

vendor that took part in Leasecomm's leasing programs in order to present their customers with Leasecomm's lease as a financing option for credit card machines.¹ Wedde admits that he undertook the following actions: Filled out and faxed an initial application, sent a voided check to set up automatic withdrawal from his bank account, signed and returned a Leasecomm Non-Cancelable Equipment Lease Agreement, received, installed and used the credit card machine leased pursuant to the Non-Cancelable Equipment Lease Agreement.

A few weeks later Wedde claims to have received a copy of the lease that had an additional page of terms that he was unaware of (despite having signed the first page of the contract clearly stating the lease is two-sided). Wedde wrote "canceled" on the Non-Cancelable Equipment Lease Agreement, sent the equipment back and stopped the automatic withdrawal from his bank account.

Over the next few months Leasecomm attempted to secure payment from Wedde and warned that a possible negative impact on his credit record may result if he failed to fulfill his credit obligations. Wedde continued to refuse payment, stating that there were terms on the second page of the lease that he was unaware of. Much later, Wedde ultimately claimed that although one copy of the lease agreement contained his signature, another copy of the same agreement was forged by someone else. Wedde alleges various damages occurring in 1997 and early 1998 as a result of the alleged negative reporting on his credit report by Leasecomm, including being declined for a Sears credit card and declined for a mortgage loan.

¹ Based on information and belief, named defendant Loganberry Merchant Services was, at the time of the events underlying this action, a California corporation, with its principal place of business in the State of California. Defendant Loganberry Merchant Services has not been served and has not appeared in this action. Loganberry Merchant Services is a completely separate corporate entity and is not, nor has ever been, affiliated in anyway with Defendant Leasecomm.

Leasecomm initiated an investigation of Wedde's claim of forgery and sought additional information from Wedde. Over a year later, Wedde submitted the additional paperwork, including signatures, requested by Leasecomm to complete its investigation. Upon completion of its investigation, Leasecomm advised the three credit bureaus to remove any derogatory remarks that may have been reported.

Although Wedde readily admits that much of his financial problems are due to his own failure to pay judgments and failure to pay his credit card bills, Wedde filed suit in March of 2002 claiming that he has been unable to obtain financing because of the information reported on his credit report by Leasecomm despite the fact that Leasecomm requested the credit bureaus to remove any derogatory remarks that may have been reported.

Wedde has brought claims for fraud, intentional infliction of emotional distress, forgery, libel, negligence, gross negligence and breach of contract. These causes of action are based on Wedde's argument that he was injured and should somehow benefit from negative credit reporting, even though that reporting resulted from his own alleged cancellation of a Non-Cancelable Equipment Lease Agreement (that he admits to signing), and equipment he admits to receiving and using.

Ultimately, however, each of his claims is subject to dismissal as a matter of law.

II. FACTUAL BACKGROUND

Defendant hereby respectfully incorporates its Statement of Material Facts in Support of Motion for Summary Judgment, filed concurrently herewith.

III. STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” FED. R. CIV. P. 56(c). An issue is “genuine” only if there is a sufficient evidentiary basis on which a reasonable jury could find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). A factual dispute is “material” only if it might affect the outcome of the suit under governing law. *Id.* at 248.

On a motion for summary judgment, the movant bears the initial burden of identifying for the court those portions of the record that it believes demonstrate the absence of dispute as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To defeat summary judgment, the nonmoving party “may not rest upon the mere allegations or denials of [its] pleading, but [its] response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e).

Specifically, the nonmoving party must produce evidence such that a reasonable juror could find for that party. *Anderson*, 477 U.S. at 248. When considering how a reasonable juror would rule, the court should apply the substantive evidentiary standard that the factfinder would be required to use at trial. *Id.* at 252. A mere scintilla of evidence will not require the court to send the question to the factfinder. *Id.* at 251. Moreover, the court need not draw all possible inferences in plaintiff’s favor—only reasonable ones. *O.S.C. Corp. v. Apple Computer, Inc.*, 792 F.2d 1464, 1466-67 (9th Cir. 1986) (“We scrutinize the evidence and reasonable inferences to determine whether there is sufficient probative evidence to permit ‘a finding in favor of the opposing party based on more than mere speculation, conjecture, or fantasy.’”)(citations omitted).

