

IN THE SUPREME COURT OF THE STATE OF MONTANA
DA-18-0238

KS VENTURES, LLC an Arizona Limited Liability Company,

Plaintiff and Appellee,

v.

WILLIAM M. RUSSELL; K.E. SMITH REVOCABLE TRUST; MYERS
REVOCABLE TRUST; KIM RUSSELL; SHARON HUFF; BEN WEIDLING;
THE LAMAR COMPANIES; U.S. TREASURY by and through the INTERNAL
REVENUE SERVICE; MONTANA SWEETGRASS RANCH HOMEOWNERS'
ASSOCIATION, INC.; DOE DEFENDANTS I THROUGH X, inclusive,

Defendants,

WILLIAM M. RUSSELL,

Defendant and Appellant.

**OBJECTION OF APPELLEE KS VENTURES, LLC TO APPELLANT'S
PETITION FOR REHEARING**

ON APPEAL FROM THE MONTANA ELEVENTH JUDICIAL DISTRICT
COURT OF FLATHEAD COUNTY, CAUSE NUMBER DV-16-389B, THE
HONORABLE JUDGE ROBERT B. ALLISON, PRESIDING

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The Appellee KS Ventures, LLC (“KS Ventures”), in conformity with Rule 20(2)(b) of the Montana Rules of Appellate Procedure, hereby opposes the Appellant William M Russell’s Petition for Rehearing filed on January 23, 2019 in this case.

The grounds for considering a petition for rehearing are stated clearly in the appellate rules:

(1) Criteria for petitions for rehearing.

1. (a) The supreme court will consider a petition for rehearing presented only upon the following grounds:

(i) That it overlooked some fact material to the decision;

(ii) That it overlooked some question presented by counsel that would have proven decisive to the case; or

(iii) That its decision conflicts with a statute or controlling decision not addressed by the supreme court.

M. R. App. P. 20(1)(a)(i-iii).

Petitions for rehearing are rarely granted. *Letica v. Anaconda-DeerLodge Cnty*, 2015 MT 323, 381 Mont. 389, 362 P.3d 614 (order denying petition for rehearing dated December 22, 2015).

Here, the Appellant Russell has offered no grounds to support that this Court should rehear, or in any way modify, its January 8, 2019 opinion. *KS Ventures, LLC v. William M. Russell, et. al.*, 2019 MT 4N. Russell’s petition is nothing more than a rehash of his previous arguments.

For example, he claims that money advanced to him under the Loan

Agreement, (which by and large was used to pay Russell's pre-"marriage" creditors, many which had already filed suit or procured judgments against Russell), was not a loan of money but, according to Russell, part of the parties alleged joint venture. Except to parse advances made under the Loan Agreement, which he also argued in his opening brief, Russell offers no explanation of the specific facts that were overlooked, or how they were material to the decision. He simply complains about the Court's conclusion. The Court examined this issue and Russell's argument squarely and properly concluded, based on the plain language of the controlling agreements, the undisputed facts and applicable law, that the parties were not in a joint venture and that the unambiguous Loan Agreement, and the Deed of Trust are what they plainly purport to be, i.e. a loan of money secured by, among other collateral, Montana real property.

Russell cites cases from federal courts arguing that he presented enough evidence to avoid summary judgment. The lack of authority said cases have over this Court notwithstanding, there are two insurmountable problems for Russell: first, the plain language of the enforceable Prenup requires that any agreement for a joint venture contain certain specified terms and be written and signed; and second, it is an undisputed fact that there is no such written and signed agreement. Despite Russell's contortions about summary judgment, he simply cannot avoid these controlling and undisputed material facts.

Russell next argues about the lack of oral argument on KS' summary judgment motion a claim which, again, this Court analyzed in its opinion and rejected. Oral argument was scheduled, counsel for KS was present, and Russell was not. As this Court carefully explained, citing applicable law, the district court did not abuse its discretion in declining to schedule yet another oral argument. *KS Ventures, LLC v. William M. Russell, et. al.*, 2019 MT 4N, ¶¶9, 10.

It need be said: Russell is not a victim. As explained by the Arizona Court in the Annulment Decree, Mr. Russell was, prior to meeting Karen, in “difficult financial circumstances” and, “ had for some time sought a mate with substantial wealth ...” (Annulment Decree, pp. 2) Russell then met and defrauded Karen, as specifically concluded by the Annulment Court, by negotiating and executing the “Prenup”, an agreement that, unbeknownst to Karen, Mr. Russell had no intention of performing. (Annulment Decree pp. 2-3)

Conversely, relying on the Prenup (which the Arizona Court found to be an enforceable agreement), and the Loan Agreement and Deed of Trust, Karen made loans to Russell totaling almost \$2 million. After making some payments, Russell defaulted for a variety of reasons and Karen, now KS, properly foreclosed.

The undisputed facts are that loans were advanced to Russell under the Loan Agreement, Russell defaulted, KS is the holder of the loans, including specifically the Loan Agreement and Deed of Trust, and KS took action, as

allowed by law, to collect the loans and foreclose the security.

This Court properly affirmed the district court's entry of summary judgment and judgment in this collection and foreclosure action. Russell's petition for rehearing should be denied.

Respectfully submitted this 29th day of January, 2019.

By: 

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KS Ventures, LLC

CERTIFICATE OF COMPLIANCE

I certify that this brief is printed with a proportionally spaced Times new Roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect is less than 2,500 words, namely 764 words, excluding caption, certificate of compliance, and certificate of service.

DATED this 29th day of January, 2019.

By: 

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CERTIFICATE OF SERVICE

I certify that on January 29, 2019, I served a copy of the preceding document by prepaid mail on the following:

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A handwritten signature in blue ink, appearing to read "Kristina Johnson", is written over a horizontal line.

CERTIFICATE OF SERVICE

I, Martin S. King, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 01-29-2019:

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Electronically signed by Christina Johnson on behalf of Martin S. King
Dated: 01-29-2019