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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.)

MOTION FOR SANCTIONS AGAINST
GLA DEFENDANTS' COUNCIL

Glastonbury Landowners Association, Inc.)
Board of Directors)

Defendant(s))

Plaintiffs & GLA members-Daniel and Valery O'Connell, pursuant to M.R.Civ.P., Rule 11, hereby submit this Motion For Sanctions Against GLA Defendants council-Brown Law Firm.

This rule states:

M.R.Civ.P., Rule 11. Signing Pleadings, Motions, and other Papers; Representations to the Court; Sanctions.

- (a) **Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name -- or by a party personally if the party is unrepresented. The paper must state the signer's address, email address, and telephone number, if any. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.
- (b) **Representations to the Court.** By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or unrepresented party certifies to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
 - (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information.
- (c) **Sanctions.**
- (1) ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.
- (2) ***Motion for Sanctions.*** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney fees, incurred for the motion.
- (3) ***On the Court's Initiative.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).
- (4) ***Nature of a Sanction.*** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney fees and other expenses directly resulting from the violation.
- (5) ***Limitations on Monetary Sanctions.*** The court must not impose a monetary sanction:
- (A) against a represented party for violating Rule 11(b)(2); or
- (B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
- (6) ***Requirements for an Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
- (d) ***Inapplicability to Discovery.*** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.
- (e) ***Limited Scope Representation.*** An attorney may help to draft a pleading, motion, or document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or document. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

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.)

Within Defendants Answer, Plaintiffs contend that all or most Defendants denials submitted by the Brown Law Firm 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 listed in part as follows:

Defendants Answer at ¶ 3 improperly denies the accurate list of current GLA Board members; for which current Board member list 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 submitted 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.

Rule 11(c) above allows sanctions against the Brown Law Firm for such 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 of causing “unnecessary delay, or needlessly increase the cost of litigation.” In fact, the Brown Law Firm, A Billings Firm, retained since October 2012, has had several months to verify all such material facts within GLA documents cited above that it improperly denied or otherwise contested in its Answer to this complaint.

Furthermore, Defendants Affirmative Defenses are also improperly brought as follows:

#1, the Court responding to a motion to dismiss previously ruled that Plaintiffs stated claims for relief; #2, obviously the GLA Governing documents contain NO such specific powers or language to grant 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; #3, Plaintiffs have acted with clean hands and hearts; #4 admits Defendants relied upon the advice of the Brown Law Firm which warrant sanctions; #5, other than this legal suit, there is no unnecessary litigation, and absolutely no other remedies exist within GLA Bylaws; #6, such general defenses do not apply here; #7 title 27 Ch.8 of the “Uniform Declaratory Judgment Act” for declaratory motion was settled prior to Defendants answer and can not be reopened as this new defense tries to do. In fact it was the Defendants council that improperly denied declaratory relief, not Plaintiffs.

All such “affirmative defenses” and “denial” of material facts thus serve no legitimate purpose, other than to cause “unnecessary delay, or needlessly increase the cost of litigation.”

Plaintiffs therefore pray this Court grant sanctions: including summary judgment against Brown Law Firm (GLA council) imposed under this rule 11(c) “limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated” and “include nonmonetary directives; an order to pay a penalty into court...”

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