

PARK COUNTY CLERK
OF DISTRICT COURT
JUNE LITTLE

2013 JUN 26 AM 11 34

FILED
BY *Jamela Penick*
DEPUTY

1 HON. BRENDA R. GILBERT
2 District Judge
3 Sixth Judicial District
4 414 East Callender Street
5 Livingston, Montana 59047
6 406-222-4130

8 MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

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

Cause No.: DV-2012-220
DV-2012-164

11 Plaintiffs,

12 v.

ORDER ON PLAINTIFFS' RULE 60 RELIEF
FROM JUDGMENT & MOTION
FOR JURY TRIAL

13 GLASTONBURY LANDOWNERS
ASSOCIATION, INC. Board of Directors,

14 Defendants.
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16 The Plaintiffs filed their Petition for a Temporary and Permanent Restraining Order on October
17 22, 2012. On September 24, 2012, Plaintiffs filed their Cause No. DV 12-164, requesting a Writ of
18 Mandamus directing the GLA to perform the duties otherwise delegated to Minnick Management
19 Corporation, to cancel the Minnick Management contract and to cancel two allegedly illegal contracts
20 with the Ericksons regarding a variance issue. In DV 2012-164, the Petitioners therein, the Plaintiffs
21 herein, also requested a Writ of Prohibition arresting the proceedings listed within the Minnick and
22 Erickson contracts until such time as a hearing could be held.
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25 On December 4, 2012, the Plaintiffs filed their Motion for Declaratory Judgment and Notice to
26 Join TRO. On January 22, 2013, the Plaintiffs filed their Motion for Summary Judgment and Motion to
27 Enjoin Cases. The Defendants filed its Cross-Motion for Summary Judgment, requesting that summary
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1 judgment be entered in its favor with regard to all issues raised in actions DV 12-220 and DV 12-164.

2 Both parties assert an absence of genuine issue of material facts. The Motions have been fully briefed
3 by the parties.

4 The Court conducted a hearing on Wednesday, June 5, 2013 and heard oral arguments with
5 respect to the pending Motions. On June 19, 2013, the Court entered an Order Denying the Plaintiffs'
6 Motion for Summary Judgment, Granting the Defendant's Cross-Motion for Summary Judgment and
7 Denying any and all further claims, motions and Writs in Cause Numbers DV 12-220 and DV 12-164.

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9 The Plaintiffs thereafter filed a Rule 60 Relief from Judgment & Motion for Jury Trial in which
10 they claim that the Court erred in its June 19 Order because the claims in the DV 12-164 cause were not
11 properly before the Court at the June 5, 2013 hearing. The Court now makes the following order:
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13 1. The Plaintiffs' Rule 60 Relief from Judgment & Motion for Jury Trial are
14 DENIED for the following reasons:

15 a. The Plaintiffs were the first parties to argue during the hearing on June
16 5, 2013 and did, in fact argue the very points which they now claim the
17 Court erred in deciding from DV 12-164. If Plaintiffs truly believed
18 that the issues in DV 12-164 were not ripe or ready to be argued before
19 the Court, there would have been no reason for them to make the
20 arguments.
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22 b. Pursuant to M.R.Civ.P. Rule 56(c)(2)(a), the right to a hearing on
23 summary judgment is waived unless a party requests a hearing within
24 14 days after the time for filing a reply brief has expired. The Plaintiffs
25 filed no reply brief in DV 12-164, but the time to do so expired on
26 February 28, 2013 and neither party requested a hearing within 14 days
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1 after that. Therefore, the Court could rule on the issues in the Motion
2 for summary judgment in DV 12-164 on the basis of the briefs, the file
3 and the law. That the Court had oral arguments to listen to, provided
4 chiefly by the Plaintiffs, was also welcome and useful.

5 The Plaintiffs' relief and motion are denied.

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7 DATED this 26th day of June, 2013.
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10 
11 BRENDA R. GILBERT, District Judge

12 CC: Daniel K. O'Connell/ Valery A. O'Connell
13 Michael P. Heringer / Seth M. Cunningham

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15 } P.P.
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