

Table of Authorities & Notes (DV-12-164)

The members complaint challenges its Board Defendants not for following or interpreting our Bylaws as written, but because they deliberately added language not written therein and extended by implication or enlarged by construction its meaning within many GLA governing documents, as listed herein.

Mt. Supreme Court, state law established that issuance of summary judgment is based only upon the court's finding that: **1. there are no disputes of "material" fact requiring a trial to resolve, and 2. in applying the law to the undisputed facts, one party is clearly entitled to judgment.**

* The determination of whether a party materially breached a contract is a question of fact. See *Sjoberg v. Kravik* (1988), 233 Mont. 33, 38, 759 P.2d 966, 969. We review a district court's findings of fact to determine whether they are clearly erroneous. See *Daines v. Knight* (1995), 269 Mont. 320, 324, 888 P.2d 904, 906 (citing *Columbia Grain Int'l v. Cereck* (1993), 258 Mont. 414, 417, 852 P.2d 676, 678). A finding is clearly erroneous if substantial evidence does not support it, if the district court misapprehended the effect of the evidence, or, if after reviewing the record, this Court is left with a firm conviction that a mistake has been made. See *Interstate Prod. Credit Ass'n v. DeSaye* (1991), 250 Mont. 320, 323, 820 P.2d 1285, 1287.

* The construction and interpretation of a written agreement are questions of law. See, e.g., *In re Estate of Hill* (1997), 281 Mont. 142, 145, 931 P.2d 1320, 1323 (citations omitted). It is also a question of law whether ambiguity exists in a written agreement. See *Estate of Hill*, 281 Mont. at 146, 931 P.2d at 1323 (citations omitted). We review a district court's conclusions of law to determine whether the court's interpretation is correct. See *Carbon County v. Union Reserve Coal Co.* (1995), 271 Mont. 459, 469, 898 P.2d 680, 686 (citations omitted).

* Courts have no authority to insert or delete provisions of a contract where the contract's provisions are unambiguous. See *Topco, Inc. v. State* (1996), 275 Mont. 352, 358, 912 P.2d 805, 809 (citations omitted). Where the meaning of a contract is ambiguous, this Court has repeatedly followed the rule that a court should interpret a contract most strongly against the party who drafted the agreement. See *Ophus v. Fritz*, 2000 MT 251, ¶31, 301 Mont. 447, ¶31, 11 P.3d 1192, ¶31 (citations omitted).

* MT. Supreme Court does not favor interpretation of contracts unless the contract language, taken as a whole, clearly has two or more distinct meanings, or so vague and ambiguous as to need interpretation. For all GLA contracts in question, there are NO claims that they're ambiguous or vague or contrary meanings; for which the ordinary, popular, and clear, explicit, or plain language as written should govern.

Mt. Law, Section 13-704, R.C.M. 1947, provides that the clear and explicit language of a contract must govern its interpretation. Section 13-707, R.C.M. 1947, states that every part of a contract is to be given effect, using each clause to help interpret the others. Section 13-710, R.C.M. 1947, provides: "The words of a contract are to be understood in their ordinary and popular sense,...."

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Covenant 2.02. "Additional Force and Effect. In addition, each provision in this Declaration shall also be interpreted in the light of its express language, context and intent, and shall be given additional legal force and effect as defined by state law as a condition, restriction, servitude ..."

Bylaw II. The purposes of the corporation are ... To provide for the management, administration, maintenance, preservation and control of the parcels, roads and common properties..."

Covenant (pg. 2) states all parties intent or purpose: "the owners of the property in ... Glastonbury have agreed that it would be in the best interests of all parties to create and empower a new self-governing structure through a community landowners association.

Articles of Inc. IV., E. The Association is "to have and exercise such further purposes and powers, or to be limited in the exercise of its powers, as may be further provided from time to time in such Bylaws."

Bylaw II., C. "In furtherance of its purposes and objects, but not otherwise, the Corporation shall have and exercise such powers as are enumerated in the Articles of Incorporation and any additional powers as may be set forth in these Bylaws. The Association shall also have such purposes, and shall be limited in the carrying out of its purposes, as may be provided in the said Covenants from time to time."

Covenant 10.01 "The Association is the sole administrative authority in the Community and shall exercise its rights, powers and responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules...These covenants shall be enforceable by specific performance."

Bylaw VI., I. Committees. ...Only Committees of Directors constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board of Directors and they may do so only to the extent authorized by the Board.

Bylaw XII. D. "Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Covenants and these Bylaws, the Covenants shall control."

* **Bylaw XII, A.** "Interpretation and Amendments. The Board shall have the power to interpret all the provisions of these Bylaws and such interpretation shall be binding on all persons. These Bylaws and the Articles of Incorporation may be amended, repealed or altered, in whole or in part, from time to time whenever at least fifty-one percent (51%) of the Membership Interests of the Association in good standing at the time attending any Annual or Special Meeting..." **28-3-101, MCA.** "All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code."

"*Bordas* pointed out, Montana law requires strict construction of restrictive covenants. **Town & Country Estates Association v. Slater** (1987), 227 Mont. 489, 492, 740 P.2d 668, 670-71." *Bordas v. Virginia Ranches Assoc.*, 2004 MT 342 at ¶17 *Bordas*' Bylaws states, "Upon payment of assessments levied by the Board of Directors during a fiscal year said owner or owners shall be considered paid members of the Association and shall be entitled to one (1) vote for each parcel of land owned."

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"If a contract's terms are clear and unambiguous, the contract language will be enforced," *Youngblood*, 262 Mont. at 395, 866 P.2d at 205 (citing *Keller v. Dooling* (1991). 248 Mont. 535, 539*813 P.2d 437, 440).

"We have previously stated that "a party acts at his peril if, 'insisting on what he mistakenly believes to be his rights, he refuses to perform his duty.'" *Chamberlin v. Puckett Construction*, 277 Mont. at 203, 921 P.2d at 1240 (quoting *United California Bank v. Prudential Ins. Co.* (Ariz. App.1983), 681 P.2d 390, 430 (quoting Restatement (Second) of Contracts § 250 cmt. d (1981))).

Board Election/voting -Claim #1

Vacancies: The word "vacancy" is not found anywhere in the GLA Covenants and only found within GLA Bylaw VII.(6) applicable only when a Director is removed from office or quits, and Bylaw X.E. for Ombudsman, not applicable here.

Position: GLA Nov. 2012 newsletter and Defendant pleadings also admit it allows its members to cast "up to 3 votes" per membership/parcel or "one vote per position" not per matter.

*The GLA Association as a non-profit corp. subject to the Montana Nonprofit Corporation Act (MNCA) 35-2-536. Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members..."

GLA Covenant 3.20, "a separate and distinct Membership Interest ... is entitled to one (1) vote." (Note: North and South Glastonbury voting districts cast votes for their respective Board candidates annually and separately.) &contrary to Bylaws V(B) & Bylaw V(F) below.

GLA Bylaw VI(A) "... the Board shall have an even number of positions available to be filled at election. ...the actual number of Directors shall be those who have been nominated and elected from time to time as provided herein; however, the number of Directors shall not be reduced to fewer than four (4), nor increased to more than twelve (12)..." (emphasis added)

Bylaw V., B. ... At such [Annual] meeting there shall be elected, by the ballot of the Members, a Board of Directors in accordance with the requirements of Article V, paragraph F, and Article VI, paragraph D, of these Bylaws.

Bylaw V. F. ..."For purposes of tabulating the written vote and consent of the Members of the Association, it is hereby provided that: 1. Each Membership Interest is entitled to one vote; 2. A Member may hold more than one Membership Interest and shall have a separate vote for each such interest;

Bylaw VI., C. ..."every Member in good standing who has a bona fide interest in serving as a Director may file as a candidate for any position to be filled by votes of the Membership Interests."

Bylaw VI, B. General Powers and Duties, (part 16) Adopt Rules from time to time for the conduct of any meeting, election or vote in a manner that is not inconsistent with any provisions of the Covenants, Articles of Incorporation or these Bylaws.

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New Guest house assessments -Claim #2

There is no specific language in the GLA bylaws/covenants that allows guest house assessments. The new GLA guest house assessment is \$191, a 100% increase in yearly dwelling assessments. Defendants construing Guest houses to be the same as “dwelling units,” thus “extended by implication or enlarged by construction” and “broadened the covenants” and bylaws below by adding that which was not contained therein;

GLA Masterplan 6.0 (pg. 15) defines a guest house as “intended for occasional guest use and not as a permanent residence, not to exceed 1,200 square feet;”

GLA Covenant 3.12 (Pg. 6) defines “dwelling unit” as “a structure or portion of a structure, normally consisting of living area, bathroom and cooking facilities, designed for occupancy by a single family” The term includes a boarding house, ...” (NOTE: This covenant definition 3.12 by itself would seem to apply to dozens of GLA bomb shelters, and even guest houses, but for the fact that covenants, taken as a whole refute this.

Covenant 11.03, (Pg.23) “...The amount of the annual assessment may be increased or decreased from year to year, at the option of the Association ... the annual assessment may be increased by the Association due to inflation or increased costs or services up to a maximum of 10% per year” or based on the “CPU whichever is greater.”

GLA Masterplan 1.1 (pg. 4) “Maximum residential development for a subdivided parcel is limited to one (1) single- family residence and one (1) Guest House* or in-residence guest apartment per subdivided Tract or Lot. A guest house or guest apartment is only allowed on lots or tracts that are equal to or greater than the minimum lot size specified in the Residential Topographical Areas and Density Schedule (Section 3.5) and having a suitable dwelling site per the Project Review Committee. Maximum residential development for an Original undivided Parcel is limited to one (1) single-family residence and one (1) additional single residence, both owned by the Landowner who owns the parcel....” *a separate and distinct treatment of a guest house from a single family residence (dwelling unit).

Covenant 6.06. Fallout Shelters. “It is the policy of this development to recommend but not require the construction... of a fallout shelter underneath, behind, in the basement of or within reasonable proximity to every dwelling or habitation placed upon any parcel.”

GLA/Minnick Contract -claim #3

The Minnick contract (pg.1) states, “GLA hereby grants Minnick Management Inc. the authority and power to perform any and all lawful actions necessary for the accomplishment of services outlines below” (GLA answer Exhibit H, page 1 at ¶ 17-18).

(Note: This word “agent” is found nowhere in the covenants, and only mentioned a few times within the GLA Bylaws at page 6, & 10-13 (N/A). Covenant 10.01 below says GLA is the “sole authority” and GLA Bylaw VI., I. says, “ONLY Committees of Directors ... may exercise the authority or powers of the Board...” This is the crux of this issue.

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35-2-118, MCA(part g) (1) Unless its articles of incorporation provide otherwise, a corporation... has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:... (g) to make contracts and guaranties;" The **GLA Articles and Bylaw VI.B.** (below) limits this statute;
GLA Bylaw VI.B,(1): 'Conduct, manage and control the affairs and business of the Association."
GLA Bylaw VI.B, (6): "Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, supervise and prescribe the duties and fix compensation, if any, as necessary, of all officers, agents, employees, or committee members of the Association;" (emphasis added) (Note: Minnick duties not "necessary" per Bylaw VI.B., evidenced by GLA July 2012 newsletter that stated, "over the years, the [current] Board has been handling the many administrative tasks necessary for operation of the association...."
GLA Bylaw VI.B, (8): "Have the right to delegate such powers as may be necessary to carry out the function of the Board to committees..."
GLA Bylaw VI.B, (15): "Negotiate and enter into agreements with public agencies, officers, boards, commissions, departments and bureaus of federal, state and local governments to carry out the above powers, duties and responsibilities."
Bylaw VI, I. "Committees. ...Only Committees of Directors constituted pursuant to the Montana Nonprofit Corporation Act may exercise the authority or powers of the Board of Directors and they may do so only to the extent authorized by the Board."

Covenant 10.01 "The Association is the sole administrative authority in the Community and shall exercise its rights, powers and responsibilities and manage its affairs in accordance with its articles of incorporation, bylaws and rules...These covenants shall be enforceable by specific performance."

35-2-440. Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

Covenant 8.01 g. "The Association's road maintenance responsibility may be assigned or delegated by conveyance or contract to another private party, a municipality, a county or other Landowners in the Community;"

Covenant/Masterplan 2.0 "The Association Board has delegated the responsibility for processing applications, making recommendations, and managing the approval process for any building projects ... in the Community to the Glastonbury Project Review Committee."

35-2-414.MCA Requirement for and duties of board. (1) Each corporation must have a board of directors. (2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board. (3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent. **35-2-423.**

Removal of directors by judicial proceeding. ... director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion with respect to the corporation.

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Title 28-more contract laws:

MT. Constitution, Art.VIII(6),"No perpetuities shall be allowed except for charitable purposes."

28-3-101. Rules of interpretation to be uniform. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

28-3-201. Interpretation giving effect to contract favored. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect if it can be done without violating the intention of the parties.

28-3-202. Effect to be given to every part of contract. The whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.

28-3-203. When several contracts taken together. Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together.

28-3-204. How repugnancies reconciled. Repugnancies in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

28-3-301. Interpretation to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

28-3-302. How intention ascertained. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

28-3-303. Writing generally to determine intention. When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this chapter.

28-3-401. Extent to which language governs interpretation. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity.

28-3-501. Words generally understood in their ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning unless used by the parties in a technical sense or unless a special meaning is given to them by usage, in which case the latter must be followed.