IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA-23-0186

DANIEL COYLE
Plaintiff and Appellee

v.

DHANLAXMI, LLC, d/b/a BUDGET INN OF DEER LODGE; ROHIT PATEL; PRAKASH GANDHI; and JOHN DOES 1-5
Defendants

and

POOJA HOSPITALITY, LLC; LAXMI GROUP, LLC
Intervenors and Appellants

APPELLANTS' REPLY BRIEF

On appeal from the Montana Third Judicial District Court, Powell County
Cause No. DV-19-26; Honorable Ray J. Dayton

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INTRODUCTION

Throughout his Opening Brief ("Brief"), Mr. Coyle operates under the same mistake in fact and law that he has from the outset—that he ever pled claims against the parties he seeks to attach his judgment, and that it could ever grant him the relief he seeks at the end of his injuction. The cases he cites to betray his position, as they hold that a preliminary injunction is meant to pause the status quo until a determination on the merits. But, at the time the preliminary injunction was entered, even a favorable determination on the merits would bring him no closer to attaching his judgment to Intervenors Pooja Hospitality, LLC ("Pooja") and Laxmi Group, LLC ("Laxmi") because there was never any theory of liability pled against them. The "Defendants," even after Mr. Coyle amended his pleadings, were only ever Dhanlaxmi, LLC ("Dhanlaxmi") and its owners, Mr. Patel and Mr. Gandhi. Thus, the only people who could be held liable upon a favorable determination on the merits were those three. Even assuming there was "active concert" between the Defendants and Pooja and Laxmi, there is no basis to "attach" liability to the enjoined parties. Without this, the preliminary injunction would only serve to freeze Pooja's funds indefinitely, until someday Mr. Coyle named them as parties, which is improper.

Pooja and Laxmi group recognize that a district court enjoys discretion in granting or denying a preliminary injunction. However, the granting of a preliminary injunction is not the default; it is an "extraordinary remed[y], granted with caution, and in the exercise of sound judicial discretion." *Paradise Rainbows v. Fish & Game Comm'n*, 148

Mont. 412, 420, 421 P.2d 717, 721 (1966). The facts are to be "narrowly interpreted," requiring Mr. Coyle to show "under the most clear facts that fully satisfy" the *Van Loan* test. *Van Loan v. Van Loan*, 271 Mont. 176, 895 P.2d 614, 618 (1995).

The district court manifestly abused its discretion in granting the TRO and then again in modifying it into a preliminary injunction in this case. While the district court is entitled to deference, its finding that "Dhanlaxmi, at the very least, was working in active concert with Pooja and Laxmi" is flawed and not supported by facts or law, and freezing the funds "while the issue of attachment is pending." Mr. Coyle's attempts to justify the ruling post-facto does not obviate the clear error under which the district court operated.

I. The District Court's Order entered after the Notice of Appeal must be disregarded for lack of jurisdiction.

As an initial matter, Mr. Coyle relies primarily on an order of the district court which is void for lack of jurisdiction. After this appeal was filed, and two days after Appellants' Opening Brief was filed, the district court appears to have entered an Order Denying Motion to Amend Order. (Doc. 78). Mr. Coyle relies heavily on this document in his Brief. However, the underlying motion had already been denied by operation of law on March 7, 2023, after which Intervenors filed a timely Notice of Appeal on March 22, 2023. An appeal to the Supreme Court—specifically, the filing of a notice of appeal—"divests the district court of jurisdiction over the order or judgment from which the appeal is taken. Thereafter the lower court is without jurisdiction to proceed upon any matter embraced therein." *Kruckenberg v. City of Kalispell*, 2004 MT 185, ¶ 10, 322 Mont. 177, 94 P.3d 748 (quoting *McCormick v. McCormick*, 168 Mont. 136, 138, 541 P.2d 765, 776

(1975)). Thus, as of the filing of the Notice of Appeal, the district court was divested of jurisdiction over the TRO, and its June 22, 2023 Order Denying Motion to Amend is void for lack of jurisdiction and must be disregarded.

II. The district court erred in freezing Pooja's funds "while the issue of attachment [was] pending" because no issue of attachment was pending as to Pooja or Laxmi.

The district court abused its discretion in enjoining non-parties Pooja and Laxmi, and it then requiring them—not Mr. Coyle—to bring the pleadings up to muster illustrates how defective this entire process was. As stated previously, the most glaring issue with Mr. Coyle's argument throughout his Brief is that he relies on the result as justification for his procedural errors. Effectively, his argument is that because the district court granted the preliminary injunction, the basis for doing so must have been correct.