IV. ARGUMENT

A. Wedde's Fraud and Forgery Claims Fail as a Matter of Law.

Wedde's fraud and forgery claims should be dismissed as a matter of law. Wedde claims that someone from Defendant Loganberry committed forgery and fraud by signing his name to the lease contract, or alternatively by not providing him copies of both sides of the contract. SOF ¶¶ 6, 12; Complaint, ¶¶ 6-7.² Even assuming, for the purposes of summary judgment only, that Wedde can support his claims for fraud and forgery (which he can not), and assuming that these claims lie against Defendant Leasecomm (which they do not) the claims are barred by the applicable statute of limitations and should be dismissed as a matter of law.

(1) Wedde's fraud claim is barred by the statute of limitations.

Wedde's fraud claim is governed by a three-year statute of limitations. *See* I.C. § 5-218 (“[a]n action for relief on the ground of fraud or mistake” shall be brought “within three (3) years.”). Idaho Code § 5-218 also describes when a cause of action for fraud accrues, stating that “[t]he cause of action in such case shall not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” *Id.*

Wedde discovered the alleged fraud based on forgery of his signature as early as November 1997 and in April 1998 informed Leasecomm he believed his signature had been forged on one of the copies of the lease agreement. SOF at ¶ 21.³ In addition, Wedde's attorney sent a letter on July 1, 1998 stating that “an individual at Loganberry signed Mr. Wedde's name to the contract.” SOF at ¶ 26. Wedde was therefore clearly aware of the facts constituting the

² The Complaint is found at Docket No. 1, beginning at page 120 of the Notice of Removal.

³ However, Wedde admits having signed and sent a different copy of the same lease agreement. SOF at ¶ 5.

alleged fraud of forgery in 1997 and early 1998, but did not file suit until May 30, 2002, over four years later and well past the three year statute of limitations.

Similarly, even if Wedde claims the fraud is based on the alleged failure to provide both sides of the lease agreement, the claim is nevertheless barred by the statute of limitations. Wedde allegedly canceled the lease agreement on November 17, 1997 by writing "canceled" on the agreement and returning the credit card equipment because, according to his deposition, he received a copy of the lease agreement and "there was a whole another page of terms I didn't know existed." SOF at ¶ 12. In addition, Wedde sent a handwritten letter to Leasecomm on March 18, 1998 stating that "I cancelled Leasecomm because they only send half the lease agreement, I send back theyre [sic] machine and inform you also." *Id.* at ¶ 17. Therefore, by November 1997, and as shown by communications from Wedde in early 1998, Wedde was clearly aware of the facts constituting any alleged fraud arising from his assertion that he received only half of the lease agreement. Again, Wedde's Complaint was not filed until over four years later. Therefore, regardless of whether Wedde supports his fraud claim with facts alleging forgery or failure to provide the entire lease agreement, the fraud claim is barred by the three year statute of limitations.

(2) Wedde's forgery claim is barred by the statute of limitations.

Wedde's forgery claim duplicates his fraud claim and is governed by the same three year statute of limitations; therefore it is similarly barred as a matter of law. *See* I.C. § 5-218; *Osborn v. Ahrens*, 116 Idaho 14, 16, 773 P.2d 282, 284 (1989)(analyzing claim for forgery against notary public under either three year statute of limitations provided in I.C. § 5-218, or two year statute of limitations under I.C. § 5-219, governing professional malpractice and personal injury).

In *Osborn*, plaintiffs brought a claim against a notary public who falsely acknowledged forged signatures on a promissory note and mortgage. *Id.* at 14. The district court ruled that the cause of action was not barred by the statute of limitations. *Id.* at 16. On review, the Idaho Supreme Court found that a cause of action for forgery commences running “when the plaintiff first sustains damage.” *Id.* Furthermore, the court found that the “statute of limitations may commence running even though the full extent of the plaintiff’s injuries may be unknown or unpredictable.” *Id.* (citing *Ralphs v. City of Spirit Lake*, 98 Idaho 225 (1977)). Applying this standard in *Osborn*, the court found there were no facts “indicating that the Osborn’s possessed any knowledge that they had been damaged by the negligent acts of [the notary]” prior to the underlying adjudication regarding the mortgage. *Id.* The court therefore rejected the argument that the damages occurred at the time of the forgery of the seller’s signature and the claim was not barred by the statute of limitations. *Id.* at 16.

Unlike *Osborn*, Wedde possessed knowledge of the alleged forgery of his signature at the latest in April 1998, when he first reported this allegation to Leasecomm. SOF ¶ 21. In his deposition, Wedde claims that he had discovered the alleged forgery even earlier. *Id.* Wedde also had knowledge of his alleged damages and even threatened suit against Leasecomm in March 1998 (SOF ¶ 17), which under *Osborn* commenced the running of the statute of limitations.

