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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

AARON TRIBBLE,

Plaintiff,

v.

STATE BOARD OF EDUCATION AND BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO

and

DUANE NELLIS, in his official capacity as president of the University of Idaho,

Defendants.

CASE NO. CV-2011-69

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

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FOR JUDGMENT ON THE PLEADINGS

Idaho Rule of Civil Procedure 12(c), which governs motions for judgment on the pleadings, provides in pertinent part that "[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

In *Bowman v. Bohney*, 36 Idaho 162, 210 P. 135 (1922), the Idaho Supreme Court stated that "[o]n a motion for judgment on the pleadings the answer is to be given a most liberal construction, and such judgment is justified only where the answer fails to put in issue any of the material allegations of the complaint." 36 Idaho at 166 (citations omitted).

In *Idaho Placer Mining Co. v. Green*, 14 Idaho 294, 94 P. 161 (1908), the court held that for the purposes of a motion for judgment on the pleadings, the movant "not only admits the truth of all the allegations of his adversary, but must also be deemed to have admitted the untruth of all his own allegations which have been denied by his adversary." 14 Idaho at 304. In reversing the district court, the court ruled that "[w]here issues of fact are raised by the pleadings which require evidence to establish, before the court could intelligently determine whether such issues are with the plaintiff or the defendant, it is error to enter judgment on the pleadings." *Id. See also Johnson v. Manning*, 3 Idaho 352, 355, 29 P. 101, 102 (1892) ("When any material allegation of the complaint is denied by the answer, it is error for the court to render judgment on the pleadings. It is only where an answer admits, or leaves undenied, the material allegations of the complaint, that a judgment can be rendered on the pleadings.") As the court later held in *Davenport v. Burke,* 27 Idaho 464, 149 P. 511, (1915), "If any one defense is good,

the entire pleading cannot be deemed frivolous or subject to the motion for a judgment on the pleadings." 27 Idaho at 474.

These decisions of the Idaho Supreme Court are consistent with decisions under Federal Rule of Civil Procedure 12(c). As summarized in 5C. Wright & A. Miller, Federal Practice & Procedure §1368, pp. 230-237 (3d ed. 2004), "It is axiomatic, as it is for motions under Rule 12(b)(6) and as evidenced by countless judicial opinions... that for purposes of the court's consideration of the Rule 12(c) motion, all of the well pleaded factual allegations in the adversary's pleadings are assumed to be true and all contravening assertions in the movant's pleadings are taken to be false. Thus, in effect, the party opposing the motion has the benefit of all possible favorable assumptions."

The Answer of Defendants State Board of Education and Regents of the University of Idaho (Board) and Duane Nellis (collectively "University") denies multiple material allegations of the First Amended Complaint, putting such material allegations in issue. Under the well-established law set forth above, Plaintiff Aaron Tribble (Tribble) admits the truth of all allegations asserted by University, and admits the untruth or falsity of all of his own allegations that are denied by University. Doing so leaves this case with multiple material allegations in issue, making judgment on the pleadings inappropriate.

Tribble has not established standing to sue.

At the current state of the pleadings, applying the established test under Rule 12(c), judgment for Tribble is not proper since the pleadings do not establish uncontroverted facts showing that he has standing to bring this suit. As the Idaho Supreme Court held in *Troutner v.*

Kempthorne, 142 Idaho 389, 128 P.3d 926 (2006), to have standing a plaintiff must have an injury in fact that is distinct and palpable and not one suffered alike by all citizens in the jurisdiction. 142 Idaho at 391. "'The doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.' To satisfy the standing requirement, 'litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.'" *Id.* (citation omitted.)

The court need look no farther than the list of facts set out in page 4 of Tribble's Memorandum in Support of Motion for Judgment on the Pleadings. Nowhere in the "admitted facts" is there any mention of Tribble owning a firearm, having the legal right to own a firearm, wanting to possess a firearm on the University property at issue, or any fact that connects Tribble to a specific injury arising from the University's application of its policy on firearms. At most, Tribble is no more than a concerned citizen who thinks the University is not properly applying the law. For this reason alone, Tribble's motion fails.

Additional matters remaining at issue.

Although the court need go no farther than the analysis above to deny Tribble's motion, it should also note numerous other issues raised by the pleadings that will require further development of the facts before they can be decided, including:

1. **Whether any rights Tribble might otherwise have to possess firearms are overridden by the terms of the license agreement he voluntarily entered into in order to occupy University-owned housing.**

Tribble alleges that he makes his "home" at 354 West Taylor Avenue, an allegation denied by the University, which affirmatively alleges that Tribble occupies a University apartment pursuant to a license agreement (Agreement) and subject to its terms and conditions. A specific term of the Agreement prohibits firearms and other dangerous weapons. The University contends that Tribble, in signing his license to occupy a University-owned residence, accepted the University's reasonable restrictions on his right to possess firearms.

2. Whether the University has the constitutional autonomy to regulate firearms on University property by virtue of authority granted to the Board of Regents of the University of Idaho to exercise its constitutional custody of the buildings and other property of the University.