When a preliminary injunction will not preserve the status quo and minimize the harm to all parties pending a trial, it should not be issued. *Knudsen v. McDunn*, 271 Mont. 61, 65, 894 P.2d 295, 298 (1995) (citing *Porter v. K&S Partnership*, 192 Mont. 175, 181, 627 P.2d 836, 839 (1981)). Mr. Coyle cannot avoid the questions: what issues were pending trial and against which parties? He had a judgment against Dhanlaxmi and Dhanlaxmi alone—indeed, at the time the TRO was entered, there was no claim even against Dhanlaxmi's owners. Even later, after Mr. Coyle filed suit against the owners, there was still no claim against Pooja or Laxmi. How can a preliminary injunction be granted "to minimize the harm to all parties pending a trial" when there is necessarily no trial, or even any claims, against the parties he sought to enjoin?

Mr. Coyle's argument highlights the error that has existed from the outset. Pooja and Laxmi agree with Mr. Coyle that a court "should decide merely whether a sufficient case has been made out to warrant the preservation of the property or rights in status quo until trial . . . An applicant need not make out such a case as would entitle him to a final judgment on the merits." (Brief at 17 (quoting *Flying T Ranch, Ltd. Liab. Co. v. Catlin Ranch, Ltd. P's hip*, 2022 MT 162, ¶ 18,409 Mont. 478, 515 P.3d 806). What is clear, however, is that he has made out **no** case against Pooja and Laxmi—despite having over two-and-a-half years to fix this error.[1] Indeed, the first element of the *Van Loan* test is whether Mr. Coyle would be successful on his claim. *Van Loan*, 895 P.2d at 617. What is his claim? He argues that he was successful in his wage claim against his employer, Dhanlaxmi, and stretches that to mean he will be successful in his unpled piercing claim against Pooja and Laxmi. "Mr. Coyle was not only successful in his wage claim, but will also likely be successful in showing the parties are so active in concert with each other that they should be considered 'Joint Employers' and that both should be liable for the judgment." (Brief at 38). At the risk of repeating oneself—Mr. Coyle had no claim against Pooja or Laxmi at the time the TRO or preliminary injunction was entered. He has not even met the prima facie standard of the first element of *Van Loan*. How can he be successful on a claim he never brought? How can the district court enter an order

[1] Mr. Coyle did later bring a claim against Dhanlaxmi's owners, which illustrates his knowledge that such an action was necessary in order to hold its owners liable for the judgment. The fact that he did not make an additional claim against Pooja and Laxmi is tellingly fatal to his position.

freezing the assets of non-parties while the "issue of attachment" was pending when there was never any claim that the judgment could attach to Pooja or Laxmi?

What is most troubling is that the district court recognized this and just sidestepped it. "Dhanlaxmi, at the very least, was working in active concert with Pooja and Laxmi and it is appropriate to restrain them from obtaining the proceeds while the issue of attachment is pending." (Order Denying Motion to Dissolve Temporary Restraining Order at 2 (Dec. 9, 2022), Doc. 58). In order to adjudicate the issue of whether the attachment could be applied to Pooja and Laxmi, it recognized that the pleadings were defective and required Pooja and Laxmi to be named as parties. In doing so, the district court effectively admitted that there was no way to adjudicate Pooja or Laxmi's liability, but rather than denying the preliminary injunction, it granted a preliminary injunction to preserve an issue it knew could not be resolved on the merits, and instead required Pooja and Laxmi to plead themselves into the case. This is fundamentally wrong and an abuse of discretion. The district court ignored that there was a defect in Mr. Coyle's pleadings and theories of liability in making its ruling, but then as a final add-on required the parties to amend the pleadings so that they conformed with its order. Mr. Coyle cannot as a matter of fairness argue that Pooja and Laxmi's actions post-preliminary injunction to clean up the pleadings he himself botched, and then purposely for over two years avoided clarifying, have now mooted the very problems which he caused from the start. More importantly, it must be an abuse of discretion for the district court to recognize that a favorable determination for Mr. Coyle would not grant him any relief against Pooja or

Laxmi, but nevertheless restrain them until Mr. Coyle (rather, Pooja and Laxmi themselves) pled them into the case.

