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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. Plaintiff(s), v. Glastonbury Landowners Association, Inc. Board of Directors Defendant(s)	Cause No. DV–12–220 **REPLY FOR SANCTION MOTION**

Plaintiffs & GLA members-Daniel and Valery O'Connell, hereby submit this timely Reply to the motion for sanctions against Defendants. Plaintiffs motion for Sanctions against the GLA was woven into their Reply to Defendants Answer, because it supports this motion for sanctions to describe the specific GLA conduct that allegedly violates Rule 11(b) as follows.

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

(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." (emphasis added)

On pg. 2 of that Reply, specific GLA conduct that appears to violate this Rule 11(b) says:

"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... because within Defendants Answer, Plaintiffs contend that all or most of 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).

Defendants denials of material facts were "presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation." For example, Defendants answers to this complaint cited below shows denials of material facts not warranted on the evidence, because all evidence they deny came directly from Defendants own governing documents, emails, newsletters, court documents, and admissions. In other words, the GLA can not say their denials of their own evidence were "reasonably based on belief or lack of information."

FACTUAL ARGUMENTS

On Jan. 17, 2013, Plaintiffs filed a motion for sanctions supported by its reply to Defendants answer. Afterwords due to Presidents Day, Plaintiffs received the following responses against sanctions on February 19, 2013 within two documents called "Defendants Response In Opposition To Plaintiffs Reply To Defendants Answer ..." and "Defendants Response In Opposition To Plaintiffs Motion For Sanctions Against GLA...." These two Defendants documents against sanctions give 3 defenses:

A. Defendants claim it was "denied 21 days to evaluate this motion claim per rule 11(c)." Instead Defendants made their own request for sanctions which proves they are the ones who failed to allow 21 days to evaluate this motion claim.

However 6 months after this complaint was filed, Defendants just now assert all NEW defenses to the complaint (1-9 below) that were NOT MADE /NEVER GIVEN in their answer to

the complaint; which proves **Defendants answer to the complaint was evasive or incomplete answers AND denial of material facts being presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation."** All of which proof cited below warrant sanctions against Defendants:

B. GLA 2nd claim they are now entitled to sanction fees and expenses for Plaintiffs' sanction motion per rule 11(c)(2), because Plaintiffs failed to request discovery first. But this claim is contrary to the rule 11(c)(2) purpose stated below and misleading, because discovery was not necessary to prove Defendants answer to the complaint were 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):

> Rule 11(**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.(c)(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."

C. Defendants claim Plaintiffs "sanctions are baseless" by asserting all NEW defenses to the complaint NOT MADE /NEVER GIVEN in their answer to the complaint (1-12 below). This Court should not now condone Defendants NEW defenses to the complaint made solely to avoid sanctions against them. Especially because they could have made such claims in their answer, but instead GLA made denial of many material facts below not warranted on the evidence, not reasonably based on belief, or lack of information, then presented for an improper purpose to cause "unnecessary delay, or needlessly increase the cost of litigation."

1. (On pg. 2 #1) Defendants give a NEW untimely defense that the complaint ¶ 3 "misspelled a Board name" and "Board positions incorrect." These assertions were NOT forthcoming in Defendants answer to the complaint for which denial of complaint material facts at ¶ 3 was not warranted for a misspelled name and for the fact that these Board positions are correct and listed on the GLA website (www.gla-mt.org), thus this denial of material fact is 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."

2. (On pg. 2 #2) Defendants give a NEW untimely defense that the complaint is "NOT a contract dispute" and "such events did not occur in Bozeman , Mt." To the contrary, this is a NEW complaint answer not forthcoming until now and false and misleading because; the

Complaint said at ¶ 4 said, "contract disputes include the GLA's governing Articles of Incorporation, Bylaws, Covenants, and Covenant addendum–Masterplan, and events that occurred in Emigrant, Park County and Bozeman, Gallatin County at the offices of GLA agent–Minnick Management." This complaint statement is obviously true since the governing documents named above are in fact **contracts** which are being disputed including the Minnick **contract** in dispute performed at Minnick's office in Bozeman, MT.. As proof the Minnick contract says, " GLA hereby grants Minnick Management Inc. the **authority and power** to perform ..." the GLA duties as described in that Minnick **contract**. Also the Mt. Supreme Court Order said Plaintiffs received all their claims for relief in that 193 case. The reference that the complaint exhibit A was denied because it had lines drawn under certain sentences and one note added on page 4 is a new defense not

presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation."

