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11 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

12 DANIEL and VALERY O'CONNELL (for and
13 on behalf of GLA landowners),

14 Plaintiffs,

15 v.

16 GLASTONBURY LANDOWNERS
17 ASSOCIATION, INC. Board of Directors,

18 Defendants.

Cause No.: DV-2011-114
Judge David Cybulski

**DEFENDANT'S BRIEF IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

19 COMES NOW the above named Defendants Glastonbury Landowners Association, Inc. Board
20 of Directors (GLA) and submit this brief in support of its Motion for Partial Summary Judgment.

21 **FACTUAL BACKGROUND**

22 Plaintiffs filed a Complaint (DV-12-164) titled "Writ of Prohibition and Writ of Mandamus" in
23 Park County on September 24, 2012 which alleges the GLA Board wrongly granted a variance to
24 landowners allowing the landowners to cluster four residences on one side of their two adjoining
25 parcels. (Attached as Exhibit A). The Complaint DV-12-164 alleges the GLA violated its governing
26 documents and exceeded its authority by granting the variance.
27
28

1 The Complaint at issue here was filed March 4, 2013. This Complaint also alleges the GLA
2 violated its governing documents in the Erickson variance process and requests that the Court reverse
3 the GLA's variance process.

4 On June 19, 2013, Judge Gilbert granted the GLA summary judgment on all of Plaintiffs' claims
5 in DV-12-164 and one other parallel case, DV-12-220. (Attached as Exhibit B). In granting summary
6 judgment, Judge Gilbert stated, "...Plaintiffs have failed to demonstrate any basis for invalidating the
7 Board's discretionary act of granting this variance." (Exhibit B at 4). Plaintiffs filed a Motion for Relief
8 from Judgment under Mont. R. Civ. P. 60, and Judge Gilbert denied that Motion on June 26, 2013. (See
9 Exhibit C). Plaintiffs have appealed Judge Gilbert's decision.

11 ARGUMENT

12 Plaintiffs claims regarding the Erickson Project in the instant case involve the same parties and
13 the same issues as those argued in DV-12-164. Judge Gilbert decided the issue on June 19, 2013 after
14 extensive briefing and oral arguments by the parties. Thus Plaintiffs claim is barred under the doctrine
15 of *res judicata*.
16

17 The doctrine of *res judicata* precludes a party from re-litigating claims which have already been
18 litigated. *Fisher v. St. Farm Gen. Ins. Co.*, 1999 MT 308, ¶ 10, 297 Mont. 201, ¶ 10, 991P.2d 452, ¶ 10.

19 A resolved claim is *res judicata* if four criteria are met:
20

- 21 1) the parties are the same;
- 22 2) the subject matter is the same;
- 23 3) the issue are the same and relate to the same subject matter; and
- 24 4) the capacities of the parties are the same in reference to the subject matter and issues. *Id.*

25 *Res judicata* will also bar a claim if a party had the opportunity to litigate a claim in a prior action. *Id.*

26 All the criteria here are met.
27
28

1 The parties are indisputably the same. The subject matter is the Erickson Project in both claims.
2 The issues as to whether the GLA violated its governing documents in the variance process are the
3 same. Further, the capacities of the parties are the same: the GLA as the governing body and the
4 Plaintiffs as members of the GLA. Finally, Plaintiffs had ample opportunity to litigate this claim in DV-
5 12-164 and lost. Plaintiffs should not be given another bite at the apple.
6

7 **CONCLUSION**

8 For the above reasons, GLA respectfully requests an Order from the Court entering partial
9 summary judgment in its favor as to Plaintiffs' claims regarding the Erickson Project, and dismissing
10 such claims with prejudice.
11

12 DATED this 11th day of July, 2013.

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17 BY 

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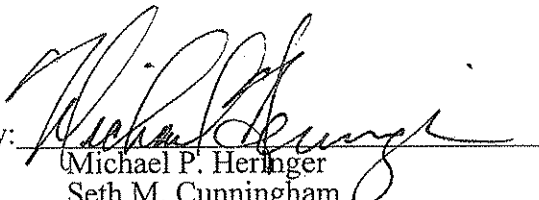
1 CERTIFICATE OF SERVICE

2 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,
3 postage prepaid, and addressed as follows this 11th day of July, 2013:

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PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

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BY ~~JUNE LITTLE~~

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

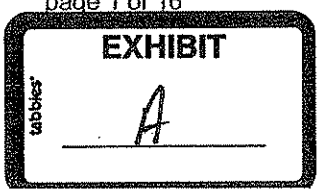
DANIEL & VALERY O'CONNELL) Cause No. SV 12-164
for & on behalf of GLA members)
)
Petitioners,)
)
v.)
)
GLASTONBURY LANDOWNERS')
ASSOCIATION, INC. ;)
Board of Directors)
)
Respondent(s))
)

**PETITION FOR:
WRIT OF PROHIBITION, &
WRIT OF MANDAMUS**

Come now Petitioners, Daniel & Valery O'Connell, and pray this Court for issuance of a Writ of Mandamus, AND a Writ of Prohibition, on grounds more fully set forth below. This Petition is brought pursuant to §27-26-101, §27-27-101, *et seq*, MCA and is based upon the attached Affidavits of Petitioners—Daniel and Valery O'Connell, on behalf of members of Glastonbury Landowners Association (herein called the GLA), the attached Exhibits and any further evidence that may be adduced in the event a hearing is held hereon. In support of this Petition, Petitioners aver as follows:

I. PARTIES; JURISDICTION; and VENUE

1. Daniel and Valery O'Connell are landowners and necessarily members of the GLA, Inc. who conducts business primarily in Park County, Montana at the time the petition was filed.



2. Respondent—the GLA, Inc. Board of Directors—are the elected Directors for the GLA Association, whose official duties regarding this petition per §, MCA require them to conduct the business and affairs of the administration on behalf of the Petitioners and other GLA members.
3. Jurisdiction is properly with this Court pursuant to GLA contracts involving property interest for §70-1-301, and proceedings of the GLA Board for §27-26-102, and §27-27-101.
4. Venue is properly with this Court in as much as this petition is directed at elected GLA Directors of this county, to compel action and prohibition, on their part, in their official capacity.
5. Inasmuch as there is no other plain, speedy and adequate remedy in the ordinary course of law to compel Respondents to accept and perform their GLA duties delegated to Minnick, a writ of mandamus is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth below, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met, and will place undue time constraints upon all Petitioner(s) constitutional right to “possessing and protecting [their] property.”
6. Also, inasmuch as there is no other plain, speedy and adequate remedy in the ordinary course of law to arrests the current proceedings of the GLA corporation board of directors- Respondents when such proceedings are without or in excess of the jurisdiction of such GLA corporation board of Directors, a writ of prohibition is the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth below, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met, and will place undue time constraints upon all Petitioner(s) constitutional right to “possessing and protecting [their] property.”