Wedde was informed on March 16, 1998 that a negative credit report may be submitted to a credit reporting agency if Wedde failed to fulfill the terms of his credit obligations. SOF at ¶ 16. On March 18, 1998, Wedde wrote a handwritten note to Leasecomm demanding the return of the direct withdrawals taken out of his account by Leasecomm. *Id.* at ¶ 17. The note states that “[b]ack in Nov. 97 I cancelled your service, since then you have taken money out of my

account. Return my money or I will be looking into criminal actions.” *Id.* Furthermore, Wedde claims, albeit without support, that the Leasecomm delinquency showed up on his credit report in “January of ‘98” and “some time after May 13, 1998.” *Id.* at ¶ 22. Finally, Wedde alleges he was denied a Sears credit card on “May 20th ‘98” and “I contribute this to Leasecomm.” *Id.* at ¶ 23.

According to *Osborn*, the statute of limitations on Wedde’s claim commenced running when Wedde *first sustained damage*, even if the full extent of the injuries were unknown or unpredictable. *Osborn*, 116 Idaho at 16. By his own allegations, Wedde alleges damages beginning in January 1998 and throughout the spring of 1998 including his own demands to refund money, the alleged reporting of negative information on his credit report and denial of credit from Sears. *See, e.g., Hogle v. First Security Bank*, 120 Idaho 682, 819 P.2d 100 (1991) (stating that claim for libel against credit card company for reporting false credit information began to run when bank first furnished the information to the credit reporting company). Each of these separate alleged damages is sufficient to constitute Wedde’s “first sustained damages” and commence the running of the statute of limitations, and each occurred outside the three year statute of limitations for fraud claims. The court should therefore dismiss Wedde’s forgery claim as a matter of law.

B. Wedde’s Contract Claim is Barred by the Statute of Limitations.

Wedde’s contract claim should be dismissed as a matter of law as barred by the statute of limitations. Wedde has brought a claim for “breach of contract,” however, the written agreement is a “lease contract,” therefore, it is governed by the Idaho Uniform Commercial Code and a four year statute of limitations. I.C. § 28-12-506. In determining whether the statute of limitations bars a breach of contract claim, the court looks to the “earliest act which could be considered the

basis for a breach of contract claim.” *Hoglan*, 120 Idaho at 685, 819 P.2d at 103 (considering breach of contract claim against bank for dissemination of false credit information). Wedde claims to have allegedly canceled the lease contract on November 18, 1997 because, according to him, he found out the contract was two-sided. SOF at ¶ 12.

Wedde can not claim the lease contract was breached by Leasecomm *after* he allegedly cancelled the contract; therefore, the “earliest act” that could constitute the alleged breach had to occur prior to November 18, 1997. Wedde’s claim, filed in May of 2002, over four years and four months after the alleged cancellation of the lease contract, is barred by the statute of limitations and should be dismissed as a matter of law.⁴

C. Wedde’s Claim of Intentional Infliction of Emotional Distress Fails as a Matter of Law.

Wedde’s claim for intentional infliction of emotional distress should be dismissed as a matter of law as barred by the statute of limitations, or alternatively for failure to present any proof of such distress.

- (1) Wedde’s intentional infliction of emotional distress claim is barred by the statute of limitations.

An action for intentional infliction of emotional distress is governed by the two year statute of limitations contained in Idaho Code § 5-219(4). *See also, Curtis v. Firth*, 123 Idaho 598, 850 P.2d 749 (1993)(analyzing two year statute of limitations for intentional infliction of emotional distress claim). If a tort involves “continuing injury, the cause of action accrues, and

⁴ As asserted in its Answer (Docket No. 1, at p.4, ¶ 12 and at p.6, ¶ b), because a commercial transaction underlies this lawsuit, Leasecomm respectfully reserves the right to seek attorney’s fees as allowed under Idaho Code Section 12-120(3), following the Court’s ruling on this summary judgment motion.

the limitations period begins to run, at the time the tortious conduct ceases.” *Id.* at 603 (quoting *Page v. United States*, 729 F.2d 818, 821-22 (D.C.Cir. 1984)).⁵ The “continuing tort” theory is inapplicable in this case because it is not comprised of continual unlawful acts. However, even if the claim is considered to be a continuing tort, the alleged tortious conduct ceased, at the latest, on or about February 11, 2000 when Leasecomm sent a “Universal Data Form” to the three credit bureaus requesting that they “remove any derogatory remarks which may have been reported and delete the Leasecomm [sic] Corp. Trade Line in its entirety.” SOF at ¶ 32. Wedde’s claim was brought over two years after the alleged tortious conduct ceased; therefore, even if analyzed as a continuing tort, the claim is barred by the two year statute of limitations.

