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IN THE SUPREME COURT OF THE STATE OF IDAHO

BLASER, OLESON & LLOYD, CHTD.,

Plaintiff-Respondent,

vs.

CHRISTINA CUTLER,

Defendant-Appellant.

Docket No. 47303-2019

APPELLANT'S REPLY BRIEF

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the Sixth Judicial District for
the State of Idaho, in and for the County of Bannock

Hon. Stephen S. Dunn, District Judge, presiding.

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Appellant, Christina Cutler (“Cutler”) submits this reply brief in support of her appeal from the final decision of the District Court of the Sixth Judicial District in and for Bannock County, Stephen S. Dunn, District Judge, presiding.

I. ARGUMENT

A. The District Court erred by holding that BOL’s complaint provided notice of a breach of contract claim.

In its Respondent’s Brief, BOL argues as follows:

The facts that the complaint alleged and the court relied on are that Cutler retained BOL to perform legal services which it then performed...that Cutler did not pay what she owed...there was an unpaid balance...and that the balance remaining with interest was \$9,788.93. All that information was present in the original complaint filed January 12, 2017, therefore there was more than adequate notice to Cutler that a breach of contract claim existed.

(Respondents’ Brief, p. 4.)

BOL is essentially arguing that its recitation of these facts, alone, was sufficient to state a claim for breach of contract. *But cf., Brown v. City of Pocatello*, 148 Idaho 802, 229 P.3d 1164 (2010), (“a naked recitation of the facts alone is insufficient.”) Rather than looking for a set of facts intermixed throughout a complaint, 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.” *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 427, 95 P.3d 34, 45 (2004).

Cutler was not put on notice that a breach of contract claim was being brought against her. On several occasions throughout the course of the litigation, Cutler made it expressly known that she read and understood BOL's complaint to contain "*only a single cause of action...account stated.*" Indeed, in her pre-trial brief filed with the trial court and served on BOL a few days before the bench trial, Cutler wrote:

Since plaintiff's complaint lists only a single cause of action, as follows: 'COUNT I. ACCOUNT STATED,' no other causes of action may be tried.... If the plaintiff attempts to argue any cause of action not plead, for example, 'breach of contract' or 'unjust enrichment,' then defendant's affirmative defense of the statute of limitations under Idaho Code § 5-217, will come into play....

(R. pp. 70-71.)

Upon being served with Cutler's pretrial brief, BOL immediately moved to *amend* its complaint to add four new counts, including one for breach of contract, "in order to allow the issue of what causes of action will be dealt with at trial to be addressed beforehand." (R. p. 59.)

But, if BOL truly believed its complaint already contained a breach of contract cause of action, then why didn't it just say so? Why did BOL find it necessary to *add* a breach of contract claim by amendment?

Under these facts, where the attorney who drafted the complaint failed to argue that it contained a breach of contract claim, but instead, moved to add such a claim by amendment; and when Cutler reasonably read and understood the complaint to contain "only a single cause of

action, account stated,” then justice¹ is not done when after trial the court, *sua sponte*, construes the pleadings to find a breach of contract claim intermixed in the complaint’s general allegations that neither party ever saw and then rules against Cutler because “She should have been prepared to refute that the contract existed.” (R. p. 106.) As the court in *Trask* reasoned,

In hindsight it is easy to view facts and agree they support a...claim. It is a much more difficult, if not an impossible task, to *predict* whether a plaintiff will raise such a claim when it is not alleged in the complaint (emphasis added).

Trask v. Butler, 123 Wash.2d 835, 872 P.2d 1080 (1994).

The trial court’s use of hindsight to discover the elements of a breach of contract intermixed in the complaint’s allegations did not do justice in this case. Cutler was not on notice that BOL was pursuing a breach of contract claim against her. Not even BOL, itself, believed its original complaint included a cause of action for breach of contract. That is precisely why BOL found it necessary to add a breach of contract claim to its complaint claim by amendment.

The question whether BOL’s complaint provided notice of a breach of contract cause of action is addressed more thoroughly in the Appellant’s Brief at pages 9 through 16.