The Idaho Supreme Court has consistently held that the University of Idaho, specifically the Board of Regents of the University of Idaho (Board) as its governing body, is a constitutionally separate entity when acting within the scope of its authority. *State ex rel. Black v. State Board of Education*, 33 Idaho 415, 429, 196 P. 201, 205 (1921); *Dreps v. Board of Regents*, 65 Idaho 88, 100, 139 P. 467 (1943). In this regard, the Court has held that the Board, not the Legislature, controls governance of the University, and that statutes such as those relating to public works construction and to purchases of supplies or lands do not apply to the Regents when utilizing University funds, *Black*, 33 Idaho at 430, nor do statutes regarding the hiring of state workers *Dreps*, 65 Idaho at 101.

These cases also recognize the affirmative power of the Board, accorded by Art. IX, §10 of the Idaho Constitution, to control the property of the University. This recognition flows from the Territorial Act, which in creating the University provided that "the Board shall enact laws for the government of the University in all its branches." Section 5 of An Act to Establish the

University of Idaho, January 30, 1889, Ter. Sess. Laws 1888-89, P.21. (The Act is set forth in full in the text of *Dreps.)* The policies of the Board and University therefore stand on the same footing as state statutes denying the right to possess firearms on elementary and secondary school grounds within the state (both public and private), Idaho Code §18-3302D, as well as an executive order of the governor (Executive Order 2004-07, Establishing the Capitol Mall Area as a Weapon Free Zone, 10/22/2004), and the order of the Idaho Supreme Court (Order dated July 26, 2008), establishing weapon free zones.

Additionally, the issue of constitutional autonomy applies to distinguish the specific powers given to the Board in its governance of the University under Art. IX, § 10 from the more general mandate of Article I § 11 of the Idaho Constitution. The University contends that Art. IX, §10 empowers the Board to establish non-criminal laws governing the possession of firearms on University property, in the same fashion as the court in *Black* held that claims against the University/Board were not subject to Article IV Section 18 requiring review by the Board of Examiners prior to payment. As the court explained in *Black*, "To hold that Article 4, §18 of the Constitution, and C.S. §242 confer upon the Board of Examiners power to pass upon claims against the Board of Regents would make the latter board subservient to the former, and in the final analysis would operate to deprive the Board of Regents of the control and direction of the funds of and appropriations to the University." *Black*, 33 Idaho at 429. In this case, to hold that Art. I, §11 deprives the University of the power to regulate the possession of firearms on University property would operate to deprive the Board of the specific powers granted under Art. IX, §10.

3. Whether, to the extent Tribble is relying on the second amendment to the United States Constitution and its interpretation in the *Heller* case (not addressed with any degree of specificity in Tribble's Motion or Memorandum), his temporary occupancy of University-owned married student housing under a license granted by the University rises to the level of a "home" as discussed in *Heller*, or rather constitutes a part of the greater University campus and a "sensitive area" as that term is used in *Heller* in denoting a clear exception to the ruling in that case.

In *District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)*, the U.S. Supreme Court struck down a District of Columbia law that banned handguns from the District and required District residents to keep lawfully owned firearms unloaded and disassembled or bound by a trigger lock or similar device. Although noting that "like most rights, the right secured by the Second Amendment is not unlimited," 554 U.S. at 627, the *Heller* Court concluded that the District's ban on handgun possession in the home violated the Second Amendment, as did its requirement that any lawful firearm be kept in a condition effectively inoperable for the purpose of immediate self-defense. However, in recognition that the right secured by the Second Amendment is not unlimited, the Court also stated clearly that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 554 U.S. at 627-628.

Here, Tribble alleges in the Amended Complaint, and the University denies in its Answer, that he "makes his home" in University student housing. The University does not concede that Tribble's license agreement gives rise to a "home" within the meaning of *Heller*, or that it in any sense removes the licensed premises from the concept of a "sensitive place" as that term is used in *Heller*.

4. Whether Tribble's right to the exceedingly broad prayer for relief that the University be "permanently enjoined ... from enforcing any prohibition against the possession of functional personal firearms and ammunition within the apartments of the South Hill Vista family housing area" is warranted under any interpretation of law or fact.

Lastly, for purposes of the University's opposition to Tribble's motion, Tribble's request that the University be permanently enjoined "from enforcing any prohibition against the possession of functional personal firearms and ammunition within the apartments of the South Hill Vista family housing area" is unsupportable. The prayer far outstrips any reasonable application of current firearms laws (including the current statutory limitations restricting possession of firearms by felons, Idaho Code §18-3316, and handguns by minors, Idaho Code §18-3302F) and the pleadings leave completely undefined the meaning of the term "functional personal firearm." An injunction would thus place the University at risk of inadvertent violation of any such order on one hand, and at risk of liability as the result of the University's tolerance of otherwise illegal or improper firearms on the other.

Conclusion

Tribble's motion should be denied. Numerous issues remain for adjudication, and much work remains to be done before they can be decided. The discussion above, although not intended as a full enumeration of all issues of fact or law that may ultimately be brought to the court in this case, provides ample basis for denial of the motion at this stage of the litigation. The University respectfully requests that the court deny Tribble's motion in full.

Dated this 16th day of March 2011.

Kent. E. Nelson, ISB No. 3281
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2011, I caused a true and correct copy of this document to be served on the following individual in the manner indicated below:

Aaron Tribble
354 W. Taylor Ave Apt #2
Moscow, ID 83843

[ ] U.S. Mail
[✓] Email
[ ] FAX
[✓] Hand Delivery

Kent E. Nelson, ISB No. 3281
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