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 ORIGINAL

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Bowen Greenwood  
Clerk of Supreme Court  
State of Montana  
Case Number: DA 23-0674

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 23-0674.

John Dobrowski,  
Sui Juris (appellant),  
v.  
Buffalo Trails Estates Homeowners Assoc.,  
(appellee).

APPEALANTS OPENING BRIEF

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On appeal from the Montana Sixth Judicial District Court,  
County of Park,  
Cause # DV 22-195,  
Honorable Brenda Gilbert Presiding

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APPELLANT OPENING BRIEF

Appearance's

John Dobrowski

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## Table of authorities

MCA title 71-chapter 3-part 5 notice of intent  
(title 26 USC 6065)

MCA title 25 chapter 20, rule 55  
(DV 2021-27)

Doc.1 error transferring case p.4 Affidavit of truth

U.C.C. 1-205,

U.C.C. 1-201(3)

U.C.C. 3-502,

U.C.C. 3-305(2) (b)&(c)

U.C.C. 1-201(3)

(U.C.C. 3-305(1)

(FRCP 26 a-d)

U.C.C. 3-401

Rule 8(d)federal Rules of civil procedure

the 11<sup>th</sup> Amendment

CJS vol. 7 sec.4,

Federal rules of evidence 602

Federal rules of evidence 603

Federal rules of evidence 802

6 Am Jur 2d., 155

Constitution for the State of Montana article 2 section 17

DAVID MILLS, ET AL.v.GALYN MANOR HOMEOWNER’S ASSOCIATION, INC.

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## STATEMENT OF ISSUES

1. Whether Appellant Dobrowski's objection to denial of due process of law and demand for disclosure of the constitutional authority that gives this Court, and this Judge the capacity to take jurisdiction and enter judgments orders and decrees in favor of the Buffalo Trails Estates Homeowners Assoc. Inc. arising from a civil proceeding regarding a debt in Park County Montana.
2. Whether The District Court Judge erred when she dismissed Appellant's (hereafter Dobrowski) case as moot and ordered Summary Judgment in favor of the Buffalo Trails Estates Homeowners Assoc. INC (hereafter BTE).
3. Whether BTE's erred when they took legal action against Dobrowski for breach of contract citing the bylaws as the contract breached by Dobrowski without filing any notice of intent letters.

## STATEMENT OF CASE

Capacity is one element of a contract, both parties must have the capacity to understand the contract. The BTE Bylaws lack capacity in that they don't explain when you can be sued or how long you can pay interest and penalties on dues. When you get a notice of intention then you have the capacity to understand. The BTE Board members did not give Dobrowski proper notice of intent that they intended to file a complaint and file a foreclosure lien against Dobrowski's property that would force him to pay attorney fees, MCA title 71-chapter 3 part 5, