

FEB 04 2013

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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.)	REPLY TO "DEFENDANTS ANSWER..."
)	TO TRO COMPLAINT & MOTION TO
Glastonbury Landowners Association, Inc.)	STRIKE
Board of Directors)	
)	
Defendant(s))	
_____)	

Plaintiffs & GLA members-Daniel and Valery O'Connell, hereby submit this timely "REPLY ... & MOTION TO STRIKE" portions of "DEFENDANTS ANSWER AND AFFIRMATIVE DEFENSES" regarding this TRO Complaint. Following a weekend & holiday on Jan. 22, 2013, Plaintiffs received and now reply to Defendants answer filed Jan. 17, 2013.

FACTUAL ARGUMENTS AND BRIEF

(Note: GLA Governing Documents (Exhibit CD), Defendants" Nov.2012 newsletter, emails, affidavits, and exhibits attached to the TRO, Writ complaints & "Motion for Summary Judgement ..." as factual evidence for relief are hereby included as if fully set forth herein.)

This case represents one of five complaints filed by members in less than 2 years against GLA Board Defendants for continued violations of its governing documents costing the Association more than \$50,000. GLA Defendants continue to use member assessments to indemnify and defend themselves against their breach of duties in violation of GLA Art. VIII.

For this case, Defendants failed to file a Rule 6(b) excusable neglect motion for extending time to answer the guest house assessment claim. Defendants also failed to timely answer that claim within 21 days, and failed to file a motion to dismiss that specific claim. Defendants are thus time barred from answering that guest house assessment claim now 3 months later per M.R.Civ. P., Rule 12(a)(1)(A), “A defendant must serve an answer within 21 days after being served with the summons and complaint...” & U.D.C.R., Rule 2(b) “Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken.”

Therefore, Plaintiffs guest house assessment claim is no longer in dispute and ripe for a Summary Judgment-motion filed Jan. 18th. The Court should also grant Plaintiffs motion for sanction and this motion to strike Defendants’ Jan. 17th **Answers** associated with the guest house assessment claims at ¶ 7,10–12, 14, 15, 17, 18–23, 37–40, & 45; excluding such costs thereby.

This is also because within Defendants Answer, Plaintiffs contend that all Defendants denials are denials of material facts not warranted on the evidence, not reasonably based on belief, or lack of information; which are “being presented for an improper purpose causing “unnecessary delay, or needlessly increase the cost of litigation” as per M.R.Civ.P., Rule 11(b). As proof, such material facts can NOT be in dispute since such facts, evidence, or exhibits come directly from Defendants own governing documents, emails, newsletters, court documents, and admissions therein.

Such improper denials of material facts are partially listed as follows:

Defendants Answer at ¶ 3 improperly denies the accurate list of current GLA Board members; for which current Board members is posted on the GLAs own website: www.gla-mt.org
Defendants Answer at ¶ 4 & 6 improperly deny Exhibit A (which Minnick Contract they signed) and improperly deny factual court documents for case DV-11-193; Defendants Answer at ¶ 7

improperly denies Exhibit C (GLA's own election ballots given to members); Defendants Answer at ¶ 7-23 and elsewhere improperly denies the guest house assessment claim that the GLA are time barred from answering; Defendants Answer at ¶ 9 & ¶ 31 improperly denies exact language of GLA governing documents copied directly from GLA Defendants website including Bylaw IV.E, Bylaw VI A & B (part 14), Art. VIII, & Cov. 11.03 and more; Defendants Answer at ¶ 10 improperly denies quotes from the Mt. Supreme Court rulings therein; Defendants Answer at ¶ 23 improperly denies the exact language of GLA Covenant/Masterplan 1.1 also copied from the GLA website; Defendants Answer at ¶ 26 improperly denies the validity of GLAs own published election ballots; Defendants Answer at ¶ 27 improperly denies the GLA August 2011 email stating there are 392 parcels for that 2011 annual election; Defendants Answer at ¶ 26, 28 & 29 improperly denies complaint Exhibit A (signed Minnick Contract), improperly denies complaint Exhibit B (GLA's notarized 2011 election results) & improperly denies complaint Exhibit C (GLA's own election ballots); for which the same GLA Defendants created, signed, and distributed these same material documents they now improperly dispute.

