

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 20-0214

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

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF ON BEHALF OF THE
COMMUNITY ASSOCIATION INTITUTE

On Appeal from the Montana First Judicial District Court, Lewis and Clark County

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The Community Association Institute (CAI) respectfully moves this Court for leave to file an *amicus curia* brief in this matter pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure. This Motion may be opposed.

I. STATEMENT OF INTEREST OF THE AMICI

The *amicus curiae* is an international organization dedicated to providing information, education, resources and advocacy for community association leaders, members and professionals with the intent of promoting successful communities through effective, responsible governance and management. CAI's more than 42,000 members include homeowners, board members, association managers, community management firms, and other professionals who provide services to community associations. CAI is the largest organization of its kind, serving more than 73.5 million homeowners who live in more than 347,000 community associations in the United States.

The CAI has 25 official members in the State of Montana. Those members include community associations (HOAs, COAs, POAs and the like), property management companies and various partner businesses (for example, law firms.) The community associations include both small and large associations, which total thousands of members. The property management companies represent hundreds of property owners and dozens of owner's associations. Our business partner serve hundreds of community associations. Therefore, through those 25 members, the CAI's membership includes and benefits thousands of people living in Montana.

II. REASONS THAT AN *AMICUS* BRIEF WOULD BENEFIT THIS CASE

This lawsuit involves a legal issue that affects almost all of the members of the CAI. The Plaintiffs/Appellants are both the Owner's Association and individual owners living and owning

property within the Craig Tract Homeowner's Association (referred to as the "Association" and the "Owners" respectively). The Defendant/Appellee Brown Drake, LLC (Brown Drake) is also an owner in the Association. Brown Drake was leasing its property as a short-term vacation rental. To summarize the legal issue, it is whether fairly standard "no commercial use allowed" language found in the Association Covenants prevented Brown Drake from using their property as vacation rental. The District Court determined that short term rental use is a residential use, not a commercial use. Because of the very general nature of the District Court's decision, this decision, and potentially the Montana Supreme Court's decision, could be applied to almost all community associations in Montana, as the "no commercial use" language was commonly used throughout Montana Covenants.

While this is an issue of first impression for the Montana Supreme Court, this legal issue (whether vacation rentals are a commercial use that is prohibited by general "no commercial use" language in Covenants) has been addressed by many different States in the United States. The CAI has filed *amicus* briefs in some of those other state Supreme Court cases. The CAI is uniquely situated to discuss other state's legal decisions over the years and the recent changes in how Courts are approaching this issue in the past few years. This was not addressed by either the party in the underlying summary judgment briefs.

Furthermore, the CAI is aware of at least two District Court cases that are addressing this same issue, for which CAI is providing support or is monitoring on behalf of its membership. One is *Palisades Properties Property Owners Asso. v. Eric and Robin Hogan*, Cause No. DV-18-66 in the Twenty-Second Judicial District Court, Carbon County. Another is *TOK Park Subdivision HOA, Inc. v. Steven and Gayle Muggli*, Cause No. DV-19-1320-DK (Hon Michael McMahon) in the First District Court, Lewis and Clark County. The CAI is aware of a number

of other associations that are contemplating filing lawsuits to enforce their own “no commercial use” language to prohibit vacation rentals. Because of the CAI’s experience, it can more globally inform the Court of the CAI’s understanding of the issues that lead their association members file these lawsuits to prohibit vacation rentals and the legal analysis behind those lawsuits.

The CAI respectfully submits that it can provide a unique perspective to the Court about the issue of vacation rental and whether or not vacation rentals comprise a commercial use. This is a legal issue that has the potential to affect thousands of Montana community associations, particularly now that community associations are barred from amending their documents to prohibit vacation rentals and apply that ban to current bad acting owners who did not vote for the amendment. (See M.C.A. § 70-17-901)

III. CAI WILL FILE A BRIEF IN SUPPORT OF THE PLAINTIFF/APPELLANT

Accordingly, the CAI respectfully requests that the court grant this motion and permit them to appear in support of the position of the Owners and the Association. The Owners and the Association does not object to the CAI’s motion.

IV. PARTIES OBJECTIONS

Counsel has contacted counsel for Brown Drake and Brown Drake may oppose this motion. Counsel stated that he needed to talk to his clients after this motion was filed.

CERTIFICATE OF SERVICE

I, Alanah Noel Griffith, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 06-24-2020:

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Electronically Signed By: Alanah Noel Griffith
Dated: 06-24-2020