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MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

Daniel K. O’Connell & Valery A. O’Connell)	
& on behalf of themselves as members of)	
Glastonbury Landowners Association.)	Cause No. DV-12-220
)	
Plaintiff(s),)	
)	
v.)	APPEAL OF ORDERS REGARDING
)	DECLARATORY MOTION & JOINER
Glastonbury Landowners Association, Inc.)	
Board of Directors)	
)	
Defendant(s))	
_____)	

COME now Plaintiffs & GLA members-Daniel and Valery O’Connell, pursuant to Rule 60, M..R.Civ.P. and rule 12(a)(1)(A) below, do hereby submit this partial MOTION “APPEAL of ORDERS...” dated Jan. 9, 2013.

The GLA Defendants were properly served the TRO complaint on Oct. 23, 2012. Courts Orders of Jan. 9, 2013 properly denied Defendants motion to dismiss as filed on Nov. 6, 2012. However Defendant’s motion to dismiss was only requested for the Board election/voter fraud claim. GLA Defendants failed to answer the other TRO complaint claim and failed to file a motion to dismiss the claim against new guest house assessments. Thus Plaintiff members’ claim against new guest house assessments is no longer in dispute and ripe for judgment.

This Court’s Jan. 9th Order properly denied Defendants motion to dismiss, yet in error should have limit Defendants answer to only the election/voter fraud claim, and allowed

Plaintiffs' declaratory judgment motion contrary to court's findings since all pleadings regarding that guest house assessment claim were complete as due by Nov. 6, 2012.

Nonetheless, Defendants failed to defend nor otherwise answer that guest house assessment claim and failed to file any motion to dismiss that guest house assessment claim thus allowing judgment or "dispositive ruling" on Plaintiffs' guest house assessment claim. Absent a motion to dismiss and excusable neglect motion, GLA Defendants are now time barred from answering that guest house assessment claim 86 days after service per rule 12(a)(1)(A) as follows, "A defendant must serve an answer within 21 days after being served with the summons and complaint...."

Rule 60. Relief from Judgment or Order.

- (a) **Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the supreme court and while it is pending, such a mistake may be corrected only with the supreme court's leave.
- (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.
- (c) **Timing and Effect of the Motion.**
- (1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time -- and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Motions provided by Rule 60(b) must be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 60-day period, the motion must be deemed denied.
 - (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

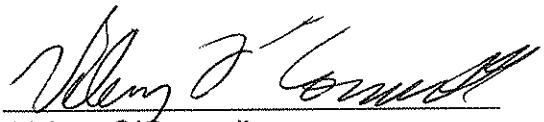
- (d) **Other Powers to Grant Relief.** This rule does not limit a court's power to:
- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief to a defendant who was not personally notified of the action; or
 - (3) set aside a judgment for fraud on the court.
- (e) **Bills and Writs Abolished.** The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

In conclusion, a declaratory judgment relief is justified and appropriate for this case for the reasons above as is Plaintiffs' summary judgment motion filed in conjunction to this appeal. Otherwise, The Courts Orders of Jan. 9, 2013 should at least be corrected/amended for oversight, omission or error to correctly state that GLA Defendants can only answer the Board election claim, not the guest house assessment claim, because of Defendants failure to answer that claim and failure to file any rule 12 motions such as a motion to dismiss that guest house assessment claim.

Also due to court's error/omission above, Defendant's possible answer regarding that guest house assessment claim should thus be stricken from the record as a result of being untimely.

DATED this 18th day of January, 2013.

Signed _____
Daniel O'Connell

Signed: 
Valery O'Connell

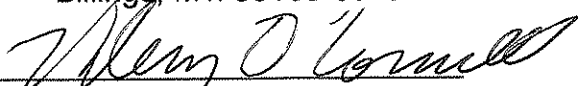
Certificate of Service

We, Daniel & Valery O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via certified mail on this same day to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

The GLA attorney of record:
Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849

By _____
Daniel O'Connell

By: 
Valery O'Connell