Specific authority for this complaint and summary relief is found in several Mt. Supreme Court rulings (see Summary motion at page 4) such as; "language of restrictive covenants should be understood in its ordinary and popular sense" and as "stated in *Higdem v. Whitham* (1975), 167 Mont. 201, 208-09, 536 P.2d 1185, 1189, that restrictive covenants should not be extended by implication or enlarged by construction, and in *Jarrett v. Valley Park, Inc.* (1996), 277 Mont. 333, 341, 922 P.2d 485, 489, that the district court could not "broaden" a covenant by adding that which was not contained therein."

Overall, Defendants "Answer" at ¶ 26 & ¶30 admits to their actions based **solely** upon their "interpretation of GLA's governing documents...." but not the actual language contained therein. In other words, the GLA Defendants more or less extended, enlarged, or broadened the GLA governing documents which give NO specific authority for GLA's actions of collecting new guest house assessments, and giving 3 votes per membership interests, and selling GLA authority and duties to another corporation—Minnick Management. All of which GLA actions they admit, but deny such actions exceed its contract authority, rewrite and/or misinterpret its

contracts, and/or violate its covenant/bylaw contracts, and breach their duty to members and the Association pursuant to GLA Art. VIII..”

CONCLUSION

In whole or part, this complaint is ripe for summary judgement, since GLA governing documents contain NO such specific language to give 3 votes per membership interests, nor charge guest house assessments, nor does it allow GLA authority and duties to be sold to another corporation–Minnick Management; also since the guest house assessment claim is settled for Defendants failure to defend or otherwise timely answer this claim. Wherefore members, the O’Connells respectfully request the following relief:

1. A permanent injunction prohibiting the GLA Board and agents (Minnick) from charging its members a guest house assessment, and no assessments will be payable to Minnick.
2. Any and other relief including sanctions and costs to be paid by the Defendants NOT the GLA Association; for which the Court deems equitable and just under the circumstances.
3. A permanent injunction prohibiting the GLA Board and agents (Minnick) from conducting any and all business (other than what is absolutely necessary and minimal) until new elections can be held for all 12 GLA Board positions. As soon as possible, the current GLA Board are to hold new elections for all 12 Board positions using such bylaw method for the (1997) first annual election; and one and only one vote is allowed per membership interest regardless of the # of Board positions at all new annual Board elections.
4. A permanent injunction prohibiting the GLA Board and agents from conducting anything other than open elections and GLA election results published to all members, showing proof of quorum, number of votes including proxies, proof of proxy votes) each candidate

received, and proof that only one vote was allowed per membership interest regardless of the number of positions at all new annual Board elections.

5. Since no material facts are in dispute regarding the guest house assessment claim, and current Board election practices (claim #2), and the GLA/Minnick contracts (joiner claim #3), Plaintiffs pray this Court Grant Summary judgment in their favor, after granting their motion to enjoin this case DV-12-220 with the Writ case-DV-12-164; both having all the same parties, and to limit Court's time, parties time, save money, and limit liability to all parties.
6. Plaintiffs pray for any other relief or costs which the Court deems equitable just under the circumstances.

DATED this 1st day of February, 2013.

Signed 
Daniel O'Connell

Signed: 
Valery O'Connell

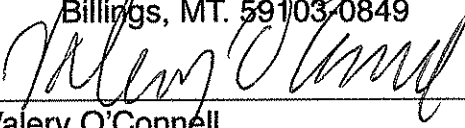
Certificate of Service

We, Daniel & Valery O'Connell, swear that a true and correct copy of forgoing document(s) were sent to the following parties via first class 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