

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 23-_____

JOSHUA T. PATTERSON a/k/a JOSH
PATTERSON, as an individual and d/b/a
PATTERSON ENTERPRISES, INC., also
d/b/a ROCKY MOUNTAIN EQUIPMENT,
INC., p/k/a ROCKY MOUNTAIN JCB,
INC., also d/b/a ROCKY MOUNTAIN
RENTAL SPECIALISTS, LLC, also d/b/a
ROCKY MOUNTAIN EQUIPMENT also
d/b/a ROCKY MOUNTAIN RENTAL, also
d/b/a ROCKY MOUNTAIN EQUIPMENT
OF MISSOULA MONTANA,

Defendants/Appellants,

vs.

ADAM PUMMILL, an individual, and
ADAM PUMMILL and KURTIS
ROBERTSON as a member of Black Gold
Enterprises, LLC, members of, and on
behalf of BLACK GOLD ENTERPRISES,
LLC,

Plaintiffs/Appellees.

NOTICE OF APPEAL

On Appeal from the Fourth Judicial District Court, Missoula County
Cause No. DV-18-1450
The Honorable John W. Larson, Presiding

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NOTICE IS HEREBY GIVEN that Joshua T. Patterson et al., Appellants in the above-named cause of action and the Defendants in the cause of action filed in the Montana Fourth Judicial District, in and for the County of Missoula as Cause No. DV-18-1450, hereby appeal to the Supreme Court of the State of Montana from the Order Granting Receiver's Motion for Summary Judgment Regarding Fixture Filing and Denying Defendant's Motion to Alter or Amend the Court's March 8, 2023 Order and Stay Dispersal of Funds, attached as Exhibit A.

Pursuant to Mont. R. App. 4, Appellants certify that:

1. This appeal is subject to the mediation process required by Mont. R. App. P. 7. The money judgment being sought is not less than \$5,000.
2. This appeal is not an appeal from an order certified as final under Mont. R. Civ. P. 54(b).
3. No notice to the Montana Attorney General is required under Mont. R. App. P. 27 because Appellants are not challenging the constitutionality of any act of the Montana legislature.

4. That included herewith is the filing fee prescribed by statute.

5. That a copy of this Notice of Appeal has been served on the clerk of the Fourth Judicial District Court, Missoula County and served on all counsel of record.

DATED this 4th day of May, 2023.

BROWN LAW FIRM, P.C.

/s/ Shane A. MacIntyre

Shane A. MacIntyre

Robert L. Sterup

Attorneys for Defendants/Appellants

1 John W. Larson, District Judge
2 Fourth Judicial District Dept. 3
3 Missoula County Courthouse
4 Missoula, MT 59802
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6 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

7 ADAM PUMMILL, as an individual,
8 and ADAM PUMMILL and KURTIS
9 ROBERTSON as a member of
10 Black Gold Enterprises, LLC,
11 members of, and on behalf of,
12 BLACK GOLD ENTERPRISES,
13 LLC,

14 Plaintiffs,

15 vs.

16 JOSHUA T. PATTERSON a/k/a
17 JOSH PATTERSON, as an
18 individual and d/b/a
19 PATTERSON ENTERPRISES,
20 INC., also d/b/a ROCKY
21 MOUNTAIN EQUIPMENT, INC.,
22 f/k/a ROCKY MOUNTAIN JCB,
23 INC., also d/b/a ROCKY
24 MOUNTAIN RENTAL
25 SPECIALISTS, LLC, also d/b/a
26 ROCKY MOUNTAIN EQUIPMENT
also d/b/a ROCKY MOUNTAIN
RENTAL, also d/b/a ROCKY
MOUNTAIN EQUIPMENT OF
MISSOULA MONTANA,

Defendants.

Dept. 3

Cause No. DV-18-1450

**ORDER GRANTING RECEIVER'S MOTION FOR SUMMARY JUDGMENT
REGARDING FIXTURE FILING AND
DENYING DEFENDANT'S MOTION TO ALTER OR AMEND THE COURT'S
MARCH 8, 2023 ORDER AND STAY DISPERSAL OF FUNDS**

1 Before the Court is the Receiver's outstanding Motion for Summary
2 Judgment Regarding Fixture Filing and Defendant's Motion to Alter or Amend
3 the Court's March 8, 2023, Order and Stay Dispersal of Funds to St. Peter or
4 Galipeau. The matters are fully briefed and ready for decision.
5