¹ I.R.C.P. 8(e), requires that, “Pleadings must be construed so as to do justice.”

B. The District Court erred by holding the trial court did not abuse its discretion in granting BOL's motion to amend its complaint.

In its Respondent's Brief, BOL argues that "The District Court stated that the trial court recognized that it had discretion to allow the amendment and determined that such an amendment would not prejudice Cutler. This determination was made upon full review of the facts of the case." (Respondent's Brief, p. 6.)

To be precise, the District Court concluded the trial court was within its discretion to grant BOL's oral motion to amend its complaint under I.R.C.P. 15(b)(1) to conform to the evidence presented during trial because "the elements of breach of contract were present in the original complaint." (R. p. 259.)

It is black letter law that an amendment to conform to the proof may be authorized only when it does not substantially change the cause of action. *See*, 61B Am. Jur. 2d, *Pleading* § 763.

In the instant case, the trial court erred by permitting BOL to amend its complaint to *add* a cause of action for breach of contract because nowhere in the record – from the time the complaint was filed to the time the trial concluded – does it show that either party, or the court, believed the complaint included a breach of contract cause of action.

The trial court abused its discretion by granting BOL's motion to amend its complaint under Rule 15(b)(1) because it substantially changed the cause of action being litigated; and the District Court erred by holding the trial court did not abuse its discretion.

The question whether the District Court erred by holding the trial court did not abuse its discretion in granting BOL's motion to amend its complaint under Rule 15(b)(1) is addressed more thoroughly in the Appellant's Brief at pages 23 through 31.

C. The District Court erred by concluding the trial court had determined BOL was the prevailing party on both causes of action.

In its Respondent's Brief, BOL argues that "...ultimately it is of no consequence whether BOL prevailed on one claim or both. The damages for both claims are the same, so whether one claim is successful or both, BOL would still be the overall prevailing party." (Respondents' Brief, p. 7.)

In order for BOL to have prevailed upon its account stated cause of action, a finding by the trial court of *mutual assent* between the parties to the account (as to the correct balance) would be required. (Appellant's Brief, p. 36) However, a review of the trial court's Findings of Fact and Conclusions of Law reveals no such finding. Quite the opposite, the trial court found that Cutler had a longstanding "dispute" with BOL over its billing. (Appellant's Brief, p. 35)

Despite the absence of any finding of mutual assent by the trial court, and indeed, the opposite finding of an ongoing dispute, the District Court held "The record reflects that the trial court made the determination that BOL was the prevailing party in *both* causes of action."²

² The two causes of action being referenced by the District Court were *account stated* and *breach of contract*.

(Emphasis added.) (R. p. 262.) But the District Court failed to identify what portion of the record, if any, it relied upon to reach its conclusion.

Insofar as the record does not support the District Court's conclusion, it is respectfully requested the Supreme Court hold that the District Court erred by concluding the trial court determined BOL was the prevailing party on *both* causes of action.

The question whether the trial court found for BOL on both causes of action is more thoroughly addressed in the Appellant's Brief at pages 34 through 37.


V. CONCLUSION

For the foregoing reasons, and those addressed in Appellant's Brief, it is respectfully requested the Supreme Court hold as follows: (1) the District Court erred by concluding BOL's complaint provided Cutler notice of a breach of contract cause of action; (2) Cutler did not acknowledge a breach of contract cause of action in her answer; (3) the District Court erred by concluding the trial court did not abuse its discretion by granting BOL's motion to amend its complaint to add four new causes of action at the conclusion of trial; (4) BOL's breach of contract cause of action added by amendment at the conclusion of trial was barred by the statute of limitations governing oral contracts; (5) the District Court erred by concluding the trial court had determined BOL was the prevailing party of both causes of action; and (6) award of attorney's fees to BOL is reversed.

The judgment of the District Court affirming the trial court should be reversed.

Submitted this 31st day of March 2020.

IDAHO LEGAL AID SERVICES, INC.

By: 
Karl H. Lewies, Esq.
Attorney for Christina Cutler

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF has this 31st day of March 2020, been served upon each of the individuals listed below:

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