Thus, even assuming that Dhanlaxmi and Pooja and Laxmi are in "active concert" and can be enjoined as non-parties, which is untrue for the reasons set forth in Intervenor's Opening Brief, there is no "issue of attachment" pending against them. As acknowledged by Mr. Coyle, "limited purpose of [a] preliminary injunction[:] to preserve the status quo and minimize the harm to all parties pending final resolution on the merits[.]" (Brief at 27 (quoting *Driscoll v. Stapleton*, 2020 MT 247, ¶ 14, 401 Mont. 405, 473 P.3d 386)). The Court in *Driscoll* went on to state that "[i]f a preliminary injunction will not accomplish its limited purposes, then it should not issue." *Driscoll*, ¶ 14 (quoting *Davis v. Westphal*, 2017 MT 276, ¶ 24, 389 Mont. 251, 405 P.3d 73. At the time the preliminary injunction was issued, there was only one issue to be determined on the merits: whether Dhanlaxmi's owners—Mr. Patel and Mr. Gandhi—could be held liable for Dhanlaxmi's judgment. Even a favorable determination on the merits would have no bearing on whether the judgment could attach to Pooja or Laxmi, because Mr. Coyle never made a piercing claim against them. The preliminary injunction—determining the issue of attachment as to Pooja and Laxmi, could not have happened since there was never any claim against them, and therefore it should never have been issued. *Driscoll*, ¶ 14.

III. The failure to require a bond, or even address Mr. Coyle's obligation to post bond under statute, was a manifest abuse of discretion.

In granting the preliminary injunction, district court by statute had to require a written undertaking from Mr. Coyle "for the payment of costs and damages that may be

incurred or suffered" if Pooja and Laxmi are found to have been wrongfully enjoined or restrained, or otherwise waive that requirement in the interest of justice. Mont. Code Ann. § 27-19-306(1). The district court did neither and therefore manifestly abused its discretion.

Mr. Coyle argues that the district court's Order dated June 22, 2023, addresses the statute and fixes the error. However, as set forth above, that order was entered by the district court without jurisdiction to do so and is therefore void. *See e.g. In re Estate of Hansen*, 129 Mont. 261, 265, 284 P.2d 1007, 1010 (1955) (issuing of letters testamentary after the appeal was taken was done without jurisdiction and was therefore void).

But even addressing the district court's logic, it still amounts to a manifest abuse of discretion to refuse to require Mr. Coyle to post a bond. The district court stated that it would be "unfair" to Mr. Coyle to require him to post a bond because it would decrease his judgment (again, against Dhanlaxmi, not the enjoined parties), and "will shift the benefit of the Judgment to the Defendants" (at the time the preliminary injunction was entered, Pooja or Laxmi were not defendants). (Doc. 78 at 3). The district court misses the purpose of the bond requirement, which is to protect the rights of the enjoined party from being wrongfully enjoined. "The purpose of section 27-19-306, MCA, and section 27-19-307, MCA, requiring the party who is granted a TRO or injunction to post bond is to cover the cost of damages that may be suffered by a party who is wrongfully enjoined or restrained." *Mktg. Specialists v. Serv. Mktg*., 214 Mont. 377, 387, 693 P.2d 540, 546 (1985). Mr. Coyle's judgment is against Dhanlaxmi, an entity from whom he could not

collect on his judgment, as he consented to the release of Dhanlaxmi's only asset from his lien. (*See* Release of Judgment Lien (Oct. 8, 2019), Doc. 8).

Moreover, the harm here goes to the third *Van Loan* element, the harm suffered by the enjoined party. Not only is Mr. Coyle only seeking monetary damages, which is not proper for a preliminary injunction, but Pooja has been restrained from the lawful use of its assets for now three years. For those three years, because it was improperly enjoined, Pooja has lost interest, investment opportunity, and the ability to pay debts on approximately $160,000 of its own funds because Mr. Coyle might someday plead a piercing the corporate veil claim against it to hold it liable for Dhanlaxmi, its member's husband's limited liability company.

Respectfully, what matters in determining a bond is fairness to the enjoined party, as that is whom the statute is meant to protect. The district court's Order does not require, or even address the bond requirement, and is therefore based on a manifest abuse of discretion.

IV. The district court's determination of "active concert" was an abuse of discretion.

Mr. Coyle's primary argument for the alleged "active concert" is that Mr. Patel transferred his interest in Pooja to his wife for little or no consideration. (Brief at 25). However, it is noteworthy that Mr. Patel made such a transfer long before any wage dispute by Mr. Coyle, and therefore necessarily could not have done it to avoid paying his judgment. Mr. Patel testified that the Missoula Motel, owned by Pooja, was transferred to his wife sometime around 2016:

> MR. WILLIAMS: Um, real quickly based at our time here Mr. Patel, you indicated you got the, the Budget Inn in Missoula for sale, is that correct?
>
> MR. PATEL: Right.
>
> . . .
>
> Q: Okay. And are you the owner of this property?
>
> A: My wife is, yeah. (INAUDIBLE-BROKE UP)..., but she is (INAUDIBLE-BROKE UP)... He, he has transferred all the files that I had to my wife's name. This was more than three or four years ago.

(Hr'g Tr. 52:9-53:4 (July 28, 2020)). Mr. Coyle cites to testimony where Mr. Patel testified that they paid for Dhanlaxmi's expenses "from here" (Brief at 26). However, he purposely omits that immediately afterward, after his own counsel asked Mr. Patel directly to clarify his answer, Mr. Patel confirmed that the Missoula Motel did not pay expenses for the Deer Lodge Motel:

> Q: Uh, just for the record, I just need a yes/no answer. Did Deer Lodge, uh sorry, did the Budget Inn in Missoula pay for expenses for the Deer Lodge Budget Inn?
>
> A: Oh, no, no, no, no.

(Hr'g Tr. 60:7-9).

Incredibly, Coyle goes on to fault Pooja and Laxmi for intervening in the case, arguing that doing so, or the fact that Dhanlaxmi (as the only named defendant) opposed the TRO and preliminary injunction. However, as a result of Mr. Coyle's improper use fo the TRO and preliminary injunction process, as well as the district court's abuse of discretion in granting said relief, Pooja and Laxmi had no choice but to intervene in order to file this appeal. *See* Mont. R. App. P. 6 (a party may appeal . . ." (emphasis added)).

Mr. Coyle purposely avoided—for over two years—naming them as parties in order to prevent them, and now seeks to blame them for exercising in order to correct this wrong, or to use that to his advantage.

V. Injunctive relief is unavailable as damages will afford the adequate remedy, and Dhanlaxmi is not acting to make his judgment ineffectual.

"Generally injunctive relief is not granted where an action for monetary damages will afford an adequate remedy." *Shammel v. Canyon Resources Corp.*, 2003 MT 372, ¶ 17, 319 Mont. 132, 82 P.3d 912. Mr. Coyle argues that at the time of the TRO and Stipulation, he "had been deprived of wages as determined by the Montana Department of Labor." (Brief at 27). He admits, therefore, that his damages are only monetary.

Mr. Coyle confuses the argument to say that Dhanlaxmi is acting to make the judgment ineffectual through its alleged concert with Pooja and Laxmi. In *Van Loan*, the Court addressed the situation wherein a party might make a judgment ineffectual. Here, as is undisputed, Dhanlaxmi is unfortunately judgment proof—its only asset, the motel, was sold at a loss. This does not mean it was undercapitalized at the time Dhanlaxmi was created, and it does not mean that it is currently taking steps to avoid a judgment. The only act it took post-judgment was to sell the motel, which Mr. Coyle voluntarily released from his judgment lien. If he wants to look at other parties' conduct or intends to attach his judgment to another party, he has to plead that they owe him some obligation (as he apparently recognized in filing suit against the owners). The district court could not, as a matter of law, restrain Pooja and Laxmi without him making a claim against them.

To that point, Mr. Coyle spends a considerable amount of time in his Brief arguing that he has proven his case for piercing the corporate veil. (*See* Brief at 23-27, 34-36). Mr. Coyle misses the point to say that this shows "active concert." The question is, at the end of the proceedings, even assuming a determination in his favor, what obligation would exist for Pooja and Laxmi? It is all well and good to say he proved "alter ego", but another entirely to say that he has pled so as a matter of law. If he has properly pled his claim against Dhanlaxmi, then it is flawed because Dhanlaxmi is not –it already is ineffectual. If he is arguing that Pooja and Laxmi are working with the named defendants (Dhanlaxmi and its owners), then he needs to have pled that they have an obligation to pay him.

