

1 Michael P. Heringer
2 Seth M. Cunningham
3 BROWN LAW FIRM, P.C.
4 315 North 24th Street
5 P.O. Drawer 849
6 Billings, MT 59103-0849
7 Tel (406) 248-2611
8 Fax (406) 248-3128
9 *Attorneys for Respondents*
10 *Glastonbury Landowners*
11 *Association, Inc.*

7 **MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY**

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

11 Plaintiffs,

12 v.

13 GLASTONBURY LANDOWNERS
14 ASSOCIATION, INC. Board of Directors,

15 Defendants.

Cause No.: DV-2012-220
Judge Brenda R. Gilbert

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR SANCTIONS AGAINST GLA
DEFENDANTS' COUNCIL**

16 COME NOW the above named Defendants Glastonbury Landowners Association, Inc. Board of
17 Directors (GLA) and submits this brief in opposition to Plaintiffs' "Motion for Sanctions against GLA
18 Defendants' Council." This motion for sanctions has been made against GLA's attorneys, the Brown
19 Law Firm. Plaintiffs argue that GLA's Answer and the denials of Plaintiffs' allegations within it were
20 not warranted on the evidence, not reasonably based on belief, or lack of information and were being
21 presented for an improper purpose causing unnecessary delay and increase to the cost of litigation.
22 Plaintiffs' motion is meritless and improper under the Montana Rules of Civil Procedure.

24 **1) Plaintiffs violated Mont. R. Civ. P. 11(c)(2) in filing their Motion for Sanctions.**

25 Mont. R. Civ. P. 11(c)(2) provides:

26
27 A motion for sanctions must be made separately from any other motion and must describe the
28 specific conduct that allegedly violates Rule 11(b). **The motion must be served under Rule 5,
but must not be filed or presented to the court** if the challenged paper, claim, defense,

1 contentions, or denial is withdrawn or appropriately corrected within 21 days after service or
2 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. (emphasis added).

3 Plaintiffs' filed their motion for sanctions with the Court without giving GLA the required 21 days to
4 evaluate its claims. The Court should deny Plaintiffs' motion for failure to comply with the Rules of
5 Civil Procedure.

6
7 **2) Plaintiffs' Motion for Sanctions regarding GLA's Answer is baseless and should be denied.**

8 Plaintiffs complain that GLA's Answer denied allegations of Plaintiffs' Complaint which they
9 feel to be true. A pleading is to be simple, concise, and direct and there is no technical form of pleading
10 required. *R.H. Schwartz Cons. Spec., Inc. v. Hanranhan*, 207 Mont. 105, 107, 672 P.2e 116, 117 (1983).

11 The general purpose of pleading is to give notice to the opposing party, and if a party needs further
12 information about a claim or denial, it can obtain it through discovery rather than a motion to strike.

13
14 *Tobacco River Lumber Co. v. Yoppe*, 175 Mont. 267, 271, 577 P.2d 855, 857 (1978).

15 Rather than send discovery in order to reveal the bases for GLA's denials of Plaintiffs' claims,
16 Plaintiffs filed this motion alleging improper behavior on the part of GLA's counsel. A defendant's
17 answer to a complaint is not the place to affirmatively allege facts in opposition to those alleged by a
18 plaintiff. GLA was only required to admit or deny the allegations asserted by Plaintiffs. Mont. R. Civ. P.
19 8(b)(1)(B).

20
21 Specifically, Plaintiffs allege:

22 1) GLA improperly denied ¶ 3 of their Complaint which they claim is an accurate list of the
23 GLA board. GLA denied that the list was accurate because Plaintiffs' misspelled a board member's
24 name and had the positions on the board incorrect.

25
26 2) GLA improperly denied ¶¶ 4 & 6 of their Complaint. GLA denied ¶ 4 of Plaintiffs' Complaint
27 because this is not a contract dispute, and the alleged events did not occur in Bozeman, MT. GLA
28

1 denied a portion of ¶ 6 of Plaintiffs Complaint because the Plaintiffs did not receive all claims on
2 settlement of DV-11-193 as they claim, the current claims have no merit, the GLA board did not abuse
3 its authority, violate any governing documents, or do anything unlawful. Plaintiffs' Exhibit A is not an
4 accurate duplicate of the Minnick Management Contract because it contains numerous handwritten
5 notes and underlining which are not a part of the actual contract.
6

7 3) GLA improperly denied Exhibit C which Plaintiffs allege are election ballots used in past
8 November's election. GLA denied ¶ 7 because it alleges the GLA abused its authority and it misstates
9 the voting practice used by the GLA. As for Plaintiffs' Exhibit C, it is not an accurate duplicate because
10 of handwritten notes upon it nor can it be verified to who this ballot was mailed.
11

12 4) GLA improperly denied Plaintiffs' claims regarding guest house assessments. GLA properly
13 denied these claims because they were not time barred but held in abeyance while Rule 12(b) motions
14 were under consideration as explained at length in GLA's "Response in Opposition to Plaintiffs' Appeal
15 of Orders Regarding Declaratory Motion & Joinder" and "Response in Opposition to Plaintiffs' Motion
16 for Summary Judgment & Brief in Support of Its Cross-Motion for Summary Judgment" and "Response
17 in Opposition to Plaintiffs' Reply to "Defendants Answer..." to TRO Complaint & Motion to Strike."
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19 5) GLA improperly denied quoted language from its governing documents. GLA denied ¶ 9 of
20 Plaintiffs' Complaint because it alleged to be quoting language from the GLA Bylaws. However, the
21 GLA Bylaws have no Article IV.E. Upon further review, it appears that language was actually taken
22 from the Articles of Incorporation, but that is not clear from ¶ 9 of the Complaint. The rest of paragraph
23 is denied because GLA denies it has any liability to Plaintiffs. GLA denied ¶ 9 because the alleged
24 quotations from the GLA Bylaws are inaccurate, altered, or missing words and sentences.
25

26 6) GLA improperly denied quotations from the Montana Supreme Court. GLA denied ¶ 10
27 because Plaintiffs claim that the quoted language is authority in the case and grounds for their claims.
28

1 GLA further denied ¶ 10 because it mixed case citations with factual allegations such as the “defendants
2 illegally enlarged or broadened GLA Covenants and Bylaws.” Whether or not the case law cited by
3 Plaintiffs is a legal conclusion for the Court to make, but GLA clearly denied the whole paragraph
4 because it is full of a mix of factual allegations and legal conclusions.

5 7) GLA improperly denied the language allegedly quoted from the Master Plan. GLA denied ¶
6 23 of Plaintiffs’ Complaint not because it denies language in the Master Plan but because Plaintiffs
7 alleged the quoted language is a basis for granting Plaintiffs’ sought relief.
8

9 8) GLA improperly denied validity of alleged ballots. GLA denied ¶ 26 of Plaintiffs’ Complaint
10 because Exhibit C is not an accurate duplicate as handwritten notes have altered it, and there is no way
11 of verifying this was the ballot given to the Wallaces as Plaintiffs claim.
12

13 9) GLA improperly denied ¶ 27. GLA denied this paragraph because it contains Plaintiffs’ legal
14 assertions such as “each membership interest gets one vote” and “a total of 392 possible allowable
15 votes.”

16 10) GLA improperly denies validity of Plaintiffs’ Exhibits A, B, and C as alleged in ¶¶ 26, 28,
17 and 29. GLA denied the validity of Plaintiffs’ Exhibit A because it is not an accurate duplicate of the
18 Minnick Management Contract because it contains numerous handwritten notes and underlining which
19 are not a part of the actual contract. GLA denied ¶ 28 of Plaintiffs’ Complaint not because of Exhibit B
20 but because of the erroneous conclusion Plaintiffs use Exhibit B to make, namely that more votes were
21 cast than are allowed. GLA denied ¶ 29 of Plaintiffs’ Complaint because of the factual allegations it
22 makes and because Exhibit C is not an accurate duplicate as handwritten notes have altered it, and there
23 is no way of verifying this was the ballot given to the Wallaces as Plaintiffs claim.
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1 Plaintiffs take issue with GLA's denying the allegations in their Complaint. They move for
2 sanctions without ever conducting discovery to discover the reasons for those denials and act if every
3 allegation in their Complaint should be deemed true. Simply put, they do not understand it is their
4 burden of proof to prove their claims by a preponderance of evidence. Sanctions against the GLA are
5 not warranted, and Plaintiffs should be ordered to pay GLA's reasonable attorney fees and costs for the
6 time spent responding to those meritless claims.
7

8 **3) Plaintiffs' Motion for Sanctions regarding GLA's Affirmative Defenses is baseless and should**
9 **be denied.**

10 Plaintiffs also allege GLA's affirmative defenses are improper. Their reasoning assumes without
11 proving that all their allegations are true. Further, they dispute the affirmative defenses without
12 providing a factual basis for doing so. Plaintiffs fail to acknowledge Mont. R. Civ. P. 12(b) which
13 requires GAL to set forth every defense available or potentially waive it, Unlike a claim for relief,
14 affirmative defenses do not require a statement supporting the defense. Rule 8(b) only requires that the
15 defense be stated which is sufficient notice to a plaintiff. Finally, the rule in *Tobacco* applies and the
16 proper avenue for proving or challenging an affirmative defense is through discovery.
17

18
19 GLA will address each affirmative defense Plaintiffs' take issue with.

20 A. Failure to State a Claim upon which Relief can be Granted.

21 In Montana, a complaint may be dismissed for failure to state a claim if the plaintiff can prove
22 no set of facts in support of his claim that would entitle him to relief. *Dennis v. Brown*, 2005 MT 85, ¶
23 5, 326 Mont. 422, ¶ 5, 110 P.3d 17, ¶ 5. This affirmative defense is self-explanatory, simple and
24 concise. Here, this defense applies to all of Plaintiffs' claims. As set forth in GLA's brief in support of
25 its cross-motion for summary judgment, GLA has demonstrated that Plaintiffs can prove no set of facts
26 that would entitle them to the relief sought.
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1 B. The GLA Board of Directors acted within the power granted by its governing documents and
2 within their power to interpret those documents.

