area in question was within the jurisdiction of the Ada County Sheriff's Department. (R. pp. 18-19.)

The District Court concluded there were no genuine issues of material fact.

The Court finds that a contract did exist between the plaintiff and defendant. The record shows that Moore asked Murphy to discover whether the Meridian Police properly had jurisdiction of the area in question. That Murphy may have investigated the issue in a manner different from how Moore would have investigated the issue is beside the point. Moore contracted with Murphy, and Murphy performed his duties under their agreement.

(R. pp. 93-94.)

## ARGUMENT

### 1. Standard of Review

[An appellate court] reviews the grant of a motion for summary judgment on the same standard used by the district court. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). Summary judgment is appropriate where 'the

pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’ I.R.C.P. 56(c).

*Patterson v. State of Idaho Department of Health & Welfare*, 2011 Opinion No. 75, p.5.

However, an adverse party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue of material fact. I.R.C.P. 56(e); accord, *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224 (1994). To withstand a motion for summary judgment, the non-moving party’s case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue of material fact. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67 (1996).

When the Court sits as the trier of fact, rather than a jury, summary judgment may be appropriate despite the possibility of conflicting inferences, because the court alone will be responsible for resolving such conflicting inferences. *Riverside Development Co. v. Ritchie* 103 Idaho 515, 519, 650 P.2d 657 (1982).

## 2. The Breach of Contract Claim Was Properly Dismissed on Summary Judgment

In order to prove there was a breach of contract, a plaintiff must prove four elements: (1) a contract existed between the parties; (2) the defendant breached the contract; (3) the plaintiff has been damaged on account of the breach by the defendant; and (4) the amount of any damages. IDJI 6.10.1. Furthermore, recoverable damages must “arise naturally from the breach and [be] reasonably foreseeable.” *Silver Creek*

*Computers v. Petra, Inc.*, 136 Idaho 879, 844, 842 P.3d 672 (2002). “Consequential damages are not recoverable unless specifically within the contemplation of the parties at the time of contracting.” *Id.*

Here, Mr. Murphy did not dispute that there was an oral agreement between the parties; the issue is whether there was a breach, and, if so, were there any damages proven by Moore. Murphy did not breach the agreement; in fact, it is undisputed that he conducted an investigation as requested. Mr. Murphy provided Moore with a detailed report of the results of his investigation and backed that up with the information obtained during the investigation. As Judge Wilper concluded, Murphy performed his part of the bargain, albeit in a manner other than how Moore would have conducted the investigation. The result of the investigation was the determination that the Ada County Sheriff’s Department had jurisdiction over the area where Moore was arrested on April 28, 2007. Therefore, there exist no genuine issues of material fact, and Murphy was properly entitled to summary judgment based on the undisputed facts.

Furthermore, the District Court properly concluded that Moore was unable to meet the standard for proof of damages should there have been a breach of the contract. Moore failed to establish that the parties had agreed at the time that consequential damages were specifically set forth in the oral agreement between the parties.<sup>2</sup> The undisputed facts

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<sup>2</sup>Moore does not raise on appeal the issue of his claim for punitive damages as he does not even attempt to meet the high burden necessary to allege such damages. I.C. § 6-1604 requires that “the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious and outrageous conduct by the party against whom the claim for punitive damages is



demonstrate that Moore was arrested by the Ada County Sheriff's Department on April 28, 2007, for driving under the influence and for driving while suspended charge.

Thereafter, he was charged with a felony DUI for that offense based upon his prior record. He eventually entered a guilty plea to the felony charge and was sentenced to a term of five years in prison with one year fixed. Thus, even if there was a breach of the contract, there are no recoverable damages in this case, as the District Court concluded.

3. Conclusion

For these reasons, this Court should affirm the District Court's grant of summary judgment in favor of Mr. Murphy. In light of Mr. Moore's indigent status, Mr. Murphy waives any request for fees and costs on this appeal to which he might otherwise be entitled under the law.

DATED this 22<sup>nd</sup> day of August, 2011.



Andrew Parnes  
Attorney for Respondent Thomas Murphy

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asserted.” Because Moore might have conducted the investigation in a different manner does not meet this high standard, as it cannot even support a breach in the first instance.

CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of August, 2011, I served the foregoing **Brief of Respondent** upon the party named below by placing a true and correct copy thereof in the United States mail, postage prepaid, addressed as follows:

Albert Ray Moore, IDOC # 90125  
ICIO  
381 W. Hospital Drive  
Orofino, ID 83544

Rebecca B. Dittmer  
Rebecca B. Dittmer

## **APPENDIX**

JAN 26 2011

CHRISTOPHER D. RICH, Clerk  
By ANGA JOHNSON  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ALBERT RAY MOORE,

Plaintiff,

vs.

THOMAS MURPHY,

Defendant.

Case No. CVOC-10-12312

ORDER GRANTING  
DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

This matter came before the Court on Defendant Thomas Murphy's Motion for Summary Judgment. The Court heard oral argument on Monday, January 24, 2011. Brian Webb appeared for the defendant Mr. Murphy. Mr. Moore appeared *pro se* and telephonically. The Court took the motion fully under advisement. This order now grants the defendant's motion.