Mr. Coyle clearly wants to attach his judgment to an entity who can pay it. However, the process for doing so has been set forth by the legislature in the prejudgment attachment statutes which "entitle defendants to specific, systematic judicial processes before a court may divest them of their property." *Yellowstone Fed. Credit Union v. Daniels*, 2008 MT 111, ¶ 20, 342 Mont. 451, 181 P.3d 595. That is what has been missing here: the specific and systematic process—rather than the one-sided relief sought here. At what point could Pooja and Laxmi confront the claims against them that they were allegedly alter egos of Dhanlaxmi? At what point did Mr. Coyle even allege that Pooja and Laxmi were alter egos of Dhanlaxmi?[2] "The statutes' prescriptions are not

[2] To that point, in order to pierce the corporate veil between Dhanlaxmi and Pooja Hospitality, Mr. Coyle would need to pierce the entity separateness between Dhanlaxmi and its owner, its owner and his wife, and then his wife and her limited liability company. Mr. Coyle improperly used the TRO and preliminary injunction process to avoid this daunting burden.

permissive. The prejudgment attachment statutes, which is what he is truly seeking, are not permissive' they "set forth the steps that the plaintiff must undertake, and what actions the district court must require of the parties, in order to seize property." *Id.* at ¶ 17. As stated above and is not disputed, Mr. Coyle did not formally serve a summons on Pooja or Laxmi and has not provided a bond. *See* Mont. Code Ann. § 27-18-201 to 204.

CONCLUSION

The preliminary injunction that the district court entered is fundamentally flawed. It forever restrains Pooja and Laxmi from lawfully using their assets while the issue of whether their assets can be attached to the judgement is resolved. But there was no "issue of attachment" pending against them, meaning their assets would be enjoined indefinitely. A preliminary injunction is meant to provide limited relief until the merits can be decided. Indefinitely enjoining Pooja's assets cannot be considered "limited" relief.

"A manifest abuse of discretion is one that is obvious, evident, or unmistakable." *Rice v. C.I. Lanning*, 2004 MT 327, ¶ 33, 322 Mont. 487, 97 P.3d 580 (citing *Shammel v. Canyon Resources Corp.*, 2003 MT 372, ¶ 12, 319 Mont. 132, 82 P.3d 912). The district court realized that it could not ultimately ever hold Pooja or Laxmi liable for Mr. Coyle's judgment. But instead of denying the preliminary injunction, it granted the injunction and required the parties (in reality, Pooja and Laxmi themselves) to amend the pleadings in order to bring its ruling into compliance with the law. Mr. Coyle himself necessarily recognized this when he filed suit against Dhanlaxmi's owners (but not Pooja and Laxmi)

and consolidated the matter with the underlying case. Enjoining a party pending relief which could not as a matter of law occur is a manifest abuse of discretion.

Furthermore, the district court eschewed its statutory mandate to either require a bond or waive it in the interest of justice. Such a ruling was an evident abuse of discretion, which this Court respectfully should reverse.

Respectfully submitted this 17th day of August, 2023.

COTNER RYAN LAW, PLLC
Attorneys for Appellants

Brian T. Geer

CERTIFICATE OF COMPLIANCE

Pursuant to Montana Rules of Appellate Procedure 11(4)(e), I certify that this Brief is printed with proportionately spaced Times New Roman text typeface of 14 points; is double-spaced; and the word count, calculated by Microsoft Office Word is 3,655 words, excluding caption, certificate of service and certificate of compliance.

Brian T. Geer

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Cotner Law, PLLC, hereby certify that on August 17, 2023, a true and correct copy of the foregoing was filed with the Montana Supreme Court. Additionally, a copy was provided to the following through the Montana Court Filing System:

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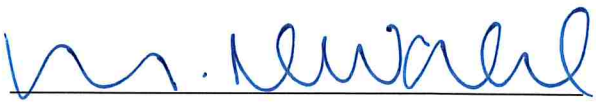

APPENDIX A

MONTANA THIRD JUDICIAL DISTRICT COURT
POWELL COUNTY

DEPARTMENT OF LABOR AND INDUSTRY, AND DANIEL COYLE,	)	**Cause No. DV-2019-26**
Plaintiff,	)	
vs.	)	
DHANLAXMI LCC,	)	
Defendant.	)	

Transcript of Proceedings

July 28, 2020
(Judgment Debtor Hearing)

PRESIDING: **THE HONORABLE RAY J. DAYTON**

DATE: **July 28, 2020**

PLACE: **Courthouse – Powell County**
Deer Lodge, MT 59722

APPEARANCES:

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A: Sure, okay. Are you ready?

Q: I am ready.

A: 7720 Northeast Hwy. 99, STE 3161, Vancouver, Washington 98665.

Q: Will you repeat the name of the city again?

A: Vancouver. Do you want me to spell it?

Q: Vancouver? No, I think I got it. Okay.

A: Do you want me to spell it.

Q: No, I think we got it, Vancouver, Washington, correct?

A: Correct, yes sir.

MR. WILLIAMS: Okay. Just for ease of logistical purposes, Mr. Patel would you mind telling us your address?

MR. PATEL: Uh, it's 300 East Broadway in Missoula, Montana, 59802.

MR. WILLIAMS: Mr. Patel do you have any plans to change residences in the near future?

MR. PATEL: Uh, no, I don't.

MR. WILLIAMS: Do you have any property that's listed for sale or currently potentially for sale right now?

MR. PATEL: Uh, not currently, but I will be in uh, I, I believe in a week or two.

MR. WILLIAMS: And what is that property?

MR. PATEL: It's the Budget Inn in uh, what you call it, Missoula, Montana.

THE COURT: Mr. Williams you didn't get uh, Mr. Patel sworn.

MR. WILLIAMS: Oh, thank you your honor. Can I have him sworn in?

THE COURT: Okay, Mr. Patel please raise your right hand. Jill?

WITNESS SWORN IN (CLERK OF COURT)

TESTIMONY OF MR. ROHIT PATEL:

MR. WILLIAMS: Um, real quickly based at our time here Mr. Patel, you indicated you got the, the Budget Inn in Missoula for sale, is that correct?

MR. PATEL: Right.

Q: Okay, that property, is there equity in that property, meaning is there, is there a mortgage against that property?

A: There is a mortgage, but there's equity as well.

Q: And approximately how much equity is in that property?

A: I would say about uh, eight, 850, eight, eight 850, I don't know exactly but uh, I can get it from the title company the exact amount, but it's around that much based on that thing on the property taxes and you know, uh property taxes and things like that.

Q: Okay. And are you the owner of this property?

A: My wife is, yeah. (INAUDIBLE-BROKE UP)..., but she is (INAUDIBLE-BROKE UP)... He, he has transferred all the files that I had to my wife's name. This was more than three or four years ago. So, I can get an affidavit from Mr. Arizobi (UNSURE OF SPELLING)..., but he did, did all this. So uh...

Q: Okay.

A: uh, let me know...

Q: And have you...

A: if he, if he needs it.

Q: And what was the reason for transferring your name off of that property, the corporation ownership?

A: Uh, because for the simple reason that uh, I was taken to the hospital about two or three times which can be verified through the doctors at the hospital. And uh, even now health wise I'm not doing too well. Uh, can't remember...

Q: You're...

A: That was a major reason.

Q: Why did you not...

A: (INAUDIBLE-SPEAKING SAME TIME AS COUNSEL)... Yes, go ahead.

Q: I was just going to say, why did you not transfer ownership of the Deer Lodge Inn, the Deer Lodge Budget Inn then?

A: It is transferred.

Q: That was transferred in your, your wife's name as well?

A: I believe so, I can check. Uh, yeah, I can check, but uh, but he knows (INAUDIBLE-BROKE UP)... case. There was nothing there. There was nothing there. It's been shut down for more than a year and a half and right now somebody has bought it, his name is (INAUDIBLE-BROKE UP)... And uh, it was shut down for more than a year and when Mr. Coyle was there uh, (INAUDIBLE-BROKE UP)... No.

Q: Just due to our time purposes we're not going to go back over the whole issue of the case here.

A: Okay.

Q: We're just talking about the financial aspects interest this one.

So, the Deer Lodge you said has, has sold. Was there any equity that you obtained from the sell of the Deer Lodge Budget Inn?

A: No, it was sold for 275,000, so much less than what we owed the bank. The new guy arranged it with the bank. Uh, I don't know what kind of loan uh, he has arranged it, but that, that's People's Bank in Deer Lodge would be able to answer your question more.

Q: Okay, and again...

A: (INAUDIBLE-SPEAKING SAME TIME AS COUNSEL)...

Q: My, my quick question you didn't-- did you receive any proceeds for the sale of that Deer Lodge uh, Budget Inn?

A: No, no.

Q: Okay, okay. Are there any other property that could potentially be used to satisfy the judgment for Mr. Coyle that is up for sale?

A: Uh, no.

Q: Okay. And would you be willing to...

A: (INAUDIBLE-SPEAKING SAME TIME AS COUNSEL)...

Q: Would you be willing to keep the money that you receive in equity of the Budget Inn in Missoula in trust until we are able to resolve this creditor issue?