3 Again, this affirmative defense is self-explanatory, simple and concise. The governing
4 documents either allow the challenged actions or they do not. That issue is currently before the Court on
5 motions for summary judgment by both parties. As demonstrated in its brief, the GLA Board of
6 Directors is entitled to judgment as a matter of law.

7 C. Plaintiffs' Claims are Barred by the Doctrine of Unclean Hands.

8 Plaintiffs have threatened to continue to sue the GLA until the Board of Directors resigns. They
9 have used the Court system as a means of bullying their neighbors in the GLA and attempting to force
10 their way onto the GLA board after the community has decided by vote to recall Daniel O'Connell and
11 declining to elect them in the two elections after that. Plaintiffs have resorted to filing frivolous
12 lawsuits. To claim that they have acted with "clean hands and hearts" while their ulterior purposes are
13 known is absurd.
14

15 D. GLA Relied on the Advice of Counsel.

16 Not only has the GLA relied on the advice of its counsel in the above matter, the Brown Law
17 Firm, it has consulted licensed Montana attorneys in all of the actions complained of by Plaintiffs.
18 These attorneys have invariably given legal advice contrary to the legal "advice" Plaintiffs have
19 attempted to give the GLA board. It was reasonable for the GLA board to follow the advice given by its
20 licensed attorneys rather than Plaintiffs who are not attorneys. This defense disproves Plaintiffs' claims
21 that the GLA board acted in bad faith.
22

23 E. Plaintiffs have Failed to Exhaust Their Remedies under the Existing Bylaws and resorted to
24 unnecessary litigation.

25 Plaintiffs' remedies under the Bylaws are for them participate as members of the GLA and to
26 run for the board of directors if they are unsatisfied with the current board. This of course would require
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1 them to obtain the votes of their neighbors. Rather than reforming their behavior and running for
2 election as allowed under the Bylaws, Plaintiffs have resorted to filing harassing lawsuits with the
3 purpose of forcing the current board to resign. Further, the Bylaws provide a process for calling a
4 special meeting and removing directors. However, Plaintiffs have not attempted to use this process.

5 F. Plaintiffs Claims are Barred by the Doctrines of Laches, Estoppel, Waiver, and Acquiescence.

6
7 GLA demonstrated in the brief in support of its cross-motion for summary judgment that all
8 these defenses apply. It is telling that Plaintiffs did not assert their claims regarding election procedures
9 until Daniel O'Connell was removed from the board and they were not elected in subsequent elections.
10 Obviously, this claim is a case of sour grapes. Plaintiffs had no issue with the procedures when the
11 elections went their way. Only now that their own behavior has made them unelectable, do Plaintiffs
12 bring this claim.
13

14 G. Plaintiffs' Claims are more Properly Brought under the Uniform Declaratory Judgment Act.

15 This defense still applies. Plaintiffs misunderstand Judge Swandal's order dismissing their
16 Motion for Declaratory Judgment. It was dismissed because it improperly tried to amend the existing
17 complaint, not because the Uniform Declaratory Judgment Act didn't apply.
18

19 **4) GLA is Entitled to Attorney Fees and Expenses Incurred by Plaintiffs' Motion for Sanctions.**

20 Rather than conduct discovery, which is the preferred method for obtaining information
21 regarding claims and defenses, Plaintiffs jumped right to a Motion for Sanctions. Further, they filed in
22 violation of Mont. R. Civ. P. 11(c)(2). As demonstrated above, Plaintiffs' motion is meritless. Under
23 these circumstances, reasonable expenses, including attorney fees, should be awarded to the GLA for
24 responding to this meritless motion.
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CONCLUSION

1 For the above stated reasons, Plaintiffs' "Motion for Sanctions against GLA Defendants'
2 Council" should be denied and GLA should be awarded its attorneys fees and costs incurred in
3 responding to this motion.
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5
6 DATED this 13th day of February, 2013.
7

8 BROWN LAW FIRM, P.C.
9 315 North 24th Street
10 P.O. Drawer 849
11 Billings, MT 59103-0849

12 BY 

13 Michael P. Heringer
14 Seth M. Cunningham
15 *Attorneys for Glastonbury*
16 *Landowners Association, Inc.*
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a true and correct copy of the foregoing was duly served by U.S. mail,
3 postage prepaid, and addressed as follows this 17th day of February, 2013:

4 Daniel and Valery O'Connell
5 PO Box 77
6 Emigrant, MT 59027
7 *Plaintiffs pro se*

8 Daniel and Valery O'Connell
9 PO Box 774
10 Cayucos, CA 93430
11 *Plaintiffs pro se*

12 By: 

13 Michael P. Heringer
14 Seth M. Cunningham
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