6 **BACKGROUND**

7 The Court finds the facts relevant to the above motions as the following.
8
9 Between December 2016 and August 2017, Defendant Patterson met with
10 Plaintiff Pummill to enter into a loan agreement between Black Gold and
11 Defendant Rocky Mountain Equipment. The loan agreement encumbered the
12 Black Gold Property. In August 2017, Defendant Patterson filed the loan
13 agreement with the Missoula County Clerk Recorder's Office. The loan
14 agreement was signed by Defendant Patterson in his capacity as Lender, and
15 Plaintiff Pummill on behalf of Black Gold. Plaintiff Robertson did not sign the
16 agreement. The Receiver argues that the loan between Rocky Mountain
17 Equipment and Black Gold is invalid because it did not have consent of all
18 members of Black Gold, and Defendant Patterson had actual knowledge of
19 Black Gold's restriction on manager authority.
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23 On April 29, 2020, the Receiver filed a Motion for Summary Judgment
24 seeking the Court declare Patterson's lien invalid. Dkt. 157. The Court held a
25 hearing on June 17, 2020, and did not hear specific argument on the issue but
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1 allowed Patterson to file an offer of proof as to the testimony and exhibits he
2 sought to introduce on the issue. On June 29, 2020, Patterson also filed a
3 Cross-Motion for Summary Judgment further addressing the substantive
4 merits of the lien. On July 19, 2020, Defendants filed a Motion for Leave to
5 File Supplemental Evidence regarding the validity of the lien, and the Court
6 allowed the motion. Receiver now requests judgment on the basis that the
7 loan was not undertaken in the ordinary course of Black Gold's business, and
8 was not consented unanimously by the Black Gold's members, violating
9 Section 10.2 of the LLC's Operating Agreement. Receiver asserts the loan is
10 invalid pursuant to Mont. Code Ann. § 35-8-301(4), rendering the lien on the
11 real property also invalid.
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15 Receiver filed his Motion for Court Approval of Professional Fees. Dkt. #
16 334. Defendants filed their Response to Receiver's Motion for Court Approval
17 of Professional Fees on August 29, 2022. Dkt. # 339. Receiver filed his Reply
18 in Support of Motion. Dkt. # 346. The Court received post-hearing briefs on
19 the matter and on March 9, 2023, the Court filed its Order Allowing
20 Professional Fees. In a matter that relates to the validity of the lien,
21 Defendants Joshua Patterson, et al. ("Patterson") now request that the Court
22 alter or amend its March 7, 2023, Order Allowing Professional Fees to remove
23 the portion of the Order that directs that Don C. St. Peter's and Jim Galipeau's
24 Fees be paid from the funds deposited with the Court from the sale of Black
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1 Gold Enterprises' (BGE) real property. Patterson also requests that the Court
2 direct the Clerk of Court not to disperse the funds at issue until ruling on the
3 validity of Patterson's underlying lien.

4 **STANDARDS**

5 Summary judgment is proper only when there is no genuine issue of
6 material fact and the moving party is entitled to judgment as a matter of law.
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8 M. R. Civ. P. 56(c)(3).

9 Motions to alter or amend a final order or judgment may be filed within
10 28 days of the issuance of the order or judgment. See M.R.Civ.P. 59(e).

11 Order or judgments may be altered on four bases: " 1) to correct manifest
12 errors of law or fact upon which the judgment was based; 2) to raise newly
13 discovered or previously unavailable evidence; 3) to prevent manifest injustice
14 resulting from, among other things, serious misconduct of counsel; or 4) to
15 bring to the court's attention an intervening change in controlling law." *Nelson*
16 *v. Driscoll*, 285 Mont. 355, 360, 948 P.2d 256, 259 (1997)

17 **DISCUSSION**

18 **I. Receiver's Motion for Summary Judgment Regarding Fixture Filing**

19 The Receiver argues that the loan at issue included a provision in which
20 the Property was used as security, and because the loan involved the
21 encumbrance of an asset, unanimous consent from all members of Black Gold
22 was required. The Receiver further argues that Black Gold never agreed to a
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security agreement which would give rise to a valid lien filing.

