

ORIGINAL

FILED

10/11/2022

DA 22-0487

Duane R. Bender
(your name)
P.O. Box 31553
(your street address)
Billings MT 59107
(city, state, zip code)
406-698-3322
(your phone number)

CLERK OF THE DISTRICT COURT
TERRY HALPIN
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 22-0487

FILED

OCT 11 2022

Bowen Greenwood
Clerk of Supreme Court
State of Montana

2022 OCT -7 P 2:48

FILED

BY DEPUTY

MONTANA 13th JUDICIAL DISTRICT COURT,
(number of district in which your county is located)
Yellowstone COUNTY
(name of your county)

~~Duane R. Bender & Rebecca~~
Estates LLC
Plaintiff,

vs.
Stacey Rosman & John Does 1-10

Defendant.

Your Case No. DV-2018-1433

MOTION FOR ~~Montana Supreme Court~~
(name of your motion describing what you want the Court to do)

Hearing of Stay of Execution of
Judgment without Bond

I, Duane R. Bender, respectfully request that the Court enter an Order
(print your full name)
that does the following Have a Hearing to approve a Stay of Execution
of Judgment for the above Case without Bond to be Ordered
by the Montana Supreme Court.

BECAUSE See the following attached pages of explanation

I am seeking relief by the Montana Supreme Court from the Ordered dated September 27, 2022, by the Montana 13th Judicial District Court. I had requested a Motion and a Hearing for the Stay of Execution of Judgment and waiver of Bond. Both were denied by Judge Davies.

I am 76 years old and in poor health. The opposing Attorney David Knobel is in a hurry to enforce the Judgment and sell everything I have worked for all my life before there is a decision made on this Appeal by the Montana Supreme Court. Mr. Knobel contends that this Case is all about the money. It is not. It is about the Real Estate Rules to purchase property that were wrongly executed in the Mediation.

I went to the Mediation to get Mr. Rosman to remove his garage and equipment off my property. I did not approve of the Mediator, but was told I did not have the choice to get someone else. The Mediator said Mr. Rosman would not agree to the removal of anything. I was to give three options of what I would agree to which was: 1. I will pay \$2,500 to Rosman to remove the shed and his equipment. The Case would be over: 2. I will pay \$70,000 for Rosman's property because they will not get an actual bank appraisal. They only paid \$62,000 for the property, so I would be giving them a profit: 3. Rosman would purchase my trailer park for \$225,000. The income revenue is \$36,000 a year. At a 10% cap rate, the selling price should be: \$360,000.

The Mediator came back and said, "Buying the Trailer Court was out. Removing the stuff was out. They would work with me on buying Rosman's house. They had an appraisal of \$202,000." We went back and forth several times until I thought we had settled on \$170,000. But then the Mediator added "or the highest appraisal". When I said "No". The Mediator said, "You have to sign. You are not leaving this room until you sign the Mediation Agreement." I said, "I am not going to sign, until I see the house." The Mediator said, "That is not going to happen."

Since the Mediator was pounding his index finger on the paper and would not let me leave, I signed the Mediation Agreement under duress. When the Mediator was walking out of the room, he asked what I thought. I said I feel like I've been blackmailed. The Mediator smiled and said, "But it's legal blackmail."

The next day I told my attorney that this is not right. I do not want to purchase Rosman's property. Cancel that Mediation Agreement. My attorney refused to do that. During this whole mediation process I was never given the choice to leave and take Rosman's encroachment on my property to the Jury Trial that was already scheduled.

To grant the Judgment or require that I obtain a Bond before the details of this Case has been presented in the Appeal is premature. The owner, Stacey Rosman, still owns this property. He has the right to sell it now for the \$202,000 he was asking from me, but it was destroyed in the fire and now worth \$30,000. It is wrong and discriminatory to expect me to pay the \$202,000 when anyone else will purchase Rosman's property for what it is really worth, the \$30,000.

The bond will be over \$30,000. I am 76 years old and will never be able to re-coop that money. All the bond does is guarantee the opposing party can collect the money for the Judgment if he wins the case. If the Appeal is in my favor, the Bond money is not returned. It is gone forever. This has caused a great deal of unnecessary stress and hardship on me. There is no reason for a bond at this time as the case is not near the end but just beginning. This Appeal is a continuance of all the facts and details which need to be considered before the Judgment or Bond is demanded of me. That is why I am seeking relief from the Montana Supreme Court for that Order.

Brief for Motion submitted to Montana 13 Judicial District Court

This Brief is in response to Attorney Knobel's counterclaim to Duane R. Bender's Motion for Stay of Execution of Judgment on Cause No. DV 18-1433.

This Cause will be reviewed in an Appeal before the Supreme Court of the State of Montana which includes many discrepancies including the exaggerated amount of the Judgment. This Appeal has been accepted by the Supreme Court of Montana and is in progress right now.