II. PETITION FOR WRIT OF PROHIBITION

1. The Petitioners seek a writ of prohibition directing the Respondent—The GLA, Inc. Board of Directors, in its capacity as the GLA Administrator, to be prohibited from exercising the two contracts entered into with Pete and Cyrese Erickson; and also prohibit their exercise of the contract entered into with Minnick Management, Inc. (see such contracts included with attached affidavit).

2. Except by a vote of 51% of GLA members, a contract can not nullify existing GLA governing documents that run with the land. Yet numerous GLA bylaws and covenants below are being nullified, and/or violated by two contracts entered into by the GLA Inc. with GLA landowners called the Ericksons to prohibit any residential building use of their parcel 90 and more. Also, another contract between the GLA and Minnick Management, Inc. delegates away most GLA powers and/or duties to Minnick Management, a for-profit corporation, for which the GLA illegally gave Minnick the “exclusive right right to operate, control, and manage the certain property known as the Community of Glastonbury in Emigrant, Montana;” for which the same properties have always been owned, operated, controlled, and managed by GLA landowners.

STATEMENT OF FACTS and DISCUSSION OF ISSUES regarding Minnick Contract

It is within this Courts jurisdiction per 27-27-101, MCA. to “arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person.”

3. In the last 15 years that the GLA, Inc. has existed, the only agents hired by the GLA outside of committees has been agents and contractors hired to maintain GLA roads and do research and accounting work, until the GLA hired Minnick Management Inc. On June 1, 2012, the GLA entered into a contract with an Minnick Management, Inc. now in effect. On page 1 of this signed contract, the GLA gave Minnick “the exclusive right to operate, control, and manage the certain property known as the Community of Glastonbury in Emigrant, Montana.”

4. The primary problem with this first paragraph of this Minnick contract is that the GLA does not have the exclusive authority over any GLA member owned property, nor allow another

corporation for profit “to operate, control, and manage” all landowners properties within the GLA.

This is because the GLA owns NO property of it own within the GLA boundaries, but is given the limited duty and easement rights to maintain and care only for GLA member owned roads, and six or more common land parcels owned jointly by all GLA members or landowners.

In other words, the GLA has no exclusive right “to operate, control, and manage” any property within the GLA. Thus without landowners permission, the GLA can not delegate away to Minnick such control and maintenance of all landowners properties. Also except for common land owned by all landowners as members, all GLA members have exclusive ownership rights of their own respective parcels as landowners within the Glastonbury Landowners Association.

Which means the GLA has no authority to give away such control and maintenance of any properties within the GLA boundaries to another corporation such as Minnick as stated in Minnick contract paragraph 1; which is a violation of landowners rights afforded under Title 70 of the Montana Code Annotated and Mt. constitution, Art. II Section 3 right to “possessing and protecting property;” but the Minnick contract granting them the “exclusive right to operate, control, and manage” GLA landowners properties may constitute a taking or illegal possession of such private property & rights as contrary to this constitutional right above, and contrary to Title 70 MCA and GLA governing documents herein.

§. Therefore the Petitioners as GLA landowners and on behalf of other GLA landers or members, requests this Court to arrest such proceedings delegated by the GLA defendants to Minnick in its

contract enacted outside of the limited jurisdiction of the GLA corporation and Board of Directors, as follows:

6. Included on pages 1-3 of the Minnick contract summarized below, the Petitioners request all such GLA proceedings with Minnick are to be arrested, as listed in that Minnick contract:

Including “collection of GLA assessments”, “file liens” against members, “pay [GLA] bills,” “prepare annual budget,” “pay taxes,” “handle payroll,” do most “GLA administrative duties,” “take meeting minutes,” “interact with landowners” wanting to contact the GLA Board for various reasons such as “send letters” to members and conduct GLA elections such as “ballot collection, tally, and reporting,” keep & maintain all “GLA records” and “respond to all basic landowner inquires” and “covenant violations,” and oversight “management of GLA... on-site services,” “contractors,” “contracts,” and “administrate covenant enforcement ...”

7. The GLA Articles, which reign supreme over all governing documents, holds the GLA liable to its members for “breach of duties to members” and willful “neglect of duties” to members. Yet in this the same GLA/Minnick contract on page 3, it requires the GLA to “2. indemnify and hold Minnick Management Inc. harmless from all costs, expenses, suits, liability, damages, and claims of every type ... not limited to ...injury” to landowners.

But such exemption for Minnick’s liability creates unnecessary liability upon the GLA who is thus responsible for its agent Minnick’s liability, per this GLA Article VIII above.

8. Also GLA Article IV(E) states that the GLA Board and Corporation are “to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws.”

Notice that all of the GLA duties (#6 above) delegated to Minnick are contrary to the Following Bylaws and more:

Bylaw VI B. General Powers and Duties. The business and affairs of the Association shall be managed by the Board of Directors. Such Directors shall in all cases act as a Board which shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts or things as are not by law or by the Covenants, Bylaws or Articles of Incorporation directed to be exercised and done by the Members. The Board shall be regularly convened and shall act by majority vote of those

members present at a meeting, unless provided otherwise herein or in the Articles of Incorporation. Such powers and duties of the Board shall include, but not be limited to, the following:

1. Conduct, manage and control the affairs and business of the Association;
 3. Fix, levy, collect and enforce the payment of common charges and assessments to Members required to carry out the duties and obligations of the Association, including, without limitation, the operation and maintenance of the community common property and roads;
 4. Issue quarterly statements of account on the assessments and take necessary and appropriate action to collect assessments from Members and common charges from the Members, including the filing of liens and prosecuting foreclosures as provided in the Covenants or by law;
 6. Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers, agents, employees, or committee members of the Association;
 8. Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees as the Board of Directors designates from time to time by resolution as provided in these Bylaws;
 9. Enforce obligations of the Members to the Association as provided in the Covenants;
 12. Pay the expenses of the Association, including all taxes or assessments;
 13. Keep records in a good and businesslike manner of all assessments made, all expenditures and the status of each Member's accounts, and make such records accessible at reasonable times to all Members;
 14. Do any and all things necessary to carry into effect these Bylaws and to implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants, Bylaws, Rules and any Land Use Master Plan adopted pursuant to the Covenants;
 15. Negotiate and enter into agreements with public agencies, officers, boards, commissions, departments and bureaus of federal, state and local governments to carry out the above powers, duties and responsibilities; and
 16. Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner that is not inconsistent with any provisions of the Covenants, Articles of Incorporation or these Bylaws.
9. These specific GLA duties above are restricted to do what is "necessary to carry out the above powers, duties and responsibilities." Also part 6 & 8 above restricts "delegation of GLA duties to committees" of Directors, or "prescribe the duties ... as necessary, of all officers, agents, employees, or committee members of the Association."

Thus when the GLA entered into a contract to transfer or delegate most GLA duties to Minnick Management, Inc., it violated its limited powers to delegate only "necessary" duties to committees or to agents that necessarily require skills not possessed by 12 GLA Board members such as an accountant agent (CPA) to handle GLA financial accounts and budget reports.

10. Also these GLA Bylaws dictate that the Board and any contract, such as the Minnick contract, can not change nor limit the land use, rights, privileges, duties, and responsibilities of the GLA, including Bylaw Article VI (14) that states that the GLA Board has a duty to **"do any and all things necessary to carry into effect these bylaws and to implement the purposes and exercise the powers AS STATED in the Articles of Incorporation, Covenants, Bylaws, Rules, and any Land Use Master Plan adopted pursuant to the Covenants."**

Therefore such GLA contract proceedings with Minnick Management, Inc. are without or in excess of the jurisdiction of such GLA corporation board of Directors; thus warrant a writ of prohibition against the GLA Directors as the proper mechanism for doing so—particularly in light of the facts that their refusal to act within the scope of their mandatory Association duties and limited powers, as set forth above, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract are met.

The Erickson Contract STATEMENT OF FACTS and DISCUSSION OF ISSUES:

1. For the Erickson contracts, one of its stated purposes says the GLA grants the Ericksons requested variances that allowed four residences instead of the allowable 2 on original undivided parcel 91 (contrary to Masterplan 1.1*). On pg. +++++, it states such condition for granting such variances are in exchange for requiring the Ericksons to never build residences on their adjoining

original undivided parcel 90 and also requires the Ericksons to enter into a restrictive easement to never sell their parcel 90 separately from parcel 91; which contractually enjoins the two parcels that are both still legally divided parcels.

2. **GLA Bylaw IV(B)** states, "the rights, privileges, duties, and responsibilities of membership in the Association (membership interest) . . . shall run with the land."

The GLA Board must carry into effect these rights and can not restrict such land use to build on Ericksons parcel 90 afforded under this Bylaw, Covenants and the Master Plan cited below; and for which GLA/Erickson contract is for "inperpetuity," but was not approved by 51% of members for contracts more than 5 years as required per GLA Bylaw VI(B)(2).

3. Even if a landowner agrees to limit their parcel land use as this contract did, this land use limitation is not allowed in the GLA governing documents and therefore must be necessarily enacted by vote of at least 51% of GLA members (per Bylaw VI(B)(2)) to nullify such covenants, Masterplan, Bylaws and Articles; yet not be contrary to them in any case.

4. However, both Ericksons parcels 90 & 91 are yet legally separated and thus subject to the GLA Masterplan 1.1 and other governing documents in effect before this Erickson/GLA contract took effect "in perpetuity" to grant the building of 4 residences instead of the 2 maximum allowable residences per GLA Masterplan 1.1* for each legally separate and original undivided parcel.

* GLA Masterplan 1.1 says in part, "Maximum residential development for an Original undivided Parcel is limited to one (1) single-family residence and one (1) additional single residence, both owned by the Landowner who owns the parcel. A formal subdivision, prepared and approved in accordance with the applicable regulations set forth by the Association Board, Park County and the Montana Department of Environmental Quality (DEQ) must be completed in order to further subdivide to limits shown in Residential Topographical Areas and Density Schedule."

5. Furthermore, Masterplan 4.0 only allows, " In granting a variance, the Association Board may attach conditions it finds necessary to achieve compliance with the criteria set forth in this Master Plan." And Covenant 6.01, requires, "The Association shall conditionally or unconditionally approve the [resident building] plans and make recommendations deemed necessary or advisable, **UNLESS**: a. The plans are incomplete, are in violation of or are not in accordance with these covenants, the Master Plan, or any rule or regulation adopted in accordance therewith; c. The plan or proposed structure is unlawful in any way."

Thus, the GLA conditions above for granting Ericksons variances are in violation of Masterplan 1.1, 4.0, Covenant 6.01 and as Masterplan 4.0 requires, also did not achieve compliance with the criteria set forth in this Masterplan section 1.1 above for limiting residences to 2 houses; and GLA/Erickson contract must be prohibited, as contrary to these and more GLA governing documents.

6. In fact, as the O'Connells are common land joint owners of an adjoining parcel to the Ericksons parcels (see attached maps). However the O'Connells were repeatedly denied their requested neighborhood review as required by Masterplan 4.1*, so further makes any variance or conditions of contract with the Ericksons contrary to O'Connells' rights afforded by this and other Masterplan requirements above.

*All variance requests to... 3) that may adversely affect neighbors will go through a variance review procedure that includes Neighborhood as well as Association Board review... The Association Board will hold a hearing of all parties concerned..." (Note: the Erickson/GLA contract easement to allow four residences on parcel 91 likely impaired members benefit of enjoyment of adjoining common lands reflected in the "scenic, environmental, aesthetic and cultural" values served by the Masterplan restriction to limit 2 residences per adjoining parcel 91.)