1 Defendants respond that the Loan Agreement is not subject to Section
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3 10.2, requiring unanimous consent of the LLC, because the section only
4 applies to encumbrances of assets outside the ordinary course of business.
5 Defendants assert there are genuine issues of material fact regarding whether
6 the Loan Agreements were outside the ordinary course of BGE's business.
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8 Defendants argue that entering a loan agreement can be within an LLC's
9 ordinary course of business. *See Lynes v. Helm*, 2007 MT 226, ¶¶ 23-24, 339
10 Mont. 120, 168 P.3d 651. Defendants argue that Loan Agreement was
11 entered into to fund improvements to the Premises, were within the ordinary
12 course of BGE's business, creating a genuine issue of material fact regarding
13 whether these Loan Agreements were within the ordinary course of business
14 and subject to Section 10.2. Defendants also argue that Robertson did not
15 sign the Loan Agreement but the Operating Agreement does not require that a
16 member's consent be expressed in writing. ROA 378, Def. Response, Exh. 5.
17 Further, Defendants contend that Robertson voluntarily accepted Patterson's
18 entities' contributions to improve the Premises, which underlying Loan
19 Agreements, and such a voluntary acceptance constitutes consent under
20 Montana law. *See* § 28-2-503(2), MCA.
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25 The Receiver replies that the question of whether or not an action
26 undertaken by a corporation is outside of its "ordinary course of business," is a

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1 question of law, not a question of fact, which is appropriate for this Court to
2 determine on summary judgment. *Union Bank v. Wolas*, 501 U.S. 151, 153
3 (1991). The Receiver argues that entering a loan secured by Black Gold's
4 real property cannot be taken in the ordinary course of Black Gold's business.

5 A valid lien under Montana law must be either be agreement or by
6 operation of law. M.C.A. § 71-3-102. Section 10.2 of Black Gold's operating
7 agreement states:
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9 10.2 Acts Beyond Powers of Member. No member may, without
10 unanimous consent:

11 (a) dispose of the goodwill of the Limited Liability Company or convey,
12 encumber, or lease any other asset of the business outside the ordinary
13 course of business.

14 Receiver MSJ re Fixture Filing, Exh. 1. Here, Defendant Patterson filed the
15 Loan with the Missoula County Clerk and Recorder's Office in August 2017.
16 ROA #157, Receiver Motion, Exh. 2. The terms of the Loan intended for the
17 Property to be used as security. Exh. 2, p. 2. Plaintiff Robertson Affidavit
18 provides Robertson never consented to the alleged loans between Black Gold
19 and Defendant Rocky Mountain Equipment. Dkt. 158. The Loan is the basis
20 for the lien against the Property and the Loan was not consented to by all
21 members of Black Gold. This Court has determined that encumbering the
22 asset of the LLC was undertaken outside the ordinary course of Black Gold's
23 business, and unanimous consent of all Black Gold's members was required.
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Given Plaintiff Robertson's lack of consent to the loan, both the lien and the

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1 loan upon which it is based are invalid. The Court has determined that no
2 genuine issues of material fact exist, and the Receiver is entitled to summary
3 judgment invalidating the lien on the Property and the loan. Accordingly,

4 IT IS HEREBY ORDERED that the Receiver's Motion for Summary
5 Judgment Regarding Fixture Filings is GRANTED and Defendants' Cross
6 Motion for Summary Judgment on the same lien issue is DENIED.
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8 **II. Defendants Patterson Motion to Alter or Amend**

9 Defendants Patterson argue that the Court should alter its order to
10 remove the instruction that St. Peter's and Galipeau's fees be paid from the
11 funds deposited with the Court on July 24, 2022, because it is necessary to
12 prevent manifest injustice. Defendants Patterson argue that the first time St.
13 Peter and Galipeau raised the issue of where their fees should be paid was in
14 the recently filed March 1, 2023, Affidavits. See St. Peter Aff., ¶ 7; Galipeau
15 Aff., ¶ 10. Defendants assert that the issue was not raised in any of their prior
16 filings; rather, all of the briefing was about the amount of their fees. See,
17 *generally*, Dkt. 334, Dkt. 346; Dkt. 363. Defendants Patterson contend it
18 would constitute manifest injustice to allow their fees to be paid out of these
19 funds, depleting the vast majority of the funds, without Patterson having the
20 opportunity to respond to it. Defendants Patterson argue that in addition to the
21 injustice attributable to that procedural issue, there is a substantive injustice as
22 the Order provides, "[p]ayment of these fess shall be made by the Clerk of
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1 Court from the \$312,833.63 funds deposited with this Court on July 14,
2 20122.” Dkt. 373. Defendants Patterson argue that the \$312,833.63 in funds
3 that the Court references in the Order are the proceeds from the sale of real
4 property previously owned by BGE. Dkt. 324. Defendants Patterson contend
5 that when St. Peter and Galipeau requested leave to deposit those funds with
6 the Court, and when the Court granted said leave, they did so explicitly for the
7 purpose of holding them until the Court issues a determination on Patterson’s
8 lien on BGE’s real property that Galipeau sold. See Dkt. 324, Dkt. 325.

