

ENTERED
MAR 29 2011
IN CIRCUIT COURT BY KCP

RECEIVED
CIRCUIT COURT
MULTNOMAH COUNTY

11 MAR 29 AM 10:39

FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

04132

OREGON BREWING COMPANY, an
Oregon corporation,

Plaintiff,

v.

NEW NWF, LLC, a Washington limited
liability company dba Frame Central, Museum
Quality Framing, Northwest Framing, Beards
Framing, Frame Central & Documounts, and
Pearl Frame Central 3107,

Defendant.

Case No.: **1103-04132**

COMPLAINT

**(Conversion, Breach of Contract,
Negligence, Breach of Bailment Contract)**

Amount Plead: \$51,000.00

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**

Plaintiff Oregon Brewing Company (hereinafter "OBC") for its Complaint alleges as follows:

1.

Plaintiff OBC was at all material times and is an Oregon corporation.

2.

Defendant New NWF, LLC dba Frame Central, Museum Quality Framing, Northwest Framing, Beards Framing, Frame Central & Documounts, and Pearl Frame Central 3107 (hereinafter "NWF") was at all material times and is a Washington limited liability company.

3.

At all material times, OBC operated Rogue Ales Public House located at 748 SW Bay Boulevard in Newport, Oregon (hereinafter "the Property").

//

COMPLAINT - 1

Hiefield Foster & Glascock LLP
Attorneys At Law
6915 SW Macadam Avenue, Suite 300
Portland, OR 97219
Tel: (503) 501-5430 Fax: (503) 501-5626

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

4.

OBC has operated Rogue Ales Public House at the Property since May of 1986 when it began renting the Property from Mohave "Mo" Neimi (hereinafter "Mo"), founder of the famous Mo's Clam Chowder.

5.

OBC was able to rent the Property from Mo at a very generous price on two conditions: 1) that a photograph of Mo, naked in a bath tub, (hereinafter "the Photograph") be forever displayed at the Property and 2) that OBC "feed the fisherman" (i.e. give back to the local community).

6.

Since Mo's passing in 1992, OBC continues to rent the Property from Mo's estate subject to the above two conditions.

7.

OBC has complied with the first condition since 1986 (for over 25 years) by displaying the Photograph in its original frame and glass over the bar at the Property.

8.

The Photograph is the original, not a print, and is one of a kind.

9.

At all material times, defendant NWF owned and/or operated Frame Central located at 1238 NW Davis Street, Portland, Oregon (hereinafter "Frame Central").

10.

On or about August of 2010, OBC took the original Photograph in its original frame and original glass to Frame Central, and requested that defendant and/or its agents or employees

1 clean, refurbish, and restore the original Photograph. OBC also requested that defendant and/or
2 its agents or employees make ten copies of the Photograph for display in OBC's other outposts.
3 Defendant and/or its agents or employees agreed to perform these services.

4 11.

5 In December of 2010, OBC returned to Frame Central to pick up the ten copies of the
6 Photograph and the refurbished original Photograph.

7 12.

8 Defendant and/or its agents or employees failed to return the original Photograph.

9 13.

10 OBC continues to demand that defendant return the original Photograph. To date,
11 defendant has failed to and refuses to return the original Photograph.
12

13 **FIRST CLAIM FOR RELIEF**

14 **(Conversion)**

15 14.

16 OBC realleges paragraphs 1 through 13.

17 15.

18 Defendant and/or its agents or employees' failure to return the original Photograph to
19 OBC is conversion.
20

21 16.

22 As a proximate result of defendant's conversion of the Photograph, OBC has suffered
23 damages including, but not limited to, the value of the Photograph, loss of use of the Photograph,
24 and reasonable expenses OBC incurred in attempting to recover the Photograph, all to OBC's
25 damage in an amount to be proven at trial, but not to exceed \$51,000.00.
26

17.

As a proximate result of defendant's conversion of the Photograph, OBC is also entitled to statutory interest on the value of the Photograph from the time of conversion through trial.

SECOND CLAIM FOR RELIEF

(Breach of Contract)

18.

OBC realleges paragraphs 1 through 13.

19.

In August of 2010, OBC took the original Photograph in its original frame and original glass to Frame Central, and requested that defendant and/or its agents or employees clean, refurbish, and restore the original Photograph. Defendant and/or its agents or employees agreed to perform these services. This agreement provided that defendant and/or its agents or employees would return the original Photograph to OBC.

