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DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IDAHO HOTEL HOLDINGS, LLC an  
Idaho limited liability company.

Plaintiff,

v.

OM SHIV GANESH, LLC, and Idaho  
limited liability company; Bhupendra R.  
Patel, an individual; and Kanti Patel, and  
individual.

Defendants.

Case No. CV-2015-1912

OPINION AND ORDER ON  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

This is an Opinion and Order in response to Defendant's Motion for Summary Judgment.

**I.  
STATEMENT OF FACTS**

On June 27, 2012 Bank of Commerce ("BOC") assigned a real estate deed of trust and Universal Note and Security Agreement ("Note") to Idaho Hotel Holdings, LLC., ("IHH") for real property located at 475 River Parkway, Idaho Falls, Idaho 83402 ("Hotel"). With the Note, IHH became the beneficiary to the agreement with Om Shiv Ganesh LLC., Bhupendra R. Patel, and Kanti Patel ("Defendants"). At the time IHH was assigned the deed of trust and Note, it was already in default to BOC. IHH foreclosed the Hotel through a trustee's sale on January 22, 2015, was the sole bidder, and purchased the Hotel for \$2,100,000.00. That same day IHH sold

the property to a third party for \$2,310,000.00. IHH, without first obtaining a license from the department of finance, brought a deficiency claim against Defendants to recover money still owed on the Note.

## II. APPLICABLE LAW

### A. Standard of Review – Motion for Summary Judgment

“If the pleadings, depositions, and admissions on file, together with the affidavits, 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, summary judgment may be granted.”<sup>1</sup>

“Disputed facts are liberally construed in favor of the non-moving party. Likewise, all reasonable inferences which can be made from the record shall be made in favor of the party resisting the motion. The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact.”<sup>2</sup>

“The plaintiff’s case must be anchored in something more than speculation and a mere scintilla of evidence is not enough to create a genuine issue. If the record contains conflicting inferences or reasonable minds might reach different conclusions, a summary judgment must be denied.”<sup>3</sup>

Such evidence may consist of affidavits or depositions, but “the Court will consider only that material ... which is based upon personal knowledge and which would be admissible at trial.”<sup>4</sup> Even circumstantial evidence can create a genuine issue, but a mere scintilla of evidence is insufficient.<sup>5</sup>

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<sup>1</sup> *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 516-17, 808 P.2d 851, 853-54 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Sherer v. Pocatello Sch. Dist. No. 25*, 143 Idaho 486, 489-90, 148 P.3d 1232, 1235-36 (2006).

<sup>5</sup> *Id.*

## **B. Idaho Collection Agency Act**

The Idaho Collection Agency Act is codified under Title 26 of the Idaho Code. The definitions are laid out in § 26-2222, and the license requirements are laid out in § 26-2223. The law applicable to this case are found below:

Idaho Code § 26-2222

(3) “Collection activities” means the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.

(4) “Collection agency” means a person who engages in any of the activities enumerated in subsections (2) through (6) of section 26-2223, Idaho Code.<sup>6</sup>

Idaho Code § 26-2223

No person shall without complying with the terms of this act and obtaining a license from the director:

(1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.

(2) Engage, either directly or indirectly, in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(6) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired.<sup>7</sup>

## **C. Statutory Interpretation**

The Court interprets statutes according to the plain, express meaning of the provision in question, and will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws.<sup>8</sup>

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<sup>6</sup> Idaho Code § 26-2222.

<sup>7</sup> Idaho Code § 26-2223.

<sup>8</sup> *State v. Yager*, 139 Idaho 680, 689-90, 85 P.3d 656, 665-66 (2004); *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 979 P.2d 605 (1999).

In attempting to discern and implement the intent of the legislature, the court may seek edification from the statute's legislative history and contemporaneous context.<sup>9</sup> Constructions of a statute that would lead to absurd or unreasonably harsh results are disfavored.<sup>10</sup>

The interpretation of a statute “must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.”<sup>11</sup> The language of the statute is to be given its plain, obvious, and rational meaning.<sup>12</sup>

Unless the result is palpably absurd, this Court must assume that the legislature meant what it wrote in the statute.”<sup>13</sup> If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.”<sup>14</sup>

“We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature.”<sup>15</sup>

“If the statute as written is socially or otherwise unsound, the power to correct it is legislative, not judicial.”<sup>16</sup>

### III. ANALYSIS

Defendants argue IHH cannot lawfully collect the debt as they are not registered as a debt collector under Idaho Code § 26-2223. IHH argues that § 26-2223(6) does not apply to the facts of this case because they are not engaged, “directly or indirectly in the business of collecting any

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<sup>9</sup> *Id.*; *State v. Burnight*, 132 Idaho 654, 978 P.2d 214 (1999).

<sup>10</sup> *Id.*; *Payette River Property Owners Ass'n v. Board of Comm'rs of Valley County*, 132 Idaho 551, 976 P.2d 477 (1999).

<sup>11</sup> *Id.*

<sup>12</sup> *State v. Beavers*, 152 Idaho 180, 186, 268 P.3d 1, 7 (Ct. App. 2010).

