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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

**PLAINTIFFS' MOTION RESPONSE
FOR HEARING & DISCOVERY**

Plaintiffs & GLA members-Daniel and Valery O'Connell, do hereby submit this timely motion response regarding an alternate hearing and discovery for any or all complaint claims.

The Erickson contract claim lacks discovery and is not ripe for judgment as proven below. Defendants counter-summary judgment motion improperly ask for summary judgment to judge those Erickson contracts they still claim were withdrawn and never "executed." Never the less, Defendants reply to this motion does not deny those Erickson contracts could be resubmitted anytime, which warrants suspending all Erickson contract claims (case DV-12-164) pending their possible re-submittal, and discovery/hearing.

The facts, evidence and affidavits in this case support summary judgment in Plaintiffs favor regarding all other claims including: 1. the Board election/fraud claims, 2. the guest house assessment claim, and 3. the Minnick Management claims. **Members complaint challenged**

GLA Defendants not for following or interpreting GLA governing documents as written, but because GLA Defendants deliberately added language not written therein and extended by implication or enlarged by construction its meaning within those governing contracts.

Plaintiffs alternately filed this motion for any and all such claims that the court can not grant summary judgment in Plaintiffs favor, to instead allow a hearing and discovery in support of summary judgment.

FACTUAL ARGUMENTS AND BRIEF

On Jan. 18, 2013, Plaintiffs filed a motion for summary judgment. On Feb. 11, 2013, GLA Defendants answered that motion and filed a cross-motion for summary judgment, which is without merit. On February 25, 2013 Plaintiffs filed a response to Defendants' cross-motion and an filed an alternate motion for a hearing and discovery.

For this alternate motion for a hearing, Defendants March 15th reply agreed to a hearing by stating (page 7), " the GLA does not oppose a hearing on these motions for summary judgment." Please note however that Plaintiffs' alt. motion for discovery & hearing is NOT requested for any claim that this court finds is ripe for judgment in Plaintiffs favor.

Defendants yet oppose Plaintiffs alternate motion for discovery claiming no facts are in dispute. To the contrary, Plaintiffs claim that discovery should not be denied them if the court finds any issue is not ripe for judgment in Plaintiffs favor. This is fair, equitable and just to allow discovery & a hearing if it will settle those issues. This includes Plaintiffs Erickson contract claim; which is part of case DV-12-164. All parties agree that the 164 case should be enjoined to this case. Defendants filed a motion to strike which included a signed letter from GLA President

Bolen stating the Ericksons withdrew their variance contracts with the GLA AFTER O'Connells complaint (DV-11-164) was filed. Without discovery Plaintiffs can not prove otherwise.

Also Defendants' 1st Affirmative Defense and Answer filed Oct. 15, 2012, said (page 5):

“ All claims involving the Ericksons [contracts] are not ripe as no variance agreement was ever been executed. At this time, the Ericksons have not met the conditions of the variance and cannot proceed under the variance. Therefore ...these claims are not ripe.”

Plaintiffs' March 24th Affidavit at ¶ h & i further shows factual issues regarding Erickson contract claims are yet in dispute. Thus this court needs only to agree with Defendants own admission that “all claims involving the Ericksons [contracts] are not ripe” for judgment. It is possible that the Ericksons variance contracts will be “executed” with the GLA if not done already. Therefore, Plaintiffs hereby request suspension of all Erickson complaint claims indefinitely pending Erickson documents being “executed” and discovery allowed for such purposes. If and when Erickson issues become ripe for judgment, Plaintiffs complaint requesting declaratory judgment (in case DV-12-164) necessitates consideration prior to summary judgment

Again, discovery & hearing is requested only for those claims that this court finds are NOT ripe for judgment in Plaintiffs favor, because discovery & a hearing is just and necessary to equitably settle any remaining facts in dispute.

DATED this 22nd day of March, 2013.

Signed 
Daniel O'Connell

Signed: 
Valery O'Connell

Certificate of Service

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