4. (On pg. 3 #4) GLA again misleads the court by changing the complaint issue altogether regarding this sanction motion and guest house claim. This motion for sanctions has to do with Defendants complaint answers. GLA's defense about a rule 12(b) pleading has nothing to do with "Defendants Answer at ¶ 7-23 and elsewhere that improperly denies the guest house assessment claim.

5. (On pg. 3 #5) Defendants for the first time give another NEW defense to the complaint for ¶9. The GLA's new defense is that the complaint at ¶9 & ¶31 "improperly quoted language from its governing documents." This allegation is simply not true and further proves Defendants Answer at ¶ 9 & ¶ 31 improperly denies exact language of GLA governing

which denial of this material fact is not warranted on the evidence, not reasonably based on belief, or lack of information is "being presented for an improper purpose causing "unnecessary delay, or needlessly increase the cost of litigation."

7. (On pg. 3 #7) Defendants for the first time give another NEW defense to the complaint for ¶ 23 saying, "¶23 ... the quoted language is a basis for granting ...relief sought." However ¶ 23 included the exact language of GLA Covenant/Masterplan 1.1 copied from the GLA website AND a copy of GLA's August 2011 email that showed "392 parcels" or membership interests for 2011 annual elections. The denial of these material facts and evidence and NEW defense not forthcoming in Defendants answer to the complaint are not warranted on the evidence, not reasonably based on belief, or lack of information; which are "being presented for an improper purpose to cause this "unnecessary delay, or needlessly increase the cost of litigation."

not warranted on the evidence, not reasonably based on belief, or lack of information; which are "being presented for an improper purpose to cause this "unnecessary delay, or needlessly increase the cost of litigation" (note: the Minnick contract was amended by Defendants at ¶ 1 after this complaint alleged ¶ 1 was illegal.).

11. (On pg. 3 #10) Defendants 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.

12. Defendants affirmative defenses are merely another motion to dismiss all complaint claims for relief, but there are many claims for relief given in the complaint. Specifically, the GLA governing documents in dispute contain NO such specific language to give the GLA Board 3 votes per membership interest, nor to charge new guest house assessments after 17 years, nor does it allow GLA powers and duties to be sold to another corporation–Minnick Management.

CONCLUSION

This motion for sanctions and subsequent pleadings could have been avoided if Defendants Defenses 1-9 above had been given in their answer to the complaint. Instead Defendants gave **evasive or incomplete answers (shown in #1– 12 above) AND denial of material facts** being presented for an improper purpose which caused "unnecessary delay, or needlessly increase the cost of litigation;" which warrant this motion for sanctions against GLA Defendants pursuant to rule 11(b) above.

In whole or part, all parties agreed this complaint is ripe for summary judgement, especially since governing documents contain NO such specific language to give the GLA Board 3 votes per membership interest, nor to charge new guest house assessments after 17 years, nor does it allow GLA powers and duties to be sold to another corporation–Minnick Management. Defendants "Answer" at ¶ 26 & ¶30 admits to these actions by claiming they were based **solely** upon their "interpretation of GLA's governing documents...." 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 interest, and selling GLA powers and duties to another corporation–Minnick Management; all of which are breaches of duty to members and the Association pursuant to GLA Art. VIII..

DATED this 4th day of March 2013.

Signed _____ Signed: _____

Daniel 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:

faxed & mailed:
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 _____ By: _____

Daniel O'Connell Valery O'Connell