- (2). Wedde’s claim of intentional infliction of emotional distress should be dismissed for lack of evidence.

If Wedde’s claim were to somehow survive the statute of limitations challenge (which it does not), Wedde will be unable to present any facts to support a claim for intentional infliction of emotional distress and this claim should be dismissed as a matter of law. “In order to recover for the intentional infliction of emotional distress the plaintiff must prove that defendant’s conduct was extreme and outrageous which either intentionally or recklessly causes severe

⁵ In *Curtis*, the Idaho Supreme Court recognized that the concept of “continuing tort” can be extended to apply to claims regarding intentional infliction of emotional distress. *Id.* at 604, 850 P.2d at 755. A “continuing tort” is defined in Idaho as:

one inflicted over a period of time; it involves wrongful conduct that is repeated until desisted, and each day creates a separate cause of action. A continuing tort sufficient to toll the statute of limitations is occasioned by continual unlawful acts, not by continual ill effects from the original violation.

Id. at 603, 850 P.2d at 754 (citing 54 C.J.S. *Limitations of Actions* § 177, at 231 (1987)). The court noted, however, that “embracing this concept in the area of emotional distress does not throw open the doors to permit filing these actions at any time. The courts which have adopted this continuing tort theory have generally stated that the statute of limitations is only held in abeyance until the tortious acts cease.” *Id.* at 604, 850 P.2d at 755 (citations omitted).

emotional distress.” *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 834, 801 P.2d 37, 41 (1990). Summary judgment is proper when “the facts allege conduct of the defendant that could not reasonably be regarded as so extreme and outrageous as to permit recovery for intentional or reckless infliction of emotional distress.” *Edmondson v. Shearer Lumber Prods.*, 139 Idaho 172, 180, 75 P.3d 733, 741 (2003)(affirming grant of summary judgment on claim for intentional infliction of emotional distress).

Wedde must prove that Leasecomm either desired to inflict severe emotional distress or knew, or should have known, that severe emotional distress would result from its actions. *McGanty v. Staudenraus*, 901 P.2d 841, 852-53 (Or. 1995); *see also O’Neil v. Vasseur*, 118 Idaho 257, 264, 796 P.2d 134, 141 (1990) (“[Plaintiff] must show that [defendants’] conduct was so extreme and outrageous they intended that [plaintiff] and his family would experience emotional difficulties.”).

Wedde has no evidence that remotely approaches the requisite threshold under Idaho law. There is no evidence Leasecomm *intended* to inflict any emotional distress. There is also no evidence that the alleged conduct here was extreme and outrageous, especially since culpable conduct must amount to blatant deviations from normal, socially acceptable behavior. *See, e.g., Brown v. Fritz*, 108 Idaho 357, 362, 699 P.2d 1371, 1376 (1985).

Finally, there is no evidence that the distress Wedde allegedly suffered was of a sufficiently severe nature, as required by Idaho law. *Gill v. Brown*, 107 Idaho 1137, 695 P.2d 1276 (Ct. App. 1985); *Davis v. Gage*, 106 Idaho 735, 741, 682 P.2d 1282, 1288 (Ct. App. 1984)

(interpreting "severe" to mean that "law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it").⁶

Leasecomm processed and investigated in a timely manner Wedde's claims that he did not receive both sides of the contract, and his (later asserted) claim that the contract was forged. It must also be noted that Wedde admits he requested and actually used the equipment. SOF at ¶¶ 2-10. After analyzing Wedde's claims (which process was delayed by Wedde's own unresponsiveness (SOF ¶¶ 30-31)), Leasecomm sent a letter to the credit bureaus clearing Wedde's credit. SOF at ¶ 32. Leasecomm's conduct was not extreme and outrageous.

In addition, there is no evidence of a severe emotional response to Leasecomm's conduct. As a matter of law, a reasonable person reviewing Leasecomm's alleged conduct would not find it outrageous; Wedde's claim for intentional infliction of emotional distress should be dismissed.

D. Wedde's Libel Claim Fails as a Matter of Law.

Wedde's libel claim should be dismissed as barred by the statute of limitations. Idaho Code § 5-219 provides that an action for libel must be brought within two years. Application of the statute of limitations was specifically discussed in *Hoglan, supra*. 120 Idaho at 683-84, 819 P.2d at 101-102. *Hoglan* involved a suit by debtors against a credit card company for reporting false credit information. *Id.* The Idaho Supreme Court held that the two year statute of limitations under I.C. § 5-219 began to run when the defendant bank *first* furnished the negative information to the credit reporting company. *Id.* at 103, 819 P.2d at 685. Because the negative

⁶ In *Davis*, despite testimony that the plaintiffs were upset, embarrassed, angered, bothered and depressed by the defendants' conduct, the court held that such injuries were insufficient to establish a claim for intentional infliction of emotional distress. 106 Idaho at 741, 682 P.2d at 1288.

credit information was *first* furnished over two years before the filing of the action, the court found the libel claim barred by the statute of limitations. *Id.*

Similarly, Wedde's claim for libel is barred by the statute of limitations. As noted above, Wedde alleges that Leasecomm first furnished the negative and allegedly false credit information as early as January or May 1998 and alleges that he was declined credit based on the negative information in May 1998. SOF at ¶¶ 22-23. Even the letter Leasecomm provided to the credit bureaus asking them to *clear* any negative information that may have been reported was sent over two years before the lawsuit was initiated. SOF at ¶ 32. The alleged information reported to the credit bureau was first furnished in 1998, which began the running of the statute of limitations for libel, and any negative information provided by Leasecomm was removed in February of 2000. Wedde's Complaint, filed in May 2002, is well past the two-year statute of limitations on his libel claim; therefore, this claim should be dismissed as a matter of law.

E. Wedde's Negligence and Gross Negligence Claims Fail as a Matter of Law.

Wedde's collective negligence claims should be dismissed as barred by the statute of limitation. Alternatively, Wedde's negligence claims fail as a matter of law because they are barred by the economic loss doctrine.

(1) Statute of Limitations

Idaho does not have a specific statute of limitations for negligence actions not based upon personal injury or malpractice; therefore, the applicable statute of limitations is the four year catch-all provision. *See* I.C. § 5-224. *See also, Hoglan*, 120 Idaho at 685, 819 P.2d at 103. One of the claims in *Hoglan* was a negligence claim against a bank for reporting inaccurate credit information. *Id.* The court found it must look at the "first act of negligence" in order to apply the statute of limitations. *Id.* In *Hoglan*, the court determined the first act of negligence by the

bank was when the bank received payment in full on the account and continued to characterize the account as charged off. *Id.* As discussed in detail above, Wedde's own testimony contends that Leasecomm's negligence began early in 1998, clearly outside the limitations period. For example, Wedde claims delinquency on his credit report as early as January 1998 (SOF at ¶ 22) and on March 16, 1998 Wedde wrote to Leasecomm demanding return of his payments on the lease and threatening a lawsuit. SOF at ¶ 16. In addition, Wedde claims the inaccurate credit information was reported in early 1998 and allegedly resulted in the decline of his Sears application on May 20, 1998 and decline of a mortgage and consolidation loan on May 27, 1998. *Id.* at ¶¶ 23-24. Wedde filed suit on May 30, 2002, over four years after the first act of negligence alleged against Leasecomm; therefore, Wedde's negligence claims are barred by the statute of limitations.

(2) Wedde's Negligence Claim Is Barred By The Economic Loss Doctrine

In the alternative, even if Wedde's negligence claim were to somehow bypass its fatal statute of limitations deficiencies, the claim is nonetheless still barred as a matter of law.

The fact that Wedde claims to have "suffered economic loss" only (Complaint, ¶ 10) is legally significant because, in Idaho, "as a general rule, a person who suffers 'pure' economic loss cannot recover in tort." Dale Goble, *All Along the Watchtower: Economic Loss in Tort (The Idaho Case Law)*, 34 Idaho L. Rev. 225, 227-228 (1998) (hereinafter "Goble"). Since the only damage sought by Wedde for Leasecomm's alleged negligence is purely economic, his negligence claim must be dismissed as a matter of law.

The Idaho Supreme Court "has adhered to a general rule prohibiting the recovery of purely economic losses in all negligence actions." *Duffin v. Idaho Crop Improvement*

Association, 126 Idaho 1002, 1007, 895 P.2d 1195, 1200 (1995).⁷ Pure economic losses are those that are not accompanied by injury to property or person. *See e.g., Duffin*, 126 Idaho at 1007, 895 P.2d at 1200.

In this case, Wedde has asserted only that he “has been unable to obtain financing and has suffered economic loss” and has sought relief in the form of seeking that “this Court order that Defendants compensate Plaintiff for his damages in a monetary amount.” (Complaint, at ¶ 10 and ¶ 2 of prayer for relief section). Clearly, such losses fall within the economic loss rule and recovery is prohibited unless an exception applies.

Idaho law recognizes only three exceptions to the economic loss rule, none of which apply here. The three exceptions to the rule are: (1) losses parasitic to an injury to a person or property, (2) where “the occurrence of a unique circumstance requires a different allocation of the risk,” or (3) where a “special relationship” exists between the parties. *Graefe*, 132 Idaho 349, 972 P.2d at 318. The first exception does not apply because Wedde has not alleged any damage to property or persons. *See Duffin*, 126 Idaho at 1007, 895 P.2d at 1200. The second exception has never been defined or applied to allow recovery of economic losses. *See Id.*, 126 Idaho at 1007-8, 972 P.2d at 1200-01; *Goble*, 34 Idaho L. Rev. at 232.

According to the Idaho Supreme Court, the third exception, the existence a “special relationship,” applies only to “an extremely limited group of cases” in which a party holds itself out as having special expertise and thereby induces reliance by a third party. *See Duffin*, 126 Idaho at 1008, 895 P.2d at 1201. Further, “[t]he ‘special relationship’ exception generally

⁷*See also Ramerth v. Hart*, 133 Idaho 194, 983 P.2d 848, 850 (1999) (“[t]he general rule prohibits the recovery of purely economic loss in a negligence action”); *Tusch Enters. v. Coffin*, 113 Idaho 37, 41, 740 P.2d 1022, 1026 (1987) (“purely economic losses are not recoverable in negligence”); *Graefe v. Vaughn*, 132 Idaho 349, 972 P.2d 317, 318 (Ct. App. 1999) (as a general rule, pure economic losses are not recoverable in tort).

pertains to claims against professionals who perform personal services, such as physicians, attorneys, architects, engineers and insurance agents.” *Eliopoulos v. Knox*, 123 Idaho 400, 408, 848 P.2d 984, 992 (Ct. App. 1992) (emphasis added); *see, e.g., McAlvain v. General Insurance Co. of America*, 97 Idaho 777, 780, 554 P.2d 955, 958 (1976) (“When an insurance agent performs his services negligently, to the insured’s injury, he should be held liable for that negligence just as would an attorney, architect, engineer, physician or any other professional who negligently performs personal services”).

The “special relationship” exception does not apply to this case. Wedde’s Complaint is exceedingly vague, but does specifically allege that Wedde suffered only “economic loss” because of indications allegedly made by Leasecomm on Wedde’s credit report. Wedde has not asserted, and cannot show, that Leasecomm held itself out as having some special expertise that induced reliance and proximately caused injury to Wedde thereby. In fact, Wedde has admitted signing the subject lease (Depo. Ex. 32, SOF 5), and the lease specifically clarifies that by signing Wedde represents that “this Equipment is being leased for business and/or professional purposes and agree that under no circumstances shall this Lease be construed as a consumer contract.” This clearly distinguishes Wedde’s situation from one where a consumer relies upon the personal advice of a skilled and trained professional. Rather, Wedde simply was involved in a lease agreement between two businesses for the use of a piece of equipment.

In sum, because Wedde seeks economic losses in tort and none of the three exceptions to Idaho’s economic loss rule apply, Wedde’s negligence claim must be denied as a matter of law.

V. CONCLUSION

Based upon the foregoing, Leasecomm respectfully requests the Court grant summary judgment on all of Wedde's claims and dismiss the case in its entirety.⁸

DATED this 21st day of July, 2004.

STOEL RIVES LLP

By:



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⁸ Because it is not necessary here, Leasecomm has not addressed the issue (as asserted in its Answer (Docket No. 1, p.4, ¶ 13)) that Plaintiff Wedde has explicitly waived his right to a jury trial. In the event the case were to proceed forward in any fashion after summary judgment, Leasecomm will address this issue by way of a motion in limine.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2004, I caused to be served the foregoing **DEFENDANT LEASECOMM CORPORATION'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** upon the following in the manner indicated:

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- Via U.S. Mail
- Via Facsimile
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By:



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