<sup>13</sup> *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 894, 265 P.3d 502, 507 (2011).

<sup>14</sup> *Id.* citing *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted).

<sup>15</sup> *Id.* citing *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993).

<sup>16</sup> *Id.* citing *In re Estate of Miller*, 143 Idaho 565, 567, 149 P.3d 840, 842 (2006).

form of indebtedness.”<sup>17</sup> IHH has stated that: “With the exception of the purchase of the promissory note and deed and of trust that are the subject to this action, neither IHH nor Hanford Holdings has acquired any interests in defaulted loans within or without the State of Idaho.” However, even after “construing the disputed facts liberally in favor of the non-moving party” and giving “all reasonable inferences to the party resisting the motion,” this argument fails as a matter of law.<sup>18</sup>

The Court “must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole.”<sup>19</sup> Here, and when construed under its plain, usual, and ordinary meaning, § 26-2223(6) prohibits the acquisition of a debt from another person, “if the indebtedness was either delinquent or in default at the time it was acquired.”<sup>20</sup> IHH does not dispute that it acquired the note from BOC while it was in default. While IHH does not generally acquire notes that are in default, it did so here, and based on a plain reading of Idaho Code § 26-2223, IHH is precluded from collecting on that debt without first obtaining a license.

IHH relies on *Allis-Chalmers* in its assertion that it was not required to obtain a license to collect from Defendants. *Allis-Chalmers* was decided under Idaho Code § 55-1101 which predated § 26-2223(6) by fifty-eight (58) years. That court neither considered nor weighed whether the loan was delinquent or in default at the time it was purchased by Plaintiff, Allis-Chalmers. The court only inquired into whether Plaintiff was acting as a collection agency and whether they were in the business of collecting or receiving payment on the behalf of others.<sup>21</sup> In

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<sup>17</sup> Idaho Code § 26-2223(6).

<sup>18</sup> *Id.*

<sup>19</sup> *Verska*, 151 Idaho at 893.

<sup>20</sup> Idaho Code § 26-2223.

<sup>21</sup> *Allis-Chalmers Mfg. Co.*, 56 Idaho at 769.

this case, § 26-2223 expressly requires a license when a person seeks to collect on any form of indebtedness that is delinquent or in default at the time it was acquired, and therefore *Allis-Chalmers* does not apply.

Finally, IHH argues that requiring it to register as a collection agency would lead to an absurd result. This Court disagrees. If the statute is not ambiguous, or the result is not palpably absurd, this Court must assume that the legislature meant what it wrote in the statute.”<sup>22</sup>

The Idaho Supreme Court stated:

[W]e have never revised or voided an unambiguous statute on the ground that is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so. . . . Indeed, the contention that we could revise an unambiguous statute because we believe it was absurd or would produce absurd results is itself illogical.<sup>23</sup>

In *Purco Fleet Services, Inc. v. Idaho State Dep’t of Fin.* the Idaho Supreme Court had the opportunity, but chose not to address Purco’s argument that § 26-2223 lead to an absurd result, instead finding they were acting as a collection agency.<sup>24</sup> Here, the Court does address the absurdity issue and finds that the license requirement under § 26-2223 is not ambiguous and does not lead to a palpably absurd result.<sup>25</sup> Based upon that finding, “this Court does not construe it, but simply follows the law as written,” for “the power to correct it is legislative, not judicial.”<sup>26</sup> Therefore pursuant to § 26-2223, this Court finds that IHH must first obtain a license from the department of finance before it may collect on the defaulted note from the Defendants.

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<sup>22</sup> *Verska*, 151 Idaho at 894, 896.

<sup>23</sup> *Id.* at 897.

<sup>24</sup> PURCO FLEET SERVICES, INC., a Utah corporation, Respondent, v. IDAHO STATE DEPARTMENT OF FINANCE, Gavin M. Gee, Director, Appellant., 2003 WL 24014597 (Idaho), 18; *Purco Fleet Servs., Inc. v. Idaho State Dep’t of Fin.*, 140 Idaho 121, 126, 90 P.3d 346, 351 (2004).

<sup>25</sup> *Verska*, 151 Idaho at 894.

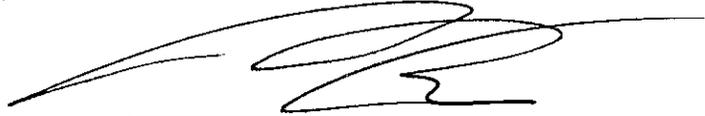
<sup>26</sup> *Id.* at 893.

**IV.  
CONCLUSION**

Based on the foregoing, the Court Orders as follows: Defendant's Motion for Summary Judgment is Granted.

**IT IS SO ORDERED.**

Dated this 6<sup>th</sup> day of May 2016.



Bruce L. Pickett  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6 day of May 2016 the OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

**Attorney for Plaintiff**

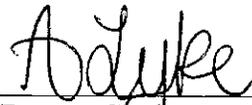
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by

  
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Deputy Clerk