A: No, because that doesn't belong to me.

Q: Do you operate the Budget Inn in Missoula?

A: I operate, my wife does for the last uh, I don't know for about eight, nine months uh, because of my illness and uh, she's on a day to day basis uh, operating the motels. Uh...

Q: So...

A: (INAUDIBLE-BROKE UP)... employees.

Q: Prior to that did you operate the Budget Inn in Missoula?

A: Yes, I did.

Q: And did you receive any type of wages for operating the Budget Inn in Missoula?

A: I don't believe so and uh, so what I's do, see the lady who does our payroll and I could provide you with all the payroll records for the motel or for Deer Lodge, or because she's the one who did the payroll for...

Q: Okay.

A: Deer Lodge as well.

Q: So, for all intensive purposes would third parties recognize you as the owner of Budget Inn of Missoula?

A: Uh, yeah definitely.

Q: Okay. Would they also recognize you the owner of the Deer Lodge Budget Inn?

A: Uh, yeah I believe so, yeah.

Q: Okay. Were employees from the Missoula Budget Inn used at the Deer Lodge Budget Inn?

A: No.

Q: Did management ever visit Mr. Coyle in the Deer Lodge Budget Inn?

A: I don't believe I ever met him over there, because mostly in Missoula he used to come once a week because he was on probation so, he had to come and see his PO once a week and that's the only time I got to see him.

Q: Okay. Did any other employees of Missoula, Deer Lodge, excuse me, Missoula Budget Inn visit the Deer Lodge Budget Inn?

A: No, no.

Q: And who responded to the Department of Labor answers then?

A: Uh, because they...

Q: (INAUDIBLE-SPEAKING SAME TIME AS WITNESS)...

A: originally, originally uh, Brian Hindman (UNSURE OF SPELLING)... who used to work with uh, Dan Coyle, he was the one who replied. And after that...

Q: Okay.

A: I, I never did get anything on the judgment part. Uh, I don't which address it went to, but Brian Hindman uh, is the gentlemen who used to work with Dan Coyle so, he has much more firsthand uh, dealings with Dan than I did.

Q: And Brian, did Brian-- where did Brian work out of?

A: Uh, out of uh, Deer Lodge. He was in Deer Lodge with uh, uh Daniel Coyle. And uh...

Q: Was Brian ever, was Bri..., hold on Mr., Mr. Patel. Was Brian ever transferred to another location?

A: Yes, to Missoula.

Q: So, again my question, did any employee work at both Deer Lodge and Missoula Budget Inn?

A: Not at the same time, at different times. Like when he was transferred to Missoula uh, then Dan was the managing the place.

Q: So, did...

A: Dan Coyle.

Q: did Brian sign a new, an employment agreement once he was transferred to Missoula Budget Inn?

A: No.

Q: So, for all intensive purposes employment was continued status quo after leaving Deer Lodge and going to Missoula?

A: Right. That's where I believe (INAUDIBLE-BROKE UP)... no.

Q: Is that frequent? Does that occur with other employees?

A: Yes. None of them have a manager's contract if you (INAUDIBLE-COUNSEL BEGAN SPEAKING)...

Q: So, the employees, so, the employees are fluid between different properties that you own, is that correct?

A: That's right, but they didn't go to Deer Lodge or they haven't, they don't go to other properties. They're just here in Missoula.

Q: So, for an employee, when an employee considered still working for the same company if they worked for the Deer Lodge Budget Inn and the Missoula Budget Inn?

A: No, because that's a different entity.

Q: Did you provide uh, different taxes for individuals that were, were assigned to different locations, different tax returns, W2's?

A: Yes, yes, yes.

Q: Would you be willing to produce those?

A: Sure, on the different tax ID as well for each one. And like I said Daniel Coyle's came from Deer Lodge and you'll see the taxes that was taken out, okay, statement.

Q: Okay. And we've heard testimony here from Mr. Gandhi that the Budget Inn in Deer Lodge was not making any money, correct?

A: Correct.

Q: And who'd paid for expenses for the Budget Inn of Deer Lodge?

A: Well, a lot of times uh, I uh, I would, we used to pay from here because they didn't, they didn't have sufficient funds.

Q: So...

A: (INAUDIBLE-COUNSEL BEGAN SPEAKING)... So, for about a year or so we start paying everything like the tables, the water, uh which can be verified through the State property tax and all that uh, because it was just not liable to operating the property.

