

HON. DAVID CYBULSKI
District Judge
Fifteenth Judicial District
573 Shippe Canyon Road
Plentywood, Montana 59254
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BY *Wally Bradberry*
DEPUTY

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

DANIEL and VALERY O'CONNELL (for)	
and on behalf of GLA landowners),)	
Plaintiffs,)	Cause No. DV- 2011-114
)	
vs.)	ORDER GRANTING DEFENDANT'S
)	MOTION FOR PARTIAL
GLASTONBURY LANDOWNERS)	SUMMARY JUDGMENT
ASSOCIATION, INC., Board of Directors ,)	
Defendant.)	

THE COURT, having reviewed the Defendant's Motion for Partial Summary Judgment and Brief in Support, the Plaintiffs' Reply & Motion to Strike Partial Summary Judgment Motion, the Defendants' Reply Brief to Plaintiffs' Reply in Opposition to Defendants' Motion for Partial Summary Judgment, the file and the law, now makes the following Order:

1. The Defendant's Motion for Partial Summary Judgment is GRANTED.
2. The Plaintiffs' Discovery requests related to the "Erickson Project" are hereby

STRICKEN.

EXPLANATORY COMMENT

Defendants moved for partial summary judgment regarding their claims involving the procedure which resulted in a variance granted by the GLA Board- referred to here as the "Erickson Project", because those claims have been resolved by Sixth Judicial District Judge Gilbert in her June 19, 2013 and June 26, 2013 decisions in parallel Park County cases DV 2012-220 and DV 2012-164. Therefore, Defendants argue that the plaintiffs' current claims regarding the "Erickson Project" are barred by the doctrine of res judicata.

"The doctrine of res judicata is grounded on the principle that litigation must at some

point come to an end. It bars the relitigation of an entire cause of action once a final judgment has been entered. Res judicata applies if: (1) the parties or their privies are the same; (2) the subject matter of the action is the same; (3) the issues are the same and relate to the same subject matter; and (4) the capacities of the persons are the same in reference to the subject matter and to the issues.” Olson v. Daugenbraugh, 2001 MT 284, ¶22, 307 Mont. 371, 38 P.3d 154 citing Holtman v. 4- G's Plumbing & Heating, Inc. (1994), 264 Mont. 432, 436, 872 P.2d 318, 320.

The Plaintiffs counter that because the decision in Park County cause DV 2012-164 is on appeal, the case is not concluded the capacities of the parties differ, and therefore, res judicata does not apply. The Plaintiffs also argue that Judge Gilbert’s order was in error and request further discovery to add to the record regarding the Erickson variance. The Plaintiffs argue that they have not yet been “afforded a full and fair opportunity to litigate the issue that may be barred.” McDaniel v. State, 2009 MT 159, ¶28, 350 Mont. 422, 208 P.3d 817.

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

The parties in this case are the same as the parties in Park County Cause DV 2012-164 and DV 2012-220. The subject matter of the summary judgment is the same, as is the issue which relates to the same subject matter. And although the Plaintiffs argue that because they are in a different capacity in DV 2012-164, than in this case because of the appeal, dismissing the claims in this case based upon the judgment in that case, has no bearing on the appeal. A decision has been made and the doctrine of res judicata precludes the Plaintiffs from re-litigating the claim. Partial Summary Judgment on these claims for the Defendant is granted.

Further, any pending discovery or motions related to the “Erickson Prject” shall be Stricken.

SO ORDERED this 9th day of December, 2013.


DAVID CYBULSKI, District Judge

cc: Daniel and Valery O'Connell
Michael P. Heringer

} mld 12-11-13
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