

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. _____

CRAIG TRACTS HOMEOWNERS'
ASSOCIATION, INC., TARA J.
CHAPMAN & MATTHEW B.
LOSEY, DONALD C. and
BEVERLY A. FRIEND, ROBERT
J. & ANDREA E. MARICICH
FAMILY TRUST, MICKELSON
INVESTMENTS, LLC, SALLIE
A. LOSEY, HEMINGWAY
PATRICK & CAROL T.
REVOCABLE LIVING TRUST,

Plaintiffs and Appellants,

v.

BROWN DRAKE, LLC,

Defendant and Appellee.

NOTICE OF APPEAL

On Appeal from the Montana First Judicial District Court,
Lewis & Clark County, The Honorable Michael F. McMahon, Presiding

APPEARANCES:

Dave Dalthorp
Scott Svee
JACKSON, MURDO & GRANT, P.C.
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Helena, MT 59601
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Counsel for Plaintiffs/Appellants

Reid J. Perkins, Esq.
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Counsel for Defendant/Appellee

Notice is given that Craig Tracts Homeowners' Association, Inc., Tara J. Chapman & Matthew B. Losey, Donald C. and Beverly A. Friend, Robert J. & Andrea E. Maricich Family Trust, Mickelson Investments, LLC, Sallie A. Losey, Hemingway Patrick & Carol T. Revocable Living Trust, the Appellants above-named and who are Plaintiffs in that cause of action filed in the First Judicial District Court, Lewis and Clark County, as Cause No. BDV 2018-1622, hereby appeal to the Supreme Court of the State of Montana from the final dispositive order, titled as a "Final Judgment," entered in such action on March 13, 2020, a copy of which is attached hereto as Exhibit A.

THE APPELLANT FURTHER CERTIFIES

1. This appeal is not subject to the mediation process required by M. R. App. P. 7.
2. This appeal is from an order granting summary judgment for the Defendants and is expressly authorized by Mont. R. App. P. 6(3)(a).
3. This is not an appeal from an order certified as final under M. R. Civ. P. 54(b).
4. A copy of this notice is being served by mailing to the clerk of the district court and to counsel of record pursuant to M. R. App. P. 4(4)(a).
5. All available transcripts of the proceedings in this case have been ordered from the court reporter contemporaneously with the filing of this notice of

appeal.

6. Included the filing fee required by statute is included with this notice.

DATED this 14th day of April, 2020.

JACKSON, MURDO & GRANT, P.C.



Dave Dalthorp
Attorneys for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Notice* was mailed, postage pre-paid, via U.S. Mail on this 14th day of April, 2020, and directed to:

Reid J. Perkins, Esq.
WORDEN THANE P.C.
P.O. Box 4747
Missoula, MT 59806-4747

By: _____



RECEIVED

MAR 17 2020

Jackson, Murdo & Grant, P.C.

FILED

MAR 16 2020

ANGIE SPARKS, Clerk of District Court
By ~~STEVE ENGL~~ Deputy Clerk

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY

CRAIG TRACTS HOMOWNERS'
ASSOCIATION, INC., TARA J.
CHAPMAN & MATTHEW B. LOSEY,
DONALD C. and BEVERLY A.
FRIEND, ROBERT J. & ANDREA E.
MARICICH FAMILY TRUST,
MICKELSON INVESTMENTS, LLC,
SALLIE A. LOSEY, HEMINGWAY
PATRICK & CAROL T. REVOCABLE
LIVING TRUST

Plaintiffs,

BROWN DRAKE LLC,

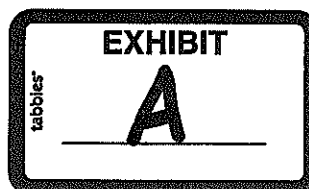
Defendant.

Cause No.BDV 2018-1622

FINAL JUDGMENT

On March 10, 2020, the Court granted Defendant Brown Drake, LLC's motion for summary judgment and denied Plaintiffs' cross motion for summary judgment. The Court having granted Brown Drake, LLC's motion for summary judgment and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

FINAL JUDGMENT



PAGE 1

1
2 1. The Court's March 10, 2020 Summary Judgment Order
3 granting Defendant's motion for summary judgment and denying Plaintiff's
4 motion for summary judgment is incorporated by reference in this final
5 judgment.

6 2. Defendant Brown Drake, LLC's real property is legally
7 described as follows:

8 Tract R3-A of C.O.S. 311107, located on the E ½ of
9 Section 3, Township 15 North, Range 3 West, P.M.
10 Montana, Lewis and Clark County. Together with a drain
11 field easement on the East side of B.N. Railroad and the
12 East side of Interstate I-15

13 Subject to all prior conveyances, leases or transfers of
14 any interest in minerals, including oil, gas and other
15 hydrocarbons.

16 (hereinafter "Property").

17 3. Defendant Brown Drake, LLC's Property is subject to the
18 Amended Covenants, dated September 29, 1984 (a copy of which was
19 attached as Exhibit B to Brown Drake, LLC's Brief in Support of Its Motion
20 for Summary Judgment) (hereinafter "Amended Covenants").

21 4. The Amended Covenants allow using any property subject to
22 the Amended Covenants for residential purposes.

23 5. Renting a property to short-term and/or long-term tenants who
24 use the property as a residence is a residential purpose.

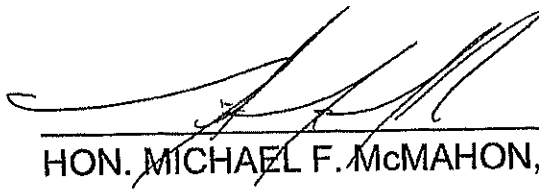
25 6. Defendant Brown Drake, LLC's renting of its Property to short-
26 term and/or long-term tenants who use the Property as a residence or
dwelling during the tenant(s)' stay at the Property does not violate the

1 Amended Covenants. Brown Drake, LLC may continue renting to short-
2 term and/or long-term tenants who use the Property as a residence or
3 dwelling. Brown Drake, LLC's owners and/or non-paying guests may also
4 continue to use the Property as a residence when they stay at the Property.

5 6. The parties shall bear their own costs and attorney fees.

6 7. This judgment is a final judgment of all matters at issue
7 between the parties in this case, and this matter is hereby closed.

8 ORDERED this 13th day of March 2020.

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HON. MICHAEL F. McMAHON, District Judge

12 cc: Dave C. Dalthorp/Scott M. Svee, 203 North Ewing, Helena, MT 59601
13 Reid J. Perkins, PO Box 4747, Missoula, MT 59806-4747
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CERTIFICATE OF SERVICE

I, David C. Dalthorp, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appeal to the following on 04-14-2020:

Scott Michael Svec (Attorney)

203 N Ewing

Helena MT 59601

Representing: Craig Tracts Homeowners' Association, Tara J. Chapman, Matthew B. Losey, Donald C. Friend, Beverly A. Friend, Robert J. & Andrea E. Maricich Family Trust, Mickelson Investments, LLC, Sallie A. Losey, Hemingway Patrick & Carol T. Revocable Living Trus

Service Method: eService

Reid J. Perkins (Attorney)

321 W. Broadway St., Ste. 300

Missoula MT 59802

Representing: Brown Drake, LLC

Service Method: eService

Electronically signed by Jodi Bell on behalf of David C. Dalthorp

Dated: 04-14-2020