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11 Defendants Patterson contend that it would be a manifest injustice to use
12 funds subject to Patterson’s preexisting lien to pay the fees of the Receiver.

13 The Receiver responds that the language included in this Court’s March
14 7, 2023, Order Allowing Professional Fees is necessary to effectuate the
15 payment of Receiver’s professional fees. The Receiver contends that
16 Defendants’ argument attempts to pass the attachment of Defendants’ alleged
17 lien from the real property to the proceeds from the property’s sale, which are
18 in possession of this Court. The Receiver argues that while the Receiver
19 deposited the proceeds of the sale into the Court, this was not an
20 acknowledgement by the Receiver that Defendants’ lien was valid, nor was it
21 an acknowledgment that Defendants were entitled to those funds. The
22 Receiver asserts that Defendants’ motion attempts to create a lien priority
23 issue, were no lien priority issue exists. Receiver is not claiming to have a
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Order

1 lien, but rather is seeking payment of fees owned out of Black Gold's
2 remaining funds. The Receiver further argues that there is no longer any real
3 property on which to have a lien. The Receiver contends that at most, the two
4 individuals have competing claims for the funds that were deposited into the
5 Court. The Receiver asserts that while Defendants can request to be paid
6 proceeds from the sale, the specific lien no longer exists. The Receiver
7 asserts that Montana law provides that a lienholder whose lien is extinguished
8 by the foreclosure of a first lien may maintain a direct action on the note, but
9 the security interest is extinguished. *First Interstate Bank of Kalispell, N.A. v.*
10 *Wann*, 235 Mont. 111, 114, 765 P.2d 749, 750 (1988).

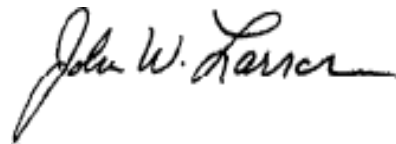
13 Montana District Courts hold an inherent authority over its own
14 judgments. *Associated Dermatology & Skin Cancer Clinic of Helena, P.C.*
15 *Profit Sharing Plan & Tr. for Benefit of Stephen D. Behlmer, M.D. v. Fitte*, 2016
16 MT 349, ¶ 16, 386 Mont. 150, 157, 388 P.3d 632, 637. The Court has
17 “....authority and discretion to utilize the equitable remedial device of
18 interpleader to determine the scope and nature of the interpleader action.” *Id.*
19 Black Gold’s sole asset was the real property sold via a Court approved sale
20 in 2022. Defendants acknowledge that Montana courts do not appear to
21 have addressed the exact issue as to whether a Receiver’s fees have priority
22 over preexisting liens. Def. Motion, p. 5. On June 20, 2022, the Receiver
23 requested leave to deposit funds into the Court, stating, “Receiver is now in
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1 possession of funds which have competing claims.” Dkt. 325. The Order
2 Granting Receiver Leave to Deposit Funds with the Court states, “Receiver
3 shall immediately deposit the \$312,833.63 necessary to satisfy the lien on
4 Black Gold’s real property into the Court, until this Court issues a
5 determination on the lien’s validity.” See Dkt. 327. In light of the Court’s
6 inherent authority over interpleaded funds and the fixture filing ruling, the Court
7 finds no manifest errors of law or fact in the Court’s March 7, 2023, Order
8 Allowing Professional Fees. Accordingly,
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11 IT IS FURTHER ORDERED that Defendants’ Motion to Alter or Amend
12 the Court’s March 8, 2023, Order and Stay Dispersal of Funds to St. Peter or
13 Galipeau is DENIED.
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15 IT IS FURTHER ORDERED that the Clerk of Court may disperse the
16 funds to St. Peter and Mr. Galipeau, as previously ordered in this Court’s
17 March 7, 2023, Order Allowing Professional Fees from the funds deposited
18 with this Court on July 14, 2022.
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20 Dated this 2nd day of May, 2023.

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24 JOHN W. LARSON, DISTRICT JUDGE
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Copies of the foregoing were sent to:

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Representing: PF4 Construction Group LLC

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CERTIFICATE OF SERVICE

I, Shane Alexander MacIntyre, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice of Appeal to the following on 05-04-2023:

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Dated: 05-04-2023