Attorney's Fees: The Mediation Agreement has conflicting sentences. Paragraph 3 the prevailing party shall be entitled to attorney's fees. Paragraph 5 each party is to bear their own attorney's fees. There is also the question of Mr. Knobel's exorbitant attorney's fees which totaled 61,445.00, September 12, 2022. Mr. Bender's expenses to date are \$28,800.00 for this same case. Plus, this Judgment is leaving Attorney's fees open ended by providing for all future expenses by Mr. Knobel as he is projecting an additional cost of \$32,000 even if he does not perform those duties. At this time there is no prevailing party for attorney's fees as there is still a dispute to various conflicts of interest in this Judgment. Attorney's fees should not be awarded at this time.

Attorney Knobel continually refers back to the Mediation Settlement. There is no reference to Interest being charged or the details of such as 7.75% is extremely high. Interest was never discussed or agreed to by both parties at any time during these proceedings. Charging interest should not be allowed in this Judgment.

Judge Davies stated that she was following Real Estate Rules. A Purchase Price has to be agreed to by both parties before there can be a real estate closing. There has been no agreement between the two parties for a purchase price nor was any Earnest Money given by Mr. Bender. There can be no closing scheduled for this property. The Seller cannot force the Buyer to purchase his property if the Buyer has not agreed to the Seller's price. Nor can any other third party insist the Buyer purchase the property from the Seller when the purchase price is not agreeable.

The Mediation Settlement states there will be an Appraisal paid by Duane Bender. Mr. Bender was to hire the Appraiser, but instead Mr. Rosman hired his own Appraiser to represent him and his price of \$202,000. When Mr. Bender's Appraiser Kyle Williams called Mr. Rosman for an appointment, his calls were never returned by Mr. Rosman. Mr. Williams was refused entrance to the property by the owner Stacey Rosman. The Buyer, Mr. Bender, was not represented with his price of \$170,000.00. This is an extreme difference of \$32,000. Since neither the Seller or the Buyer wanted to negotiate the price, this sale is null and void. The Mediation Settlement should have been dissolved at that time also.

On July 7, 2022, Mr. Rosman's house was destroyed by fire. He collected \$177,000.00 from the Insurance Company. The Insurance Company's Inspector states the house cannot be repaired. The property is now valued at \$30,000. But Judge Davies still placed the value of the property at \$202,000 in the Judgment. That is \$172,000.00 over the existing value of this property. Duane Bender offered the \$30,000.00 to purchase the property. Mr. Rosman refused. Since Mr. Rosman accepted the Insurance monies, this raises the question of fraud and extortion by Mr. Rosman for insisting Mr. Bender still pay the original price of \$202,000.00 when he already collected \$177,000.00 from his insurance company for the fire. The second question is why does the Court or Mr. Rosman not acknowledge the fact the value of this property has changed. In a Real Estate Buy Sell, the destruction of the property would constitute a whole new Buy Sell Agreement with a different price and set of conditions.

Judge Davies stated at a hearing that she would not allow Mr. Rosman the \$202,000.00 purchase price as he had already collected \$177,000.00 from the insurance company. Judge Davies stated Mr. Rosman could not collect monies twice on the same property.

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But in the Judgment, Judge Davies contradicted herself and did award the \$202,000.00 as the value of the property. Judge Davies never stated in the Judgment that Mr. Rosman had already collected \$177,000 from the insurance company for the fire.

There are many conflicts of interest to the Mediation Settlement and to the purchase of Mr. Rosman's property. Mostly there was not an agreed to purchase price, not being able to use Mr. Bender's Appraiser but having to pay for Mr. Rosman's appraiser, the fact the house burned down giving Mr. Rosman a sizeable settlement and making this property now worth \$30,000 not the \$202,000.00. Charging interest was never in writing or agreed to by Mr. Bender. Mr. Bender was not given the opportunity to oppose Attorney Knobel's fees as he was rushed to the Deaconess Emergency Room that day just before the Court Hearing. Mr. Bender had Heart A-fib and high Blood pressure of 205/115. Mr. Bender was not released until after 10:30 that night. Mr. Bender is not a well person. His Medical Records from Billings Deaconess Hospital and Clinic from 2017 to the present are contained in 3 reams of paper, which is 1,500+ sheets. The Attorney's Fees were presented in a Civil Court not a Criminal Court. Attorney Knobel has incriminated Mr. Bender by suggesting Mr. Bender was involved in the house fire, which has not been proven. If this was the case that the Sheriffs were there to arrest Mr. Bender, then this is cause for entrapment in Judge Davies Court Room. Mr. Bender was sitting in the hall outside the Court Room where these Sheriffs could have arrested him.

