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## IN THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF:	DA 22-0700
JEREMY LOOK, an individual person,  Cross-Claimant/Appellant,  v.  CASEY McGOWAN, MEGAN McGOWAN, and KAREN SPAWN McGOWAN, heirs to an estate,  Appellees.	<b>OBJECTIONS TO PETITION FOR REVIEW</b>

Appellees Casey McGowan, Megan McGowan, and Karen Spawn McGowan (McGowans), by and through their counsel of record Faure Holden Attorneys at Law, P.C., respectfully submit their Objections to Appellant Jeremy Look's (Look) Petition for Review, which is actually a Petition for Rehearing.

**I. INTRODUCTION**

Look's Petition for Rehearing should be denied. He fails to establish any

grounds for rehearing. He reargues issues already decided or raises new issues never raised in his briefing. His Petition is without merit. It should be denied and McGowans should be awarded their attorneys' fees.

## **II. ANALYSIS AND ARGUMENT**

On September 26, 2023, this Court issued its Opinion in this matter pursuant to Section I, Paragraph 3(c) of its Internal Operating Rules. *Look v. McGowan*, 2023 MT 182N. This Court determined that this case presented a question controlled by settled law or by the clear application of the applicable standards of review. *Id.* at ¶ 23. Despite this, Look continues his factually and legally unsupported arguments.

### **A. There are no grounds for rehearing.**

“[T]his Court seldom grants petitions for rehearing.” *Miller v. Mont. Bd. of Dentistry*, DA 22-0272, 2023 Mont. LEXIS 20 (Jan. 10, 2023). For this Court to even consider granting rehearing, Look must show that:

- (i) it overlooked some fact material to the decision;
- (ii) it overlooked some question presented by counsel that would have proven decisive to the case; or
- (iii) its decision conflicts with a statute or controlling decision not addressed by the supreme court.

Mont. R. App. P. 20(1)(a). Look fails to establish any grounds for this Court to consider his Petition.

The Court addressed Look's argument regarding time being of the essence. *Id.* at ¶ 3. In fact, Look's Opening Brief admitted the contract contained a "time is of the essence" clause. Opening Brief, pp. 4, 12. There is no merit to his current argument that the contract did not contain a time is of the essence provision.

Look next alleges the Court failed to consider whether McGowans waived the time is of the essence clause. Look did not previously argue waiver, and waiver cannot be raised now. *Miller v. Mont. Bd. of Dentistry*, DA 22-0272, 2023 Mont. LEXIS 20 (Jan. 10, 2023). This issue is without merit.

Look's argument regarding the Rule 12(b)(6) standard is also meritless. This Court reviewed Judge Olson's decision for correctness. *Look*, ¶ 7. This Court found that Look could not state a claim as a matter of law because he materially breached the agreement, as shown on the face of the complaint. *Id.* at ¶¶ 3-12. Failure to pay is a material breach of a real estate contract – this is settled law. *Id.* at ¶ 10. Look again admits in his Petition that he failed to pay. Petition, pp. 8-9. This issue is without merit.

Finally, this Court did not rewrite the Third Amendment. This issue was extensively briefed, and Look's own briefing indicates he knew that the Third Amendment "would delay closing until August 2, 2021, *if* he can deliver \$100,000 earnest money" by July 23, 2021. Opening Brief, p. 8 (emphasis added). This

Court got it right. Look cannot change his position now. This issue is without merit.

Look wants a second bite at the appellate apple. But that is not the purpose of rehearing. While Look may disagree with this Court's Opinion, he cannot relitigate issues already decided by this Court, raise new issues not raised before, nor supplement his prior briefing with new authority and argument. *Ibsen v. Mont. State Bd. of Med. Examiners*, DA 21-0149, 2021 Mont. LEXIS 1048 (Dec. 21, 2021); *Miller v. Mont. Bd. of Dentistry*, DA 22-0272, 2023 Mont. LEXIS 20 (Jan. 10, 2023); *Estate of Brager v. Weinberger*, DA 20- 515, 2021 Mont. LEXIS 526 (June 8, 2021). His Petition should be denied.

**B. McGowans should be awarded their attorneys' fees.**

McGowans were awarded attorneys' fees in the District Court and asked this Court to award them on appeal. Response Brief, p. 17. The Court did not address the issue in its Opinion, and McGowans accepted the Court's Opinion because it meant they were finally free of Look's baseless litigation.

However, Look continues to harass them with unsupported filings. McGowans respectfully request that Look be required to pay their attorneys' fees on appeal. *Gibson v. Paramount Homes*, 2011 MT 112, ¶ 21, 360 Mont. 421, 253 P.3d 903 ("When entitlement to costs and attorney fees arises from contract, that entitlement includes costs and attorney fees on appeal.").

### III. CONCLUSION

The Court should deny Look's Petition for Rehearing, and award McGowan's their attorneys' fees for both the appeal and now having to respond again to Look's baseless arguments.

DATED this 8<sup>th</sup> day of November, 2023.

FAURE HOLDEN ATTORNEYS AT LAW, P.C.

/s/ Jason T. Holden

Jason T. Holden

### CERTIFICATE OF COMPLIANCE

Pursuant to Rules 11 and 20 of the Montana Rules of Appellate Procedure, I certify that the preceding document is printed with a proportionately spaced Times New Roman 14-point font; is double spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word does not exceed 2,500 words, i.e., is 793 words.

FAURE HOLDEN ATTORNEYS AT LAW, P.C.

/s/ Jason T. Holden

Jason T. Holden

## **CERTIFICATE OF SERVICE**

I, Jason Trinity Holden, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Objection to Petition for Rehearing to the following on 11-08-2023:

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Electronically Signed By: Jason Trinity Holden

Dated: 11-08-2023