

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STRIDER CONSTRUCTION CO. INC.,
Plaintiff,

vs.

IDAHO WATER RESOURCE BOARD,
Defendant.

Case No. CV01-22-10932

ORDER RE: JURY TRIAL

THIS MATTER comes before the Court on Plaintiff's motion to strike the jury trial setting in the Scheduling Order and Defendant's motion requesting the case be set for a jury trial. Oral argument was heard on April 26, 2023, and the matters were taken under advisement.

BACKGROUND

This is a breach of a contract action related to a construction contract entered between Plaintiff Strider Construction Co., Inc. and Defendant Idaho Resource Board for certain improvements to the Priest Lake Water Management Project Outlet Dam located in Priest Lake, Idaho. Plaintiff filed its Complaint on July 29, 2022, alleging breach of contract, violation of Idaho Prompt Payment Act, I.C. § 67-2302, and declaratory judgment. Plaintiff seeks over \$1.5 million in damages and a declaratory judgment that its termination of the contract was proper. It did not request a jury trial in its Complaint.

On August 23, 2022, Defendant filed an Answer and Counterclaim. The Counterclaim alleges breach of contract against Plaintiff. Defendant did not request a jury trial. Plaintiff filed a Reply to the Counterclaim on September 14, 2022, and again did not request a jury trial.

On October 7, 2022, a scheduling and status conference was held, at which time the Court inquired whether either party requested a jury trial. Plaintiff's counsel represented that no jury trial was requested. Defense counsel confirmed that no jury trial had yet been requested, but that he suspected Defendant would demand a jury trial. The Court indicated that the Scheduling Order would set the matter for a jury trial, but that it was not a final decision as to whether a jury trial would be held.

On November 16, 2022, the Court issued a scheduling order setting the matter for a jury trial on November 27, 2023.

On March 3, 2023, Plaintiff filed a motion to strike the jury trial setting because neither party requested one under IRCP 38. On March 15, 2023, Defendant filed a motion for a jury trial under IRCP 39(b) and a response in opposition to the motion to strike. On April 19, 2023, Plaintiff filed a reply. Oral argument was heard April 26, 2023, and the matter was taken under advisement.

LEGAL STANDARD

A district court's refusal to grant a jury trial under Rule 39(b) is reviewed under an abuse of discretion standard. *KDN Mgmt., Inc. v. WinCo Foods, LLC*, 164 Idaho 1, 5, 423 P.3d 422, 426

(2018), citing *City of Pocatello v. Anderton*, 106 Idaho 370, 373, 679 P.2d 647, 650 (1984). The test for an abuse of discretion is “whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018).

ANALYSIS & CONCLUSION

Under the Idaho Rules of Civil Procedure, on any issue triable of right by jury, a party may demand a jury trial by serving the other party with a written demand, which may be included in a pleading, no later than 14 days after the last pleading directed to the issue is served. IRCP 38(b). A party waives a jury trial unless its demand is properly served and filed. IRCP 38(d). Here, it is undisputed that neither party filed a timely demand for a jury trial.

“However, when a jury trial is not properly demanded, Rule 39 permits the district court to order a jury trial upon a motion from either party.” *KDN Mgmt., Inc.*, 164 Idaho at 6, 423 P.3d at 427, citing IRCP 39(b), *see also R. E. W. Const. Co. v. Dist. Court of Third Judicial Dist.*, 88 Idaho 426, 443, 400 P.2d 390, 401 (1965) (“Where a jury trial is desired after time to demand a jury as of right has expired, a motion to the [c]ourt under Rule 39, rather than service of a demand under Rule 38 is the proper course.”).

In *KDN Management*, the Supreme Court noted that it has “routinely found” no abuse of discretion in denying a motion for a jury trial under IRCP 39(b) where the movant fails to give a

reason for the untimely demand. *KDN Mgmt., Inc.*, 164 Idaho at 6, 423 P.3d at 427, *City of Pocatello v. Anderton*, 106 Idaho 370, 373, 679 P.2d 647, 650 (1984), *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 398, 111 P.3d 73, 83 (2005), overruled on other grounds by *Farber v. Idaho State Ins. Fund*, 152 Idaho 495, 272 P.3d 467 (2012); *Viehweg v. Thompson*, 103 Idaho 265, 269, 647 P.2d 311, 315 (Ct. App. 1982). The party requesting a jury trial in *KDN* (the “Nelson Parties”) argued it did not know why the jury trial was not demanded and assumed it had been because (1) the case was scheduled as a jury trial approximately five times with no objection from WinCo; (2) the parties executed a stipulation for a 12-person jury trial; (3) local counsel for WinCo stated that a jury trial was likely acceptable to WinCo; and (4) the Nelson Parties made a jury demand in their answer to WinCo's second amended complaint.

The Supreme Court held the parties’ stipulation to a jury trial was not binding on the court, but scheduling orders are. “Thus, it is incumbent upon counsel to insure that a stipulation for scheduling and planning is confirmed by the court signing an order to that effect which is then filed.” *Id.* at 7, 423 P.3d at 428. Apparently, such scheduling order was not entered by the district court, and the Supreme Court noted that had such an order been entered, “such an order would have gone a long way to support the Nelson Parties’ belated request for a jury trial pursuant to I.R.C.P. 39(b).” *Id.* Under these facts and circumstances, the Court held the district court acted within its discretion in denying the jury trial request because the movant failed to provide a “reasoned explanation” as to why a proper demand was not made.

Here, the Court entered a Scheduling Order setting the matter for a jury trial; though reserving the final decision for a later date. That day has come. Defendant argues a jury trial should be

held even though it did not file a timely demand because outside counsel was retained and appeared after the deadline passed to demand a jury trial as a matter of right, and outside counsel recommended requesting a jury trial. It argues that after evaluation of the claims, a jury trial is now requested, and that Plaintiff will not be prejudiced.

Although Defendant proffered a reason for its late request to have a jury trial – it was still clearly dilatory in making the request months after it had retained outside counsel. Nevertheless, the deadline to amend the pleadings has not yet passed. Defendant does not argue that it relied on the Court’s Scheduling Order; however, as noted in *KDN*, a scheduling order setting a matter for a jury trial supports a party’s argument that a jury trial is warranted. Unlike in *KDN*, however, here, the parties did not file a stipulation for a jury trial. Plaintiff will suffer no prejudice by setting the matter for a jury trial.

On balance, given that the right of trial by jury is “inviolable,” Idaho Const, art. I, § 7, and Plaintiff suffers no prejudice, the Court finds a jury trial warranted in this case. Therefore, Plaintiff’s motion to strike is DENIED, and Defendant’s request for a jury trial is GRANTED.

IT IS SO ORDERED.



SAMUEL A. HOAGLAND
District Judge

5/16/2023 4:31:15 PM

Date

CERTIFICATE OF MAILING

I hereby certify that on 5/17/2023 9:23:02 AM, I served a true and correct copy of the within instrument to:

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Trent Tripple
Clerk of the District Court

By  _____
Deputy Court Clerk