**BACKGROUND**

This case involves an alleged breach of contract. On April 28, 2007, plaintiff Albert Moore was arrested at the Kit Kat Club in Meridian. *Murphy Affidavit in Support of Defendant's Motion for Summary Judgment* at Exh. C. Subsequently, Moore contracted the private investigative services of defendant Thomas Murphy to discover whether the "Meridian Police Department had jurisdiction [of the intersection of] Black Cat Rd and Franklin Blvd." *Complaint* at 1. Their agreement was not memorialized in writing. However, Moore sent Murphy two letters indicating that he wanted to engage Murphy's investigative services and both men state that they intended to be in a contractual

1 relationship. *Complaint* at 1; *Murphy Affidavit* at ¶3. On August 12, 2008, Moore sent Murphy a  
2 check for \$300.00 as payment in advance for services. *Attachment to Complaint*. On or about  
3 November 18, 2008, Murphy sent Moore an investigation report reflecting his findings. *Murphy*  
4 *Affidavit* at ¶13. Moore's complaint was filed on July 15, 2010.

#### 5 SUMMARY JUDGMENT STANDARD

6  
7 Idaho Rule of Civil Procedure 56(c) provides that summary judgment is "rendered  
8 forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any,  
9 show that there is no genuine issue as to any material fact and that the moving party is entitled to a  
10 judgment as a matter of law." *See also First Sec. Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787,  
11 790 (1998). An adverse party may not simply rely upon mere allegations in the pleadings, but must  
12 set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); *see*  
13 *Rhodehouse v. Stutts*, 125 Idaho 208, 211(1994). The affidavits either supporting or opposing the  
14 motion must set forth facts that would be admissible in evidence and show that the affiant is  
15 competent to testify. *Id.*

16 To withstand a motion for summary judgment, the non-moving party's case must be  
17 anchored in something more than speculation; a mere scintilla of evidence is not enough to create a  
18 genuine issue of material fact. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854  
19 (1996). Generally, liberal construction of the facts in favor of the non-moving party requires the  
20 court to draw all reasonable factual inferences in favor of the non-moving party. *See Williams v.*  
21 *Blakley*, 114 Idaho 323, 324 (1988). If reasonable people could reach different conclusions or draw  
22 conflicting inferences from the evidence, the motion should be denied. *Friel v. Boise City Housing*  
23 *Authority*. 126 Idaho 484, 486 (1994).

24 However, when the Court sits as the trier of fact, rather than a jury, summary judgment may  
25 be appropriate despite the possibility of conflicting inferences, because the court alone will be  
26

1 responsible for resolving such conflicting inferences. *Riverside Development Co. v. Ritchie*, 103  
2 Idaho 515, 519 (1982); *see also Cameron v. Neal*, 130 Idaho 898, 900 (1997). In such an instance,  
3 “the judge is free to arrive at the most probable inferences to be drawn from uncontroverted  
4 evidentiary facts.” *Blackmon v. Zufelt*, 108 Idaho 469, 470 (Ct. App. 1985) (citing *Riverside*  
5 *Development Co.*, 103 Idaho at 519).

#### 6 **BREACH OF CONTRACT**

7 The elements that must be proven to support a Breach of Contract claim are 1) a contract  
8 existed between plaintiff and defendant, 2) the defendant breached the contract, 3) the plaintiff has been  
9 damaged on account of the breach, and 4) the amount of the damages. *IDJI 6.10.1*. Recoverable  
10 damages for a breach of contract are those that “arise naturally from the breach and are reasonably  
11 foreseeable.” *Silver Creek Computers, Inc. v. Petra, Inc.*, 136 Idaho 879, 844 (2002). “Consequential  
12 damages are not recoverable unless specifically within the contemplation of the parties at the time of  
13 contracting.” *Id.* Similarly, lost profits are not typically recoverable unless the contract indicates they  
14 were contemplated by the parties and they can be proven with reasonable certainty. *Id.*

#### 15 **DISCUSSION**

16 In this summary judgment motion, the defendant alleges that no genuine issues of material  
17 fact exist which preclude the Court from finding that the plaintiff’s breach of contract claim cannot  
18 be sustained. In analyzing this motion, because the Court sits as trier of fact, the Court is free to  
19 arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts found in  
20 the record.

21 The Court finds that a contract did exist between the plaintiff and defendant. However, the  
22 Court does not find that the defendant breached that contract. The record shows that Moore asked  
23 Murphy to discover whether the Meridian Police properly had jurisdiction of the area in question.  
24

1 That Murphy may have investigated the issue in a manner different from how Moore would have  
2 investigated the issue is beside the point. Moore contracted with Murphy, and Murphy performed  
3 his duties under their agreement. Because the Court finds that the record includes no set of facts  
4 that could show Murphy breached the contract, the Court is not required to further analyze the  
5 elements of Breach of Contract. However, the Court notes that even if Moore could prove breach  
6 of the contract, he could recover, at most, \$300.00: the amount he has actually paid Murphy to  
7 date. Nothing in the record indicates that consequential damages or loss profits were contemplated  
8 by the parties when they entered the contract, and the caselaw is clear that such damages are only  
9 recoverable if contemplated by the parties when they entered into the contract.

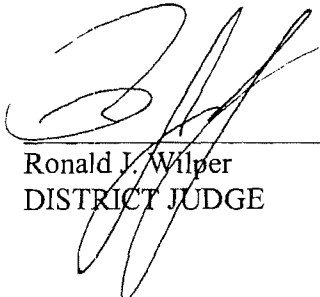
10 **CONCLUSION**

11 Upon review of the record, the Court finds that no genuine issues of material fact remain  
12 and that plaintiff's Breach of Contract claim cannot be sustained. Therefore, defendant's Motion  
13 for Summary Judgment is GRANTED.

14  
15 IT IS SO ORDERED.

16 Counsel for defendant is instructed to prepare a Judgment consistent with this Order.

17 Dated this 25<sup>th</sup> day of January, 2011.

18  
19  
20   
21 \_\_\_\_\_  
22 Ronald J. Wilper  
23 DISTRICT JUDGE  
24  
25  
26

