

ORIGINAL

FILED

09/15/2021

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 21-0343

Ian Elliot  
2512 Golden Blvd.  
Billings, MT 59102  
Appellant in Pro Se

IN THE SUPREME COURT OF THE STATE OF MONTANA  
Case No. DA 21-0343

Ian Elliot \_\_\_\_\_,

Appellant

v.

Joseph Womack and Cindy Elliot,

Appellees.

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Clerk of Supreme Court  
State of Montana

**APPELLANT' EMERGENCY MOTION FOR INJUNCTIVE RELIEF  
OR STAY DISTRICT COURT ORDER PENDING APPEAL**

Appellant Ian Elliot (Ian) respectfully submits this motion requesting an immediate relief or stay district court's property sale order pending appeal. (Ian also filed a petition of writs for the same immediate relief) Ian has contacted the opposing counsels who have stated that they will oppose this motion.

**FACTUAL BACKGROUND**

**A. Ada's Estate and Starfire Has Simple Assets and Operation Expenses**

Attorney Joseph Womack was Court appointed as Ada Elliot Estate's Special Administrator by the recommendation from one of the Estate's beneficiary Cindy Elliot (Cindy) on 5/29/19. Neither Womack nor Cindy's counsels challenged or

denied Ian's statements that Womack has close relationship with Cindy's counsels.

Ada's estate had less than \$500 cash balance in her personal bank accounts, less than \$11,000 monetary assets in her life insurance and investment funds. Ada's valuable assets were her 96.34% limited partnership interest in her family company Starfire L.P.. Ada's two heirs Cindy and Ian were the General and Limited Partner.

Starfire had real property of 230-240 acres land including 2 houses, and 2 separate building sites. Starfire leased/rented its properties and received around \$60,000 annual income. Starfire's operation management requires payment of 6 annual bills totaling \$25,000-\$30,000 with occasional property maintenance (which varies). Starfire's tenants were responsible to pay utilities and maintain the grounds prior to Ada's death.

**B. Womack Secured His Appointment as Starfire's Liquidating Partner With Cindy's Assistance**

Immediately after Womack's appointment, he sought and obtained District Court's order to release the restriction on his authority to terminate the pending litigation. Womack then settled with Cindy and requested Federal Court to dismiss Estate's claims against Cindy with prejudice for the stated reason to save litigation expenses. The Federal Court requested to see and compare his accounting with a forensic accounting conducted by Ian.

Newly obtained information after the District Court's 4/22 hearing indicates that immediately after Womack's appointment, Womack and Cindy's counsel

Joseph Soueidi planned to setup Womack's appointment as Starfire's liquidating partner in a Starfire meeting. They planed to "force him [Ian] show up and to give us [Womack and Soueidi] an argument the meeting is valid and bounding...". (Doc 163, exhibit A)

Womack was appointed as Starfire's liquidating partner by a District Court order to grant Womack's motion to enforce a claimed oral agreement by Womack and Cindy. (Doc. 79) Cindy and her counsel acted as Womack's witnesses claiming Ian orally agreed Womack's appointment in a partnership meeting.

Womack has about \$200,000 cash for his administration for 1.5 years. He claims he needs close to \$1 million additional funding for his administration. Ian oppose. Their conflicts have become more antagonistic during the last year.

## ARGUMENT

According to U.S. Supreme Court,

"In ruling on a stay motion, we are guided by four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009)

A short analysis applying each of these factors supports this motion.

### **A. Ian Is Likely to Succeed on the Merits of Appeal**

1. The District Court Erred In Determining There Was No Misrepresentations Regarding Womack's Claim of An Agreement To Appoint Him As Starfire's Liquidating Partner

Newly obtained information indicates that Womack and Cindy's counsel Joe Soueidi colluded to setup Womack's appointment. Whether Womack obtained his appointment through collusion and misrepresentation needs to be re-examined.