20.

In failing to return the original Photograph to OBC, defendant and/or its agents or employees breached this agreement.

21.

As a proximate result of defendant's breach of the agreement, OBC has suffered damages including, but not limited to, the value of the Photograph, loss of use of the Photograph, and reasonable expenses OBC incurred in attempting to recover the Photograph, all to OBC's damage in an amount to be proven at trial, but not to exceed \$51,000.00.

//

//

22.

As a proximate result of defendant's breach of the agreement, OBC is also entitled to statutory interest on the value of the Photograph from the time of breach of the agreement through trial.

THIRD CLAIM FOR RELIEF

(Negligence)

23.

OBC realleges paragraphs 1 through 13.

24.

Defendant and/or its agents or employees were negligent in one or more of the following particulars, each of which was foreseeable that it would contribute to and/or cause defendant to fail to return the original Photograph to OBC:

- a) in failing to properly store the Photograph;
- b) in failing to properly safeguard and/or protect the Photograph;
- c) in failing to properly track and/or inventory the Photograph;
- d) in failing to properly maintain the Photograph;
- e) in failing to properly care for the Photograph; and/or
- f) in failing to properly keep the Photograph in their custody and/or control.

25.

As a proximate result of defendant's negligence, OBC has suffered damages including, but not limited to, the value of the Photograph, loss of use of the Photograph, and reasonable expenses OBC incurred in attempting to recover the Photograph, all to OBC's damage in an amount to be proven at trial, but not to exceed \$51,000.00.

26.

As a proximate result of defendant's negligence, OBC is also entitled to statutory interest on the value of the Photograph from the time of the negligence through trial.

FOURTH CLAIM FOR RELIEF

(Breach of Bailment Contract)

27.

OBC realleges paragraphs 1 through 13.

28.

In August of 2010, OBC took the original Photograph in its original frame and original glass to Frame Central, and requested that defendant and/or its agents or employees clean, refurbish, and restore the original Photograph. Defendant and/or its agents or employees agreed to perform these services. This agreement provided that defendant and/or its agents or employees would return the original Photograph to OBC.

29.

In failing to return the original Photograph to OBC, defendant and/or its agents or employees breached this contract of bailment.

30.

As a proximate result of defendant's breach of the contract of bailment, OBC has suffered damages including, but not limited to, the value of the Photograph, loss of use of the Photograph, and reasonable expenses OBC incurred in attempting to recover the Photograph, all to OBC's damage in an amount to be proven at trial, but not to exceed \$51,000.00.

//

//

As a proximate result of defendant's breach of the contract of bailment, OBC is also entitled to statutory interest on the value of the Photograph from the time of breach of the bailment through trial.

WHEREFORE, plaintiff prays for judgment against defendant as follows:

FOR PLAINTIFF'S FIRST CLAIM FOR RELIEF for Conversion:

- a) For damages in amount to be proven at trial but up to \$51,000.00;
- b) For plaintiff's costs and disbursements incurred herein; and
- c) For statutory interest through trial.

FOR PLAINTIFF'S SECOND CLAIM FOR RELIEF for Breach of Contract:

- a) For damages in amount to be proven at trial but up to \$51,000.00;
- b) For plaintiff's costs and disbursements incurred herein; and
- c) For statutory interest through trial.

FOR PLAINTIFF'S THIRD CLAIM FOR RELIEF for Negligence:

- a) For damages in amount to be proven at trial but up to \$51,000.00;
- b) For plaintiff's costs and disbursements incurred herein; and
- c) For statutory interest through trial.

FOR PLAINTIFF'S FOURTH CLAIM FOR RELIEF for Breach of Bailment Contract:

- a) For damages in amount to be proven at trial but up to \$51,000.00;
- b) For plaintiff's costs and disbursements incurred herein; and
- c) For statutory interest through trial.

//

//

1 Dated this 20th day of March, 2011.

2 **HIEFIELD FOSTER & GLASCOCK, LLP**

3
4 By 

5 Andrew D. Glascock, OSB No. 992676

6 E-mail: aglascock@hfg-law.com

7 Jennifer A. Durham, OSB No. 052419

8 E-mail: jdurham@hfg-law.com

9 Attorneys for Plaintiff