Q: Okay, so, just expenses and finances were shared between the Missoula Budget Inn and the Deer Lodge Budget, is that accurate?

A: I wouldn't say shared, but uh, we did uh, my wife's, she pull so much into this credit card, uh what do you call it, the mileage thing. But she has put some charges on the,

like the paper bill and things like this. And whatever's cash...

Q: Okay, so...

A: whatever's cash that Daniel's receipt provide which was very, very good amount. We pay the water bill and a few other bills that way.

Q: Uh, just for the record, I just need a yes/no answer. Did Deer Lodge, uh sorry, did the Budget Inn in Missoula pay for expenses for the Deer Lodge Budget Inn?

A: Oh, no, no, no, no.

Q: You just went on to that a second ago saying that there was expenditures that were paid by the Missoula Budget Inn for Deer Lodge Budget Inn?

A: No, it's the Bel Aire Motel, that's where I'm at, that's what I meant the Bel Aire, not the Budget Inn. (INAUDIBLE-COUNSEL BEGAN SPEAKING)...

Q: Your honor. Well, your honor, I know we're out of time on this one. I think there's, this is something we definitely have to continue. I think I do need to make a motion your honor to uh, do some type of injunction on the proceeds of this property that's potentially going to be sold, but I'm gonna, as, as directed courtesy I think I will make a formal motion on that too with-- to hold those proceeds.

Your, your honor I think you're muted.

THE COURT: I only do that five times a day at least.

(LAUGHING)...

THE COURT: I'll look forward to whatever uh, you deem are appropriate motions and uh, give them the promptest attention that uh, I can.

MR. WILLIAMS: Okay, thank you your honor. I think at this point I'd move to continue this, this uh, exam for another date.

THE COURT: Yeah, uh, uh gentlemen, uh Mr. Gandhi, Mr. Patel uh, uh, you have uh, an interesting situation. It's a relatively complex situation. There's uh, multiple properties that you own. Uh, your spouses are involved uh, you know, transfers have been made to spouses.

Uh, uh and Mr. Williams on behalf of his client is entitled to try and sort it out. Uh, you guys have been relatively forthcoming uh, with responses. Uh, uh today, but it's just not finished. Uh, it will be much more efficient uh, uh if you give truthful answers. I don't mean to imply that-- uh, to written questions uh, about properties and documents and get them to Mr. Williams upon his request.

Uh, once he has them uh, he'll uh, make arrangements to resqui..., reschedule further questioning of each of you gentlemen. Uh, uh and uh, you know, the case is still an active case in the, in the Court. Uh, uh and uh, order of further motions might be made. Uh, you, you of course are

entitled to respond to them. Uh, you're always uh, more than entitled to bring counsel to bear on your behalf. Uh, in the meantime uh, the matter will proceed.

Uh, thank you for your cooperation thus far. This hearing is not at an end. Uh, it is, as they say, to be continued. Uh, Thank you very much.

MR. WILLIAMS: Thank you your honor.

THE COURT: Uh, I'm going to switch, I'm going to switch computers so I'll be able to look on documents on this one and uh, I'll open up the Zoom on my other computer in just a couple of minutes. I'll leave the meeting.

MR. PATEL: Can I hang up?

THE COURT: You guys can hang up. Uh, you'll, you'll be contacted again...

MR. PATEL: Okay.

THE COURT: to continue with the hearing at a later date.

MR. PATEL: Alright, thank you. Be safe. Bye.

CONCLUSION ----------

CERTIFICATE OF TRANSCRIPTIONIST

I, Ann Allen, Official Court Transcriptionist of the District Court of the Third Judicial District of the State of Montana, in and for the Counties of Granite, Anaconda-Deer Lodge and Powell, after having been duly sworn,

DO HEREBY CERTIFY:

That the foregoing proceedings were electronically recorded using an FTR Recording System.

That the recording has been in the custody of the Court.

That the recording has not been changed or altered in any way.

That the recording is a full, true and accurate record of these proceedings.

That the undersigned arranged to have the recording transcribed to writing.

That the undersigned has compared the tape recording with the requested written transcription and the foregoing 63 pages constitute a full, true and accurate transcription of the above-entitled proceedings had and taken in the above-entitled matter at the time and place hereinabove mentioned.

Witness my hand this 14th day of August, 2020.

/s/ Ann M. Allen
Ann M. Allen
Official Court Reporter

CERTIFICATE OF SERVICE

I, Brian Geer, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 08-17-2023:

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Dated: 08-17-2023