2. The Court Erred In Granting Womack's Motion to Liquidate And Sell Starfire's Real Properties Instead of Enforcing In-Kind Distribution

Montana law MCA 72-3-902 explicitly requires "a descendant's assets must distribute in-kind to the extent possible". This is a material fact in deciding the issues or matters at hand. Womack's inserting the unnecessary process of Starfire's dissolution and liquidation into a simple estate's administration and distribution, has artificially caused additional conflicts and controversies, substantially increased his service charges to Starfire and the Estate.

3. The Court Erred In Denying Ian's request for a Jury Trial in Fact-Findings and Not Allowing a Formal Discovery

Ian has the right for a jury trial concerning Womack's alleged collusion and misrepresentations, which are legal issues despite the estate case being initiated as an equity case. *State v. Real Property Owned By Chiliski*, 2016 MT 280, ¶9, 385 Mont. 249, 383 P.3d 236.

The District Court's 4/22/2021 fact finding endorsed Womack's words against Ian's words. Ian was prejudiced in the 4/22 court hearing without the Court order having a formal discovery.

**B. Ian and the Estate Will Be Irreparably Injured Absent Injunctive Relief**

Starfire's 2 houses are in the most desirable location of Starfire's remaining properties. The sale of Starfire's 2 houses will leave the remainder of Starfire's properties with limited access to the outside roads and shall substantially reduce the remaining properties development potential. For generations, the Ecton family worked hard to keep their farm and resisted selling it for cash even during the Great Depression. The Court forced-sale deprives Ada's heir's property rights.

### **C. The Estate, Starfire, and Cindy Will Not Be Injured In a Stay**

Ian proposed that Ian and Cindy work together to produce a joint preliminary capital account report to save accounting expenses. There is no evidence that this cannot be done. If the Court orders Ian and Cindy to produce one, they must do so, or they will be held in contempt of a Court order. Cindy and Ian's Joint report is more reliable because it is based on what they mutually agree upon.

Gallatin County is a desirable location in Montana and its property values have continued to rise. Womack's reasoning that the Starfire properties will lose value if not sold right now is unfounded. The property appreciation is a long term trend. It is caused by population growth contrasted to the available land for development, the increased labor and building material cost, the inflation trend, the government regulation, etc.

Even if there might be a short-term decline in property prices, the heirs should have the right to keep their family ranch houses and farmland for generations for

long-term economic security and emotional benefits instead of a short-term, one-time shot. It was also Cindy and Ian's wish to distribute one house in kind to each other prior to Womack's appointment.

**D. A Temporary Injunctive Relief Will Serve The Public Interest**

The importance of the Court to make serious further inquiries pending appeal cannot be overstated. Otherwise, it will set a dangerous precedent for some court appointed officers to continue their predatory practice of taking advantage of probate family members' disputes, to deprive heirs of their property rights. This may cause many Montana families to lose their generations of family ranch, farmland and other properties.

**CONCLUSION**

For the forgoing reasons, Ian prays this Court to grant Ian's motion for an immediate relief of the District Court's Court orders.

**DECLARATION**

I declare under penalty of perjury that the information I set forth herein is true and correct to the best of my knowledge.

DATED: 9/14/2021

  
\_\_\_\_\_  
Ian Elliot, Appellant in Pro Se

## CERTIFICATE OF COMPLIANCE

I certify that this Petition comply with Rule 16(3) of the Montana Rules of Appellate Procedure, the word count by WPS Write is 1,237 which does not exceed 1,250 words, excluding certificate of service, and certificate of compliance.

DATED: 9/14/2021



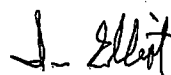
Ian Elliot, Appellant in Pro Se

## AFFIDAVIT OF SERVICE

I certify that on the 14th day of September, 2021, I served a true copy of this document, via Email or USPS First Class Mail, addressed to:

Michael Manning  
mmanning@rmkfirm.com

Jeseph Soueidi, Felt Martin PC  
2825 3rd Ave. N., Suite 100, Billings, MT 59101



Ian Elliot, Appellant in Pro Se