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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),)	
)	PLAINTIFFS MOTION REPLY RE:
v.)	RELIEF OF ORDERS REGARDING
)	"DECLARATORY MOTION ..."
Glastonbury Landowners Association, Inc.)	
Board of Directors)	
)	
Defendant(s))	
_____)	

Plaintiffs & GLA members-Daniel and Valery O'Connell, submit this Reply to Defendants Answer to Plaintiffs Rule 60 Motion filed on Jan. 18th. This motion was misnamed "Appeal of Orders..." and hereafter called "RELIEF OF ORDERS...." for which motion is not and never intended as an appeal to the higher court. Barring this Declaratory relief, Plaintiffs pray for Summary Judgment that will give similar relief and justice in Plaintiffs favor.

FACTUAL ARGUMENTS AND BRIEF

For this rule 60 motion, Defendants falsely answer that only rule 60(b) relief was requested. This motion used the exact language of M.R.Civ.P., Rule 60(a), (b), & (d) and requested such relief. Defendants mostly disputed whether or not they should have answered the unchallenged portions of this complaint prior to settling the motion to dismiss.

Their answer relies on a California District Court case, *Batdorf v. Trans Union*, and also a 1967 Montana Supreme Court case, *Sealey v. Majerus* (attached). But this old Montana case, *Sealey v. Majerus*, appears to have no applicable bearing on this issue.

The California District Court case, *Batdorf v. Trans Union* and a few other district cases (**no cases found in Montana**) having many claims, postponed answers on a partial motion to dismiss to avoid duplicative/confusing sets of pleadings in the event the 12(b) motion is denied.

Defendants also cite Federal rules that give no direct guidance for partial motions to dismiss. Fed. R. Civ. P. 12(a)(4)(A) "Unless the court sets a different time, serving a motion under this rule [Rule 12] alters these periods as follows: (A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action."

There is some case authority for Plaintiffs' position that, with a partial motion to dismiss, GLA Defendants should answer the unchallenged portions of a complaint. For example: In *Gerlach v. Michigan Bell Telephone Co.*, 448 F.Sup. 1168, 1174 (E.D. Mich. 1978), the court, acknowledging the rule is silent and that there was a dearth of case law, held that "separate counts are, by definition, independent bases for a lawsuit and the parties are responsible to proceed with litigation on those counts which are not challenged by a motion under F[ed]. R. C[iv]. P. 12(b)."

Defendants' 12(b) motion was denied and Defendants were allowed 3 months after service to give answer. Considering the need for expeditious resolution of litigation, Plaintiffs rightly challenged Orders that allowed Defendants to delay justice & discovery by never requesting extension of time to answer to the guest house claim.

Plaintiffs simply pray the Court focus on at least allowing some relief such as Summary Judgment relief pursuant to M.R.Civ. P., Rule 56 and also Rule 12(h) for Defendants "Failure ... to state a legal defense to a claim may be raised:

- (A) in any pleading allowed or ordered under Rule 7(a);
- (B) by a motion under Rule 12(c) [**"Motion for Judgment on the Pleadings"**]

Thus barring Declaratory relief, Plaintiffs pray for Summary Judgment that will give similar relief and justice in Plaintiffs favor. There are no disputes of "material" fact requiring a trial to resolve, because GLA Defendants have no legal defense, NO language in the GLA bylaws/covenants that allows 1. new guest house assessments, 2. much less 3 votes per membership, 3. much less selling Defendants' GLA duties and powers over to Minnick Corporation costing members more than \$20 thousand dollars a year. Plaintiffs are clearly entitled to judgment "on all of part of these claims, because the language of the GLA Bylaws, Covenants or "agreements are clear and unambiguous and, as a result, "susceptible to only one interpretation." There is nothing for the courts to interpret or construe." The only duty of the court is to apply GLA bylaw/covenant language as written (Exhibit CD) allowing restrain of undisputed GLA actions & claims 1-3 above not authorized therein its governing documents.

DATED this 8th day of February, 2013.

Signed *Daniel K. O'Connell*
Daniel O'Connell

Signed: *Valery O'Connell*
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 K. O'Connell*
Daniel O'Connell

By: *Valery O'Connell*
Valery O'Connell