7. Also note the **Uniform Statutory Rule Against Perpetuities** (72-2-1002 & 1005, MCA.) as also contrary to this "in perpetuity" contract between the GLA and Ericksons. This Erickson IN **PERPETUITY**" contract length is also contrary to and did violate **Bylaw VI.(B)(2)** requiring a vote of "51% of members" for such contracts" in excess of 5 years," because the **GLA members did not approve of such Erickson contract.**

The GLA corporation Board by denying the Ericksons to build on its parcel 90 thus denied this and more Bylaws and denied the GLA Master Plan which allows for land use for lots 90 and 91 called "Upper Forested Area" including:

GLA Masterplan 1.1. This illegal condition upon Ericksons parcel 90 in exchange for GLA granting several variances (negatively impacting the adjacent common land) to the Ericksons parcels 90 & 91, thus illegally nullified these and several other governing Bylaws and Covenants.

8. The GLA/Erickson contract also created a so called "easement" that burdens and enjoins parcels 91 & 90 contrary to allowable easements listed in **70-17-101, MCA, and contrary to the Bylaws and covenants that run with this land stipulating that legally separate parcels are afforded equal and separate rights.**

***Bylaw IV(B) was amended to read in Part, "Each of the following separated units of property, whether held by one or more than one landowner, shall constitute a separate and distinct Membership Interest that is entitled to one vote and to all other rights, privileges, duties and responsibilities as set forth in the Covenants and in these Bylaws:**

a. A parcel (as defined in Section 3.22 of the Covenants); b. An undivided tenancy-in-common interest ..."

Altogether, both of the 2 Erickson/GLA contracts (attached to the affidavit) must be necessarily prohibited because they violate several GLA governing documents and Masterplan restrictions,

arbitrary and capriciously deny or restrict GLA member property rights, and deny their constitutional property rights afforded to members and landers within the GLA and contrary to the above state statute rights per Title 70 for property use, servitudes, burdens, restrictions, and easement limitations.

9. Therefore to arrests the current proceedings of the GLA corporation board of directors- Respondents when such proceedings are without or in excess of the jurisdiction above of such GLA corporation board of Directors, a writ of prohibition is the proper mechanism for doing so— particularly in light of the facts that their refusal to act within the scope of their mandatory duties and limited powers, as set forth above, impugns the rights of Petitioner(s), if all other prerequisites delegated to the Minnick Management, Inc. contract AND/or Erickson contracts are met.

III. PETITION FOR WRIT OF MANDAMUS

1. The Petitioners seek a writ of mandamus directing the Respondent—The GLA, Inc. Board of Directors, in its capacity as the GLA Administrator, to perform the required GLA duties so given to Minnick Management, Inc. on grounds that the GLA limited powers only allows the GLA to control and manage the GLA corporation and non other. Per Bylaw VI(B) above the GLA can only delegate duties only “as necessary” such as road maintenance and accounting duties, thus excludes all other duties given to Minnick as the Minnick contract lists such as:

“collection of GLA assessments”, “file liens” against members, “pay [GLA] bills,” “prepare annual budget,” “pay taxes,” “handle payroll,” do most “GLA administrative duties,” “take meeting minutes,” “interact with landowners” wanting to contact the GLA Board for various reasons such as “send letters” to members and conduct GLA elections such as “ballot collection, tally, and reporting,” keep & maintain all “GLA records” and “respond to all basic landowner inquires” and “covenant violations,” and oversight

“management of GLA... on-site services,” “contractors,” “contracts,” and “administrative covenant enforcement ...”

Again for the past 15 years except for road maintenance and accounting, the 12 GLA Board of Directors have personally and collectively performed all these GLA duties listed above. Thus proving that it is not “necessary” to delegate all such duties to Minnick.

2. However, this is exactly what the Minnick contract has caused to happen now, as contrary to GLA Bylaw VI B. requirements that the business and affairs of the Association shall be managed by the [GLA] Board of Directors” or delegate powers only to “committees” as necessary, and delegate duties to agents only as “necessary.”*

*Bylaw VI(B) part 6. “Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers, agents, employees, or committee members of the Association;”

part 8. “Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees as the Board of Directors designates from time to time by resolution as provided in these Bylaws;”

3. Together with the requisite supporting affidavit, this writ of mandamus complies with the requisites of Title 27 Chapter 26 & § 35-2-118(1) as follows:

35-2-118(1) “Unless its articles of incorporation provide otherwise, a corporation ... has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power: ... (j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state; ... (n) to impose dues, assessments, admission, and transfer fees upon its members; ... (p) to carry on a business; or (q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.... “

These and other limitations, obligations, or GLA/Minnick contract objects therein can NOT be transferred or granted as they would have the effect of nullifying the intent and purpose of

existing laws above and requirements of Title 35, Chapter 2 for non-profit corporations to be directly administered by its Board of Directors (as elected by its members); which law regulations and rights of the GLA corporation and its members are also required under existing GLA Bylaws & Covenants above, and include Bylaw VI(B) cited above that states, "The business and affairs of the Association shall be managed by the Board of Directors."

Thus this Bylaw VI does not allow the GLA Directors to delegate almost entirely its many duties and powers to another corporation, Minnick Management, Inc.

4. Also Bylaw VII.(E-H) requires such GLA Director officers to, "perform such other duties as are incident to his office or are properly required of him by the Board or President."

Such powers AND duties incident to the office of GLA Treasurer, yet illegally delegated to Minnick are listed in the Minnick contract (page 1-2) under the headings of; "Collection/ disbursement of Monies," "Reporting" "Employee/Independent Contractor Accounting & Reporting."

5. In fact Covenant 11.05 requires in part, that "The Association is and shall be a fiduciary in the allocation, application and use of assessment funds. The Association has a duty to perform the responsibilities provided in these covenants to the best of its ability and to the extent that assessment funds reasonably allow."

Such powers AND duties incident to the office of GLA Secretary, yet illegally delegated to Minnick are listed in the Minnick contract (page 2-3) under the headings of; "Administrative Management," "Association Records," "Meetings," "Communications," & "Site Mngement."

6. Furthermore, Covenant 11.06 states in part, “... The Association may bring an action at law against a Landowner to collect delinquent assessments, penalties and interest and/or to foreclose on the lien against the parcel, and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien thereof, including reasonable attorney’s fees.”

Nowhere in the GLA Covenants or Bylaws does it allow collection of assessments to be turned over for collection of unpaid collections; such as to a collection agency or to another corporation, Minnick, to “collect delinquent assessments, penalties and interest.” This duty as stated in covenant 11.06 above, falls upon the Association (and treasurer) to “collect delinquent assessments, penalties and interest.”

7. This GLA covenant above requires the GLA Association to also collect “collect ... penalties and interest” from delinquent homeowners, not to be collected by a collection agency nor another corporation such as Minnick, as their contract demands. This covenant above does NOT allow “50% of collected late fees from delinquent homeowners [to] become property of Minnick Management, Inc.” (see Minnick contract page 4, part 5). **Yet in exchange for Minnick performing all these same GLA duties and more, the GLA agreed to give away its duty, powers to Minnick to collect the same fees.**

The member ran non-profit GLA Association was not created to have other corporations collect or give away such fees, nor stick its members with inordinate fees that collection agencies typically charge which can double or triple the penalties and interests amounts for late assessment fees.

8. **It is no excuse, nor is it “necessary” to delegate any GLA power or duties performed for the last 15 years and for which the 12 GLA Board of Directors now simply “don’t want to**

do,” or perform. But such was the excuse verbally stated by the GLA Directors at its May 2012 Board meeting.

Therefore as pursuant to 27-26-101, MCA., et al., except for delegated duties for road maintenance and accounting duties not able to be done by the GLA Treasurer, this writ of mandamus is necessary to compel the GLA Association Board of Directors to take back, carry out, and perform all such powers and duties it delegated to Minnick in the Minnick contract.

Note: GLA defendant Directors were personally involved in the termination of their own duties to members and entering into a Contract with Minnick and Ericksons and thus Petitioners argue this conduct was tortious based on: (1) the fact the GLA Board defendants ratified a decision to wait until the contracts had been signed to inform members, (2) but did not inform members of their intent to give most of the GLA duties over to Minnick.

The Mt. Supreme Court held in *Phillips*. “Corporate officers or directors are privileged to interfere with or induce breach of the corporation’s contracts or business relations with others as long as their actions are in good faith and for the best interests of the corporation.” *Phillips*, 187 Mont. at 425, 610 P.2d at 158 (citations omitted); accord *Bottrell*, 237 Mont. at 25, 773 P.2d at 708-09.

9. Thus Petitioners also request a writ of Mandamus to otherwise “induce breach of the corporation’s contracts” with Minnick and the Ericksons, as in the best interest of the GLA corporation, since all these contracts violate governing documents, and/or state statutes, and/or unconstitutional, and adverse to GLA members property possession and rights as cited herein.

IV. PRAYER FOR RELIEF

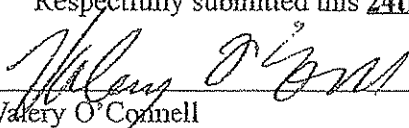
Wherefore, in light of all of the foregoing, Petitioners respectfully pray this Court for issuance of a **writ of mandamus** directing Respondents to perform its duties and powers otherwise delegated to Minnick Management; and otherwise cancel the Minnick contract and cancel two illegal contracts with the Ericksons, which is the subject of this petition as to form and/or content. Petitioners also bid this Court for a **writ of Prohibition** arresting the proceedings listed

within those Erickson contracts AND the Minnick contracts; or until such time as a hearing can prove why the GLA should breach those contracts, as would be in the best interest of the GLA corporation.

Petitioners also request an Order requiring Respondent to pay Petitioners' reasonable fees and costs incurred in bringing of this Petition and any other relief this court deems is acceptable.

Respectfully submitted this 24th day of September, 2012.

By:


Valery O'Connell


Daniel O'Connell

JUN 21 2013

PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

2013 JUN 19 PM 1 28

FILED
BY Shelly Bales
DEPUTY

1 HON. BRENDA R. GILBERT
2 District Judge
3 Sixth Judicial District
4 414 East Callender Street
5 Livingston, Montana 59047
6 406-222-4130

7
8 MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

9 DANIEL and VALERY O'CONNELL (for and
10 on behalf of GLA landowners),

11 Plaintiffs,

12 v.

13 GLASTONBURY LANDOWNERS
14 ASSOCIATION, INC. Board of Directors,

15 Defendants.

Cause No.: DV-2012-220
DV-2012-164

16
17 ORDER ON PLAINTIFFS' MOTION FOR
18 SUMMARY JUDGMENT AND
19 DEFENDANTS' CROSS MOTIONS FOR
20 SUMMARY JUDGMENT

21 The Plaintiffs filed their Petition for a Temporary and Permanent Restraining Order on October
22 22, 2012. On September 24, 2012, Plaintiffs filed their Cause No. DV 12-164, requesting a Writ of
23 Mandamus directing the GLA to perform the duties otherwise delegated to Minnick Management
24 Corporation, to cancel the Minnick Management contract and to cancel two allegedly illegal contracts
25 with the Ericksons regarding a variance issue. In DV 2012-164, the Petitioners therein, the Plaintiffs
26 herein, also requested a Writ of Prohibition arresting the proceedings listed within the Minnick and
27 Erickson contracts until such time as a hearing could be held.

28 On December 4, 2012, the Plaintiffs filed their Motion for Declaratory Judgment and Notice to
Join TRO. On January 22, 2013, the Plaintiffs filed their Motion for Summary Judgment and Motion to
Enjoin Cases. The Defendants filed its Cross-Motion for Summary Judgment, requesting that summary

EXHIBIT

tabbies

B

1 judgment be entered in its favor with regard to all issues raised in actions DV 12-220 and DV 12-164.
2 Both parties assert an absence of genuine issue of material facts. The Motions have been fully briefed
3 by the parties. The Court conducted a hearing on Wednesday, June 5, 2013 and heard oral arguments
4 with respect to the pending Motions. The Court having considered the Motions, the Briefs and
5 Affidavits filed with respect to such Motions, the oral argument presented, and all of the records and
6 files herein, whether specifically mentioned or not, now enters the following Orders:
7

8 IT IS HEREBY ORDERED AS FOLLOWS:

- 9 1. The Plaintiffs' Motion for Summary Judgment is hereby DENIED.
- 10 2. The Defendant's Cross-Motion for Summary Judgment is hereby GRANTED.
- 11 3. Any and all further claims, motions, and Writs filed in Cause Numbers DV 12-220 and
12 DV 12-164, having been effectively resolved by the Court's ruling regarding the summary judgment
13 motions, are hereby DENIED.
14

15 EXPLANATORY COMMENTS

16 The issues raised by the pending Motions consist of The Erickson Variance, The Guest House
17 Assessment Claim, The Minnick Contract, and The Election Procedures. The Court will address these
18 issues in the order presented by the Plaintiffs in their oral argument.
19

20 SUMMARY JUDGMENT STANDARD

21 The party moving for summary judgment has the initial burden of showing that no genuine issues of
22 material fact exist. Once the moving party meets that burden, in order to raise a genuine issue of
23 material fact the non-moving party must provide substantial credible evidence that one exists. *Von*
24 *Petersdorff v. Kenyon Noble Lumber Co.*, 2004 MT 382, ¶ 8, 325 Mont. 94, 103 P.2d 1082,
25

26 For summary judgment to issue, the movant must demonstrate that no genuine issues of material
27 fact exist. Once this has been accomplished, the burden then shifts to the non-moving party to prove by
28 more than mere denial and speculation that a genuine issue does exist. Having determined that genuine

1 issues of material fact do not exist, the court must then determine whether the moving party is entitled
2 to judgment as a matter of law. *Stutzman v. Safeco Ins. Co.* 284 Mont. 372, 376, 945 P.2d 32, 34,
3 (1997), (citing *Treichel v. State Farm Mut. Auto Ins. Co.*, 280 Mont. 443, 446, 930 P.2d 661, 663,
4 (1997).

5 Under Rule 56(c) M.R.Civ.P. summary judgment is proper when there is no genuine issue of
6 material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), M.R.Civ.P. It
7 is never a substitute for a trial on the merits. *Morton v. M-W-M, Inc.* 263 Mont. 245, 249, 868 P.2d
8 576, 578, (1994) and *Mills v. Mather* 270 Mt 188, 890 P.2d 1277, (1995).

9 All inferences which may be reasonably drawn from the record are to be drawn in favor of the
10 non-moving party. *Vincelette v. Metropolitan Life Ins. Co.* 903 P.2d 1374, 1376, (1995) citing
11 *Simmons v. Jenkins* 230 Mont. 429, 432, 750 P.2d 1067, 1069, (1988).

12 THE ERICKSON VARIANCE

13
14 Generally, the Defendant GLA's Covenants and Master Plan allow only two homes per lot. The
15 Ericksons own two lots, Lots numbered 90 and 91, in South Glastonbury, which lots are adjacent to
16 one another. The Ericksons requested a variance from the GLA Board that would permit them to
17 construct 5 houses on their two combined lots. The GLA board discussed the matter and sought input
18 from other landowners. The requested variance was made known to the other members of the
19 subdivision and input and comment were sought. Some members voiced concern. The terms of the
20 variance that were reached precluded any building in the future on Lot 91. The GLA Board then
21 granted the Ericksons permission to build four homes on Lot 90. The ultimate result was that the only
22 individuals objecting to the terms of the variance were the Plaintiffs.
23
24

25 The Covenants, at Section 12.01, provide that, "The Association reserves the right to waive or
26 grant variances to any of the provisions in this Declaration, where, in its discretion, it believes the same
27 to be necessary and where the same will not be injurious to the rest of the Community". The
28

1 Covenants also provide, at Section 5.01, that the site plans and building plans must be submitted in
2 advance and are required to be, "satisfactory to the Association". Also, because this request was to
3 change the allowable number of residences on a lot, a neighborhood review was necessary per Section
4 4.1 of the Master Plan. The Board conducted such a review and made fairly extensive Findings of Fact
5 that demonstrated what factors the GLA board considered in granting the variance. (See Exhibit G to
6 the Brief of the GLA.)
7

8 The GLA Board approved the variance under Section 4.2 of the Master Plan. The Board has
9 discretion to approve or deny variance requests in accordance with Section 12.01 of the Covenants.
10 Given that the owners of Lot 90 and 91 will not be able to build on Lot 91 and that both lots 90 and 91
11 must be always sold together in the future, the Board believed that the principle of two homes per lot
12 was effectively served. The factors cited in approving the variance were that it was not materially
13 detrimental to neighboring properties, the topography on the lots justified the variance, and the
14 Ericksons would be making road improvements leading to their lot and to the GLA common land and
15 Forest Service Land.
16

17 In any event, for purposes of the pending summary judgment motion, the facts underlying the
18 variance decision are not in dispute. There is no material fact precluding the Court from entering
19 summary judgment. Summary judgment in favor of the Defendant GLA is appropriately granted as to
20 this issue as the Plaintiffs have failed to demonstrate any basis for invalidating the Board's
21 discretionary act of granting this variance.
22
23
24

25 THE GUEST HOUSE ASSESSMENT CLAIM

26 The Plaintiffs' summary judgment motion encompasses their claim that GLA has imposed new
27 guest house assessments against some of its members, without having the legal authority to do so. The
28

1 Plaintiffs claim that the GLA's undisputed actions of "collecting new guest house assessments exceed
2 its contract authority, rewrite and/or misinterpret its contracts, and/or violate its covenant/bylaw
3 contracts, and breach their duty to members and the Association pursuant to GLA Art. VIII." The
4 Plaintiffs contend that a guest house is determined by its intended design and use as defined in GLA
5 Covenant/Masterplan 6.0 which says a guest house is "intended for occasional guest use and not as a
6 permanent residence, not to exceed 1,200 square feet." Such a guest house, is, according to Plaintiffs,
7 not a dwelling unit. Plaintiffs base this contention upon the definition of dwelling units found in
8 Covenant 3.12 that states it is intended "for occupancy by a single family" and is not restricted in size
9 or use.
10

11 The pertinent Section 3.12 of the Covenants defining "dwelling unit" provides as follows:
12

13 A structure or portion of a structure, normally consisting of living
14 area, bathroom and cooling facilities, designed for occupancy by a
15 single family. The term includes a boarding house but not the
16 individual rooms within a boarding house that do not contain a
17 bathroom and cooling facilities.

18 Section 1.1 of The Master Plan allows one single-family residence and one guest house per lot, absent a
19 variance.
20

21 The GLA responds that its Board determined guest houses were "dwelling units" because they
22 had living areas, bathroom and cooking facilities, and were designed for occupancy by a single
23 family. GLA points out that some residents in the GLA reside full time in guest houses. It contends
24 that the fact that a parcel may have a main house and a guest house does not diminish the fact that
25 both are "dwelling units" as defined by the Covenants.

