

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RANDAL HEEB, an individual; and
SHIRLEY ANN MERCHANT, an
individual,

Plaintiffs,

v.

WHIPPLE, INC., VIRTUAL
DESIGN CONCEPTS, LLC, and
JASON WHIPPLE, an individual,

Defendants.

WHIPPLE, INC.,

Counterclaimants,

v.

RANDAL HEEB, an individual; and
SHIRLEY ANN MERCHANT, an
individual,

Counterdefendants.

Case No. 1:19-cv-00190-BLW

**MEMORANDUM DECISION
AND ORDER**

INTRODUCTION

Before the Court is Plaintiffs' Motion to Amend the Complaint. Dkt. 41.

Plaintiffs seek to include a claim for punitive damages against individual Defendant Jason Whipple (“Whipple”). Defendants have not opposed the Motion. For the reasons explained below, the Court will grant the Motion.

BACKGROUND

On May 23, 2019, Plaintiffs filed their Complaint against Defendants alleging claims of breach of contract, breach of implied covenant of good faith and fair dealing, breach of the implied warranty of workmanship, breach of implied warranty of habitability, breach of express warranty, unjust enrichment, fraud, and a violation of the Idaho Consumer Protection Act. *See* Dkt. 1. Plaintiffs’ claims arise from a residential construction dispute where they allege Defendants did not construct the residence subject to the plans and specifications in the construction agreement or in a timely manner.

Plaintiffs’ fraud claim is specifically against Whipple. *See* Dkt. 1 at 19-21. They claim he “contrived and executed a scheme to overcharge [Plaintiffs] by inflating his invoices above the amount subcontractors were actually paid and pocketing the difference” and made representations to Plaintiffs that were knowingly false. *Id.* at 20. Plaintiffs further claim that they entered into the construction agreement based on Whipple’s false statements. *Id.* at 21.

On August 25, 2020, this Court held summary judgment proceedings and

determined that there exists triable issues of fact as to Plaintiffs' fraud claim against Whipple. *See* Dkt. 40 at 45-46. Based on the Court's decision at summary judgment, Plaintiffs now seek to amend their Complaint to add a claim for punitive damages against Whipple.

ANALYSIS

Under Idaho Code § 6-1604(2), "[i]n all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive damages." However, a party may amend the pleadings to include a prayer for relief seeking punitive damages by way of pretrial motion after a hearing before the court. *Id.* "The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party has established. . . a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." *Id.* It is well established that punitive damages may be awarded when fraud has been proven. *See Walston v. Monumental Life Ins. Co.*, 923 P.2d 456, 466 (Idaho 1996).

During summary judgment proceedings, this Court determined that issues of fact exist sufficient to submit the fraud claim to a jury and denied summary judgment as to the fraud claim. *See* Dkt. 40 at 45-46. Therefore, Plaintiffs have established a "reasonable likelihood of proving facts at trial" sufficient to support a

claim of punitive damages. If the jury finds Whipple liable for fraud, punitive damages are explicitly available under § 6-1604(2). Accordingly, the Motion will be granted.

ORDER

IT IS ORDERED that:

1. Plaintiff's Motion to Amend the Complaint (Dkt. 41) is **GRANTED**.



DATED: May 4, 2021

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge