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Attorney for Defendant Glastonbury Landowners Association, Inc.

MONTANA EIGHTEEN JUDICIAL DISTRICT, GALLATIN COUNTY

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

Petitioners.

vs.

GLASTONBURY LANDOWNERS ASSOCIATION,
INC., Board of Directors,

Respondents.

)
) Cause No. DV-12-789C
)
)

) MOTION TO MOVE FOR
) IMPROPER VENUE AND
) MOTION TO DISMISS FOR
) FAILURE TO STATE A
) CLAIM AND BRIEF
)
)

The Respondent, Glastonbury Landowners Association, Inc., Board of Directors (Glastonbury) moves the Court to move this matter to Park County as that is the proper venue for this matter. Furthermore, Glastonbury also moves the Court to dismiss the request for a temporary restraining order with regards to the vote as it fails to state a claim upon which relief can be granted because Petitioners Daniel and Valery O'Connell are attempted to change the status quo with a request. As restraining orders are used to maintain the status quo, not change it, a restraining order will never be able to give the O'Connell the relief they are requesting. The petitioners were contacted regarding this motion and oppose this motion.

MOTION TO CHANGE VENUE TO PARK COUNTY

According to MCA 25-2-114, "If an action is brought in a county not designated as the

proper place of trial, a defendant may move for a change of place of trial to a designated county.” According to MCA 25-2-118 “The proper place of trial for all civil action is the county in which the defendants or any of them reside at the commencement of the action.” If the action is brought against a Montana Corporation, “a Montana corporation resides in the Montana County in which it has its principal place of business. . .” *Burlington N. R. Co. v. Ford*, 504 U.S. 648, 651, 112 S. Ct. 2184, 2186, 119 L. Ed. 2d 432 (1992) (upholding Montana’s venue rules.) Furthermore, Montana has analyzed the question of venue concerning a Montana corporation which does business in more than one county within the State. “In such cases, this Court has held that a corporation does not reside in *any* county in which it happens to do business. A corporation in Montana has only one residence. That residence is the county in which it has its principal place of business.” *Mapston v. Joint Sch. Dist. No. 8*, 227 Mont. 521, 523, 740 P.2d 676, 677 (1987).

In this case, Glastonbury’s principle place of business is Park County. It is registered in Park County (See Secretary of State’s report and Affidavit of Richard Bolen, attached.) All of the property the Association oversees and maintains is in Park County. All of its Board Members live in Park County. The corporation’s annual, regular and special meetings take place in Park County. Therefore, its principle place of business is Park County.

The O’Connell’s filed this motion in Gallatin County. Apparently, they believe that because Glastonbury hired Minnick Management to help manage some of the day to day aspects of the corporation, that Glastonbury’s principle place of business is now Gallatin County. It is not. They would be akin to saying that if Montana Power contracted with a bookkeeping company in Lewis and Clark County, then venue for Montana Power would move from Silver Bow to Lewis and Clark. That is simply not the case.

Because Glastonbury's principle place of business is in Park County, the Court should grant the motion to move this matter to Park County.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN
BE GRANTED

The O'Connells' petition includes a request for a temporary restraining order. "It is well settled that a temporary restraining order is an interlocutory order issued often on an ex parte basis. The restraining order is intended to preserve the *status quo* until a show cause hearing can be held." *Ellason v. Evans*, 178 Mont. 212, 216, 583 P.2d 398, 401 (1978). (emphasis added.)

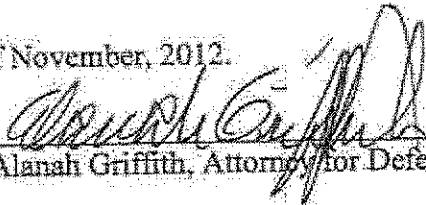
The O'Connells ask for a TRO "to restrain [sic] GLA Defendants corrupt election voting practices of allowing up to 3 votes instead of 1 vote per member interest no matter how many positions are available." Therefore, it seems that the O'Connells are asking to Court for a TRO forcing Glastonbury to change the way it has done voting for over decade. In other words, instead of asking for the Court to maintain the status quo and stall the annual meeting until the Court can make a decision, they are asking the Court to actively state that the O'Connell's interpretation of the covenants is correct. This would not be maintaining the status quo. As the O'Connells state in their own Petition, the GLA has been allowing each member who has a right to vote to cast a vote for each open position for years. If the Court were to grant the TRO requested by the O'Connells it would be turning the voting tradition of Glastonbury on its head. Therefore, as this would not be maintaining the status quo, the Court cannot grant the relief requested. As such, the motion for a temporary restraining order should be dismissed.

CONCLUSION

The Court should move this matter to Park County since it is the principle place of business for Glastonbury. Furthermore, the Court should dismiss the request for a temporary

restraining order requesting a change to the voting rules as the request does not maintain the status quo.

Respectfully submitted this 6th day of November, 2012.

By 
Alanah Griffith, Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of November, 2012, a true and correct copy of the foregoing, was mailed, postage prepaid and by email, to the following counsel of record:

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