26 The stated justification for assessing the guest houses as "dwelling units", according to GLA,
27 ensures that those receiving the benefit of GLA services such as snow removal and road maintenance,
28 are contributing like their neighbors. Thus the GLA Board has determined that if a structure has

1 living areas, a bathroom, and cooking facilities, and it was designed for occupancy by a single family,
2 then it is subject to the “dwelling unit” assessment.

3 No disputed material facts exist with respect to this issue. Both parties so have alleged and
4 have requested summary judgment be entered. Covenants are construed under ordinary principles of
5 contract law. When interpreting a contract, “the words of a contract are to be understood in their
6 ordinary and popular sense...” Section 28-3-501, MCA.

7
8 The GLA Board’s determination that a guest house is a dwelling unit because it has living areas,
9 a bathroom, and cooking facilities, and is designed for occupancy by a single family, is a
10 straightforward interpretation of the Covenants. The fact that the Master Plan restricts the size of the
11 guest house to 1200 square feet and states that they structures not intended to be permanent residences
12 does not change the fact that a guest house fits within the definition of a dwelling unit.

13
14 GLA’s cross-motion for summary judgment is granted as to this issue and the Plaintiffs’ motion
15 for summary judgment as to the guest house assessment issue is denied.

16 Further, the Plaintiffs’ argument that they are entitled to judgment on this issue because the GLA
17 did not address this claim in its initial Motion to Dismiss is not well taken. The Defendant’s Motion
18 altered the time to respond to all of the causes of action. Plaintiffs did not seek to default GLA on this
19 claim, nor would such a request have been appropriate. When the Court denied the Motion to Dismiss
20 by its Order of January 9, 2013, the GLA filed its Answer on January 17, 2013, well within the time
21 allotted by Mont. R. Civ. P. 12(a)(4)(A).
22
23
24

25 THE MINNICK CONTRACT

26 On June 1, 2012, the GLA entered into a contract with Minnick Management Corporation.
27 (hereinafter referred to as Minnick) There is no dispute regarding the fact that Minnick has performed
28

1 duties under that contract since June of 2012. Minnick performs the administrative functions for the
2 GLA such as mailings, bookkeeping, taking meeting minutes, collecting assessments, paying bills, and
3 other support functions. Prior to contracting with Minnick, GLA used various independent contractors
4 to perform such functions. Of the approximately 360 landowners in the GLA, only the Plaintiffs have
5 objected to the Minnick contract.
6

7 Section 35-2-118(1), MCA allows nonprofit corporations to enter into contracts and to hire
8 employees and appoint agents. The GLA Bylaws give the GLA the power to enter into contracts, hire
9 employees and agents and to "Do any and all things necessary to carry into effect these bylaws and to
10 implement the purposes and exercise the powers as stated in the Articles of Incorporation, Covenants,
11 Bylaws, Rules and any Land Use Master Plan adopted pursuant to the Covenants Section VI.B".
12 (Bylaws, Article VI.B.14)
13

14 With statutory authority and authority granted by the bylaws, the Board has hired Minnick to
15 carry out administrative functions. This does not constitute an abrogation of the Board's authority to
16 Minnick. Indeed, if the GLA Board were tasked with performing all of the administrative tasks being
17 performed by Minnick at this time, it would probably find it very difficult to fill the Board positions.
18

19 The Affidavit of Richard Bolen is instructive as to the nature of the responsibilities that have
20 been delegated to Minnick, and the Plaintiffs have not disputed the assertions therein. According to the
21 Bolen Affidavit, Minnick collects assessments, files liens, processes accounts payable and receivable,
22 maintains GLA accounts, obtains approval for payment of bills from the GLA Board, produces
23 monthly financial statements, maintains employment and contractor records, maintains membership
24 records, takes minutes at meetings, makes copies of agendas and handouts, completes mailings, helps
25 collect and tally ballots, serves as a point of contact for inquiries, mails out newsletters and quarterly
26 reports and responds to service requests.
27
28

1 By way of contrast, Minnick does not oversee contracts for road and building maintenance, work
2 with utilities, handle insurance matters, handle covenant enforcement, approve or deny variance
3 requests, approve building designs, designate committees, approve expenditures of funds, promulgate
4 rules and regulations, hire or fire employees, or set assessments. The GLA board reserved its decision-
5 making powers and Minnick has been contracted to complete administrative functions.

6
7 The Plaintiffs' position that the GLA board can only delegate its powers to a committee, rather
8 than a corporation, under Article VI.B.8, does not take into consideration the principle of reading the
9 Bylaws as a whole. The Bylaws give the GLA Board the authority to hire employees and appoint
10 agents in order to do any and all things necessary to conduct the business and affairs of the
11 Association.

12
13 The Minnick contract is allowed by the Bylaws and by statute. It appears to be a necessary
14 delegation of administrative duties, particularly given the large number of GLA members. The
15 Plaintiffs' Motion for Summary Judgment on this issue is denied and the Defendant's Motion for
16 Summary Judgment on this issue is granted.

17 18 19 THE ELECTION PROCEDURES

20 The GLA has six vacancies on its board each year, three positions from North Glastonbury and
21 three positions from South Glastonbury. Voting is based upon a "membership interest", which is
22 derived from ownership of a parcel, (including an undivided tenancy-in-common interest or a joint
23 tenancy), or a condominium unit. Articles IV.B and V.F. of the Bylaws provide that each membership
24 interest is entitled to one vote.

25
26 The Plaintiffs complain that the GLA November newsletter states that the GLA Board allows its
27 members to cast "up to 3 votes" per membership/parcel or "one vote per position" instead of one vote.
28

1 The Plaintiffs contend that this newsletter, the GLA Ballots and GLA Bylaw/Covenants attached to
2 their Complaint are prima facie evidence that all 12 Board seats will get votes this way and never be
3 eliminated.

4 The GLA responds by noting that, since its inception, the GLA has sent separate ballots to each
5 membership interest for North and South Glastonbury. The ballots list all candidates for the three
6 vacancies and instruct the holder of the membership interest to vote for three separate candidates to fill
7 the three separate vacancies. Each membership interest has one vote per vacancy. The three
8 candidates with the most votes win seats on the board. The GLA submits that each membership
9 interest has one vote per issue. When there are three vacancies on the board, a membership gets to vote
10 for one candidate per vacancy.
11

12 The elections have been conducted this way since the GLA was formed in 1997. The Plaintiffs
13 have not objected to these procedures until 2012. The Plaintiffs have run for election and Plaintiff
14 Daniel O'Connell was elected to the GLA Board in 2009 under these election procedures. The GLA
15 claims that the Plaintiffs' complaints about the election procedures are barred by equitable estoppel,
16 acquiescence, and waiver.
17

18 The Court concludes that the GLA Board has the authority to administer the elections as it has
19 done historically and is currently doing. Although the Bylaws do not specify election procedures,
20 Article XII.A of the Bylaws provides that, "The Board shall have the power to interpret all the
21 provision of these Bylaws and such interpretation shall be binding on all persons."
22

23 The ballots complained of by the Plaintiffs clearly allow each membership one vote, per issue-
24 that is per board vacancy. Moreover, Plaintiffs have acquiesced in the election procedures. Plaintiff
25 Daniel O'Connell ran for director and won under these procedures. The Court concludes that the
26 Plaintiffs' objections to the procedure after the last two elections have not gone their way can not be
27
28

1 sanctioned under the doctrine of equitable estoppel. Plaintiffs' consent to and active participation in the
2 current election process in prior years constitutes a waiver of the right to challenge it. *Kelly v. Lovejoy*,
3 172 Mont. 516, 520, 565 P.2d 321, 324 (1977). Finally, Plaintiffs' claim regarding the GLA's election
4 procedures is barred by the doctrine of laches. The Plaintiffs' Motion for Summary Judgment on this
5 issue is denied and the Defendant's Motion for Summary Judgment on this issue is granted.
6

7 DATED this 19th day of June, 2013.

8
9
10 
11 BRENDA R. GILBERT, District Judge
12

13
14 CC: Daniel K. O'Connell/ Valery A. O'Connell
15 Michael P. Heringer / Seth M. Cunningham
16

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JUN 27 2013

PARK COUNTY CLERK
OF DISTRICT COURT
JANE LITTLE

2013 JUN 26 AM 11 34

FILED
BY *Pamela Penick*
DEPUTY

1 HON. BRENDA R. GILBERT
2 District Judge
3 Sixth Judicial District
4 414 East Callender Street
5 Livingston, Montana 59047
6 406-222-4130

8 MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

9 DANIEL and VALERY O'CONNELL (for and
10 on behalf of GLA landowners),

11 Plaintiffs,

12 v.

13 GLASTONBURY LANDOWNERS
14 ASSOCIATION, INC. Board of Directors,

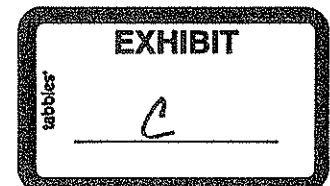
15 Defendants.

Cause No.: DV-2012-220
DV-2012-164

ORDER ON PLAINTIFFS' RULE 60 RELIEF
FROM JUDGMENT & MOTION
FOR JURY TRIAL

16 The Plaintiffs filed their Petition for a Temporary and Permanent Restraining Order on October
17 22, 2012. On September 24, 2012, Plaintiffs filed their Cause No. DV 12-164, requesting a Writ of
18 Mandamus directing the GLA to perform the duties otherwise delegated to Minnick Management
19 Corporation, to cancel the Minnick Management contract and to cancel two allegedly illegal contracts
20 with the Ericksons regarding a variance issue. In DV 2012-164, the Petitioners therein, the Plaintiffs
21 herein, also requested a Writ of Prohibition arresting the proceedings listed within the Minnick and
22 Erickson contracts until such time as a hearing could be held.
23

24
25 On December 4, 2012, the Plaintiffs filed their Motion for Declaratory Judgment and Notice to
26 Join TRO. On January 22, 2013, the Plaintiffs filed their Motion for Summary Judgment and Motion to
27 Enjoin Cases. The Defendants filed its Cross-Motion for Summary Judgment, requesting that summary
28



1 judgment be entered in its favor with regard to all issues raised in actions DV 12-220 and DV 12-164.
2 Both parties assert an absence of genuine issue of material facts. The Motions have been fully briefed
3 by the parties.

4 The Court conducted a hearing on Wednesday, June 5, 2013 and heard oral arguments with
5 respect to the pending Motions. On June 19, 2013, the Court entered an Order Denying the Plaintiffs'
6 Motion for Summary Judgment, Granting the Defendant's Cross-Motion for Summary Judgment and
7 Denying any and all further claims, motions and Writs in Cause Numbers DV 12-220 and DV 12-164.
8

9 The Plaintiffs thereafter filed a Rule 60 Relief from Judgment & Motion for Jury Trial in which
10 they claim that the Court erred in its June 19 Order because the claims in the DV 12-164 cause were not
11 properly before the Court at the June 5, 2013 hearing. The Court now makes the following order:
12

13 1. The Plaintiffs' Rule 60 Relief from Judgment & Motion for Jury Trial are
14 DENIED for the following reasons:

15 a. The Plaintiffs were the first parties to argue during the hearing on June
16 5, 2013 and did, in fact argue the very points which they now claim the
17 Court erred in deciding from DV 12-164. If Plaintiffs truly believed
18 that the issues in DV 12-164 were not ripe or ready to be argued before
19 the Court, there would have been no reason for them to make the
20 arguments.
21

22 b. Pursuant to M.R.Civ.P. Rule 56(c)(2)(a), the right to a hearing on
23 summary judgment is waived unless a party requests a hearing within
24 14 days after the time for filing a reply brief has expired. The Plaintiffs
25 filed no reply brief in DV 12-164, but the time to do so expired on
26 February 28, 2013 and neither party requested a hearing within 14 days
27
28

1 after that. Therefore, the Court could rule on the issues in the Motion
2 for summary judgment in DV 12-164 on the basis of the briefs, the file
3 and the law. That the Court had oral arguments to listen to, provided
4 chiefly by the Plaintiffs, was also welcome and useful.

5 The Plaintiffs' relief and motion are denied.

6
7 DATED this 26th day of June, 2013.

8
9
10 
11 BREANDA R. GILBERT, District Judge

12 CC: Daniel K. O'Connell/ Valery A. O'Connell
13 Michael P. Heringer / Seth M. Cunningham

14 } mailed 6/26/13
15 P.P.