

Daniel & Val O'Connell
P.O. Box 77
Emigrant, Mt. 59027
406-577-6339

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.)
& current GLA Board of Directors)

Defendant(s))

Cause No. DV-11-114
Judge Cjbulski

PLAINTIFFS' MOTION REPLY TO STRIKE/DISREGARD DEFENDANT ALLEN'S
AFFIDAVIT

Come now Plaintiffs & GLA members-Daniel and Valery O'Connell, and file this "Motion Reply..." to Defendants' response to this Motion. Defendants response to this motion claims this motion is not allowed if it is merely another response against summary judgment motion. It is not. This motion disputes new and false claims made for the first time in Allen's Affidavit & SJM Response (Summary Judgment Motion). Plaintiffs respectfully move this Court to consider the following issues newly admitted by Defendants:

A. Allen's affidavit paragraph 7 and their SJM Reply admits, "GLA has not shared[with members other member] phone numbers, account balances, private correspondence, and other information not considered part of membership records." (Note: Allen also says this is for "maintaining member privacy."

(Note: This GLA admission denying its members all these GLA documents requested is in direct violation of state laws §35-2-114(3)MCA, §35-2-907MCA, & §35-2-906MCA (cited in this motion page 10) that allow such member election records to members. (see Plaintiffs SJM Reply "Exhibit 6" & complaint issue #6 & #7) GLA emails that denied members to see/copy member documents like member email/correspondence with GLA Board; & denied members to see/copy

election ballots, proxies, certification, vote tallies (cited in this motion page 10) that allow such member election records to members.)

B. Allen's affidavit paragraph 5 and SJM Reply admit, "After these inspections, the [GLA] records were in extreme disarray with no indication of what had been copied or taken by Plaintiffs making inspections in the future unworkable."

(Note: This GLA admission denying its members access to GLA document "inspections in the future unworkable" (motion page 7 and Complaint claim #5) violates "35-2-906. Corporate records. "(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.")

C. Allen's affidavit paragraph 8 and their SJM Reply admits, "sometimes detailed minutes are generated in closed [GLA Board] sections, and these [minutes] are not disseminated to members" that the GLA claims is "privileged or Privacy protected by law." Allen's affidavit also admits if such private or privileged information in the Board meeting minutes "were completely redacted, they could be disclosed" to GLA members. **Allen's affidavit paragraph 9-10 and their SJM Reply admits**, GLA only properly took "committee minutes" "for a couple of years" showing members attending and actions taken only AFTER this lawsuit issue was filed.

(Note: This admission denial of minutes to members (complaint issue #6) violates: 35-2-906 MCA "all meetings of its members and board of directors" be made available to its members as does 35-2-907 MCA "Inspection of records by members" (also GLA Bylaw Art.VI(I)) & 35-2-535 MCA authorizes "the district court ... [to] order the inspection or copying at the corporation's expense" for such things as "meeting minutes." Thus Plaintiffs injunction request the Court Order GLA to allow members to inspect and copy all such open and private GLA minutes and other GLA documents.)

D. GLA Allen affidavit paragraph 11 and their SJM Reply admits, to "subsequent ratification" of email records. This admission admits the GLA had failed in the past to ratify or follow email record requirements in 35-2-428 MCA & GLA Bylaw VII(J):

(Note: This admission denial of email records to members (complaint issue #1 & #6) violates the settlement agreement & 35-2-428 MCA that requires, "The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes filed with the corporate records reflecting the action taken" & GLA Bylaw VII(J) "Such written consent [by email meetings of the Board] or consents shall be filed with the Minutes of the proceedings of the Board...")

E. GLA/Allen affidavit, paragraph 6 and their SJM Reply & Allen affidavit paragraph 9 admits, "for the purpose of continuity" GLA denied member due process/notice (required per Bylaw XI.C., pg.15 Exhibit C.) for such things as the GLA Board "Policy for Length of Board Service" that without due process was enforced since 2013, (see Plaintiff reply to SJM "Exhibit 15" GLA Newsletter mailed to members January 2014 AFTER this policy was adopted effecting all members.)

(Note: This GLA admission denial of due process (complaint issue #2) for this "Policy for Length of Board Service" and others violates GLA Bylaw XI(C) & 35-2-115 MCA "If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern;" for GLA Bylaw XI.C. "Prior to making any new Rules or Regulations..., the Association, acting through the Board of Directors and officers, shall provide reasonable written notice in accordance with Article V, paragraph D, to all of the Members...")

GLA October 2012 minutes “Exhibit 12” and Bolen/Allen deposition (both cited in Plaintiffs’ reply to SJM) show **GLA admits**, they failed to give its members actual “Receipts & Expenditures” before 2012 and waited until “October 2012 to give [fake] receipts and expenditures” for 2011 that are merely a budget report; given to members only after O’Connells’ complaint for this claim #3 was filed 2011. (explained in this motion page 15)

(Note: This GLA admission denying its members receipts & expenditures (complaint issue #3) violates 35-2-911 MCA that requires “Financial statements for members. Upon the written request of any member of the corporation, the corporation shall deliver to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations” & Bylaw VIII & H, “the Association will furnish the Members with a statement of the receipts and expenditures of the Association for each fiscal year.”

F. Allen’s affidavit paragraph 5 and SJM Reply admit , “After these inspections, the [GLA] records were in extreme disarray with no indication of what had been copied or taken by Plaintiffs making inspections in the future unworkable.”

(Note: This GLA admission denying its members access to GLA document “inspections in the future unworkable” (motion page 7 and Complaint claim #5) violates “**35-2-906. Corporate records.** “(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.”)

GLA ADMISSIONS A-F ABOVE (NOT IN SJM) MADE FOR THE FIRST TIME IN ALLEN’S AFFIDAVIT SUPPORT COMPLAINT CLAIMS #1, #2, #3, #6, & #7

GLA DENIALS BELOW (NOT IN SJM) MADE FOR THE FIRST TIME IN ALLEN’S AFFIDAVIT SHOW FACTS IN DISPUTE FOR COMPLAINT CLAIMS #1, #5, #6, & #8

Pursuant to Rule 7(f) of Mt. R.Civ. Procedure, Plaintiffs respectfully move this Court to strike or disregard for SJM Defendant/Allen’s affidavit claims (below) as false, which attempts to correct the deficiencies in their SJM for these issues NOT raised in their SJM as cited above and below, as follow:

Allen Affidavit paragraph 3 and SJM Reply falsely claim, ‘GLA provided the Plaintiffs with a “membership list... without charge.” (refuted by this motion page 2 and Complaint claim #1 violations to 2012 Settlement Agreement & **35-2-535 MCA**).

Allen affidavit paragraph 4 and SJM Reply falsely claim, “Plaintiffs would make general catch-all demands for whole categories of records without stating a proper purpose or describing with reasonable particularity the purpose and the record the member desires to inspect.” (refuted by this motion page 5 and Complaint claim #1 & #6 violations to 35-2-906 MCA 35-2-907 MCA, & GLA Bylaw Art.VI(I))

Allen affidavit paragraph 12 and SJM Reply falsely claim, “The GLA can and does pay board members... rendering service in other capacities such as snow removal, construction, road maintenance, and administrative work...”

Allen affidavit paragraph 13 and SJM Reply falsely claim, no bids are required and GLA does inform members of job needs “at meetings, through the newsletter, and announcements.”
Note: Plaintiffs discovery and GLA Board have failed to provide proof of this notice to its members.

(This claim is refuted by this motion page 13 and Complaint claim #8. Note: Without taking any bids, GLA Directors then “derived an improper personal economic benefit” (per Articles VIII.) for getting such jobs & profit by default. Taking bids to get lower competitor price “is good business practice” required of the GLA (per GLA Covenant 11.05 & GLA also fail to get any member consent for Director conflict of interests as state statute 35-2-418 MCA requires, especially for paying 4 GLA directors to do GLA jobs without taking competitor bids. Evidence in Bolen and Allen’s written depositions July 2013 #8 Response says “documents 000464 and 000465” were the only 2 contractor bids the GLA took since 2010.)

STATEMENT OF FACTS REFUTING Defendants’ RESPONSE TO THIS MOTION

On May 7th Plaintiffs filed this rule 12 Motion and affidavit against Allen’s affidavit supporting summary judgment motion. On May 22nd, Plaintiffs received Defendants 6 page response, cited and underlined below as follow:

Defendants reply to this motion page 4 makes a new claim, “Plaintiffs [complaint] regarding director conflict of interest do not create issues of material facts.

All the new claims and defense raised above (NOT raised in Defendants SJM) were raised for the first time in Allen’s Affidavit and SJM Reply. These new admissions and defense claims above and below are shown to be issues of material facts (also see Plaintiffs Reply to SJM).

Example #1: Amended complaint claim #8 (showing GLA fail to get any member consent for GLA Director conflict of interests as state statute 35-2-418 MCA requires; for paying 4 GLA directors to do GLA jobs without taking competitor bids, and Covenant 11.05 violation

requirement to “follow good business practise” to do so.) Thus four GLA Directors since 2010 (5 years) had “exclusive dealing arrangements” with the GLA and “conflicts of interests” absent competitor bids and absent member approval for such conflicts of interest as required under state law §35-4-416 MCA.

Further evidence is shown by Plaintiff affidavit (attached to SJM Reply) that supports the fact that “no members ever gave written approval as required under state law §35-4-416 MCA for any Director conflicts of interests; & also violates GLA Covenant 11.05 requirement that GLA follow “good business practices” such as taking bids to find lower rates for such jobs done by exclusively by four GLA Directors (see also claim #4b).”

For other complaint material facts in evidence; consider Plaintiffs’ evidence exhibits 01 through 015 attached to SJM response and complaint, Plaintiffs’ 3 affidavits, and GLA Defendants written admissions and documents; all these at very least show a preponderance of evidence, or else clear and convincing evidence specific to eight complaint material facts (see more examples below).

Defendants reply to this motion page 2 makes another new claim. “Plaintiffs [complaint] improperly rely on allegations made in a settled case.”

This claim does not defend against this motion itself. This new claim of “improper” allegations regarding violations to the settlement agreement is a new claim raised for the first time in their response to this motion, which attempts to correct the deficiencies in their SJM for failing to raise this issue back then. Plaintiffs dispute this new claim, because Defendants violation of Plaintiffs prior case (193) settlement agreement is a new claim made in this case as cited as #1 above in dispute shows new allegations against GLA from 2012 -2014; which happened after that case was settled as Plaintiffs SJM Reply exhibit 5 proves are new timely allegations.

Defendants reply to this motion page 3 claims. “Plaintiffs [complaint] raise no genuine issues of material facts.”

Notice this is a complaint defense claim not a defense to this motion. None the less, Defendants violation of Plaintiffs prior case (193) settlement agreement is a genuine issue of material fact supported by SJM Reply exhibits and Plaintiffs affidavit to this motion. Other genuine issues of material facts are cited in Plaintiffs' SJM Reply & exhibits, and 3 affidavits total, including this motion with attached affidavit.

Here are more examples of the eight material facts raised within Plaintiffs Amended complaint evidenced by Plaintiffs SJM Reply exhibits & motion affidavit:

Example #2; Defendants (Allen) affidavit & SJM Response both misstate Plaintiff's Complaint, because Plaintiffs do NOT take issue with GLA reliance on state law when GLA violated the settlement agreement (lawsuit 193), and Plaintiffs "improper" document requests was not the reason given by Defendants to deny Plaintiffs document requests allowed under the settlement agreement (case 193).

These Instead Defendants made these new claims out of thin air for the first time within Allen's affidavit and SJM response AFTER their SJM filing. Plaintiffs contend they are false or misleading new claims disputed by this motion as proper, because Plaintiffs never said this, and Defendant claims were not made in Defendants summary judgement motion itself.

Plaintiffs contend Allen's affidavit is hearsay for giving such second hand statements not witnessed by Allen, or raised topics not in the SJM; yet refutes Plaintiffs' Complaint facts (wether true or not). Thus Allen's affidavit belatedly dispute Plaintiffs' complaint fact #1; thereby contradicting their SJM that claimed otherwise.

Example #3; Defendants (Allen's) affidavit & SJM response for the first time makes an astonishing conclusion (page 20); which falsely says Plaintiffs complaint pleadings, "never provide specifics...fail to produce any evidence of actual harm...failed to establish genuine issues of material facts..."

This statement is refuted by the amended complaint facts in dispute 1 through 8 above that do state specifics, and MT. Supreme Court Opinion that said in 2012, ““O’Connells were asserting [Defendants] substantive and procedural violations of the GLA Covenants.”

Example #4, Plaintiffs evidence does further rely on state law 35-2-906 MCA and others to show GLA did provide Plaintiffs some requested documents, but at the same time the GLA Defendants yet refused to provide members other requested documents for the stated reason(s):

Plaintiff SJM Reply “Exhibit 5” from GLA council states in 2013 the GLA will not provide requested documents such “as membership list” “until a date has been set for another member meeting.” GLA denied membership list to members several months past the state law 35-2-535 statue of time allowed which is 2 days;

Other requested documents denied to members were for GLA “Exhibit 5” letter stated reason that MCA laws “do not allow” members to have such documents as “member email addresses,” “member financial records,” “member/GLA correspondence with each other,” and also “some GLA meeting minutes” the GLA never took or call “confidential” minutes contrary to 35-2-906 MCA.

So GLA stated reasons to deny members these requested documents was NOT for improper requests as their SJM reply claims for the first time, but because the GLA indirectly dispute state laws that yet allows members to have such documents, including 35-2-906 MCA:

35-2-906 MCA in part says such Defendant corporate, “records may be recovered within 2 business days: ... (c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members; (d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years; (e) the financial statements available to members for the past 3 years under 35-2-911; (f) a list of the names and business or home addresses of its current directors and officers; ...”

GLA denying members some requested documents for the stated reasons (Exhibit 5) that the GLA claimed as “not allowed,” or “require a meeting date” are thus disputed by this sate law 35-2-906 MCA and others that allows members to have such requested documents as “member email addresses” (note GLA members approved GLA use of emails in 2014), “member financial

records,” “member/GLA correspondence with each other,” and also “some GLA meeting minutes” the GLA “confidential” minutes.

Defendants reply to this motion page 5 makes a new claim, “Plaintiffs allegations of a “fake” Receipts and Expenditures report are unsupported.

Example #5: To the contrary, Plaintiffs motion page 14 cites supporting evidence as:

“GLA October 2012 meeting minutes “Exhibit 12” and Bolen/Allen deposition (cited in Plaintiffs’ reply to SJM page 9) show GLA failed to give its members actual “Receipts & Expenditures” in 2011 and waited until October 2012 to give fake ones only after O’Connells’ complaint for this claim was filed.” Bolen/Allen deposition (cited in Plaintiffs’ reply to SJM page 9) says, “Defendants 2013 written deposition Response 1-4 pg. 6 says, “the Receipts & Expenditures report for 2011 ...was mailed to members approximately October 10, 2012 ...[&] 2012 .. was mailed to members approximately January 18, 2013.... [as] a general report that does not contain check details, deposit checks, cancelled checks, credit card and bank statements.”

Budget reports side by side comparison with fake “Receipts and Expenditure Reports” are almost identical to GLA Budget Reports. Without actual receipts and expenditures as contained in GLA check details, deposit checks, cancelled checks, credit card and bank statements, denying members to see any of these receipts and expenditures allows GLA to hide theft of member funds and does not allow members to prove GLA theft and misappropriation of member funds.

Plaintiffs complaint allegations (such as GLA filing “fake” “Receipts and Expenditures” reports) are all supported by material facts evidenced within this motion and within Plaintiffs’ exhibits attached to their Reply to SJM. Again this motion shows, GLA ADMISSIONS A-F ABOVE (NOT MADE IN SJM) MADE FOR THE FIRST TIME IN ALLEN’S AFFIDAVIT SUPPORT COMPLAINT CLAIMS #1, #2, #3, #6, & #7, but GLA DENIALS ABOVE (NOT MADE IN SJM) MADE FOR THE FIRST TIME IN ALLEN’S AFFIDAVIT SHOW FACTS IN DISPUTE FOR COMPLAINT CLAIMS #1, #5, #6, & #8.

CONCLUSION

Allen affidavit against complaint facts proves those facts are in dispute or proven false by Plaintiffs' affidavit & evidences. This motion is not merely another response against summary judgment motion. This motion to "Strike or Disregard Defendant Allen's Affidavit" is warranted to consider GLA ADMISSIONS A-F ABOVE (NOT MADE IN SJM) MADE FOR THE FIRST TIME IN ALLEN'S AFFIDAVIT SUPPORT COMPLAINT CLAIMS #1, #2, #3, #6, & #7. This motion is also warranted to "Strike or Disregard Defendant Allen's Affidavit" OF GLA DENIALS ABOVE DISPUTING COMPLAINT CLAIMS #1, #5, #6, & #8 (NOT MADE IN SJM) MADE AFTER SJM FOR THE FIRST TIME IN ALLEN'S AFFIDAVIT; or else deny Defendants' SJM considering all these GLA admissions A-F above and facts still in dispute.

Respectfully submitted this 4th day of June, 2015,

By:  Daniel O'Connell
By:  Valery O'Connell

Certificate of Service

A true and correct copy of forgoing document(s) were sent to the following parties via email the same day & via first class mail on the following business day to:

Sixth Judicial District Clerk of Court
414 E. Callender St.
Livingston, Mt. 59047

Alannah Griffith
26 E. Mendenhall
Bozeman, Mt. 59715

Hon. Judge David Cybulski
573 Shippe Canyon Rd.
Plentywood, Mt. 59254

Brown Law Firm, P.C.
315 N. 24th St. (PO Drawer 849)
Billings, MT. 59103-0849