There is no bond required from Civil Court to District Court. This same consideration can be given from the District Court to the Supreme Court. A Bond is to be issued to secure payment or performance. The payment for Mr. Rosman's property was never completed nor was the performance of Earnest Monies ever given by Mr. Bender. There has to be Earnest Monies in order to complete the purchase transaction. There is no reason for Mr. Bender to provide a bond as Mr. Rosman still owns this property and has every right to sell his property to someone else as this real estate deal has fallen

through. When this happens in any real estate purchase, the Seller is not entitled to extra compensation by the Buyer except for the Earnest Money, which none was given. The only purpose of this Bond is to guarantee Mr. Rosman collects monies from Mr. Bender which he is not entitled to.

The outcome of this disagreement will be determined by the Appeal currently in the Supreme Court of Montana. That is why I, Duane Bender, is requesting this Stay of Execution of Judgment without Bond.

Duane R. Bender
(your name)
P.O. Box 31553
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406-698-3322
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CLERK OF THE
DISTRICT COURT
TERRY HALPIN
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DEPUTY

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(number of district in which your county is located)
Yellowstone COUNTY
(name of your county)

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Estates LLC

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vs.

Stacey Rosman & John Does 1-10

Defendant.

Your Case No. DV-2018-1433

AFFIDAVIT

I, Duane R. Bender, swear (or affirm) under oath that:
(print your name)

all matters contained here in are true and correct.

See the attached pages of explanation.

Since the Complaint concerns the purchase of real estate, action
on the above Judgment or Bond should not be performed until a
final Order is made by the Montana Supreme Court on the Appeal.

I am requesting a Stay of Execution of Judgment with out Bond.

I am seeking relief by the Montana Supreme Court from the Ordered dated September 27, 2022, by the Montana 13th Judicial District Court. I had requested a Motion and a Hearing for the Stay of Execution of Judgment and waiver of Bond. Both were denied by Judge Davies.

I am 76 years old and in poor health. The opposing Attorney David Knobel is in a hurry to enforce the Judgment and sell everything I have worked for all my life before there is a decision made on this Appeal by the Montana Supreme Court. Mr. Knobel contends that this Case is all about the money. It is not. It is about the Real Estate Rules to purchase property that were wrongly executed in the Mediation.

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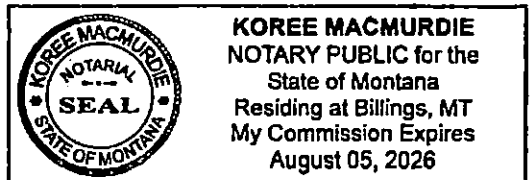
The outcome of this disagreement will be determined by the Appeal currently in the Supreme Court of Montana. That is why I, Duane Bender, is requesting this Stay of Execution of Judgment without Bond.

DATED this 7 day of October, 2022
(date) (month) (year)

Duane R Bender
(Your signature)

State of Montana
County of Yellowstone

SIGNED AND SWORN (OR AFFIRMED) to before me on October 7, 2022
by Duane R. Bender.



Koree MacMurdie
Notary Public for the State of Montana
Printed name of notary Koree MacMurdie
Title or rank: Notary Public
Residing at Billings, MT
My Commission Expires: Aug. 5, 2026

Duane R. Bender
Your name
P.O. Box 31553
Your mailing address
Billings MT 59107
City State Zip
406-698-3322
Your phone number

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

2022 OCT -7 P 2:48

FILED

BY DEPUTY

Montana 13th Judicial District Court

Number of the judicial district where you are filing

Yellowstone

County

Name of the county where you are filing

Duane R. Bender & Rebecca
Estates Plaintiff

VS

Stacey Rosman & John Does 1-10
Defendant

Cause No. DV-2018-1433

CERTIFICATE OF SERVICE

I, Duane R. Bender, swear (or affirm) under oath that:
(print your name)

I served a copy of the attached Motion, Affidavit, &

Certificate of Service

(name of each of the documents that you filed in Court)

upon Attorney David F. Knobel for Stacey Rosman

(name of the opposing party)

on 7 day of October, 2022,
(date) (month) (year)

by

mailing a true and correct copy with postage prepaid and addressed as follows:
David F. Knobel, Crowley Fleck, PO Box 2529, Billings MT 59103

David F. Knobel of Crowley Fleck

(opposing party's name or name of opposing party's attorney, if he/she has one)

P.O. Box 2529

(opposing party's mailing address or mailing address of his/her attorney)

Billings MT 59103

(city, state, zip code)

hand delivering a true and correct copy to:

Clerk of the District Court, Terry Halpin, Yellowstone

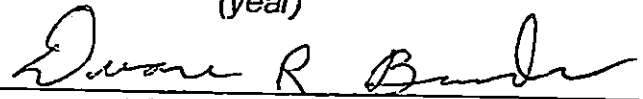
County Court House, 7th Floor, Billings MT

DATED this 7 day of October, 2022.

(date)

(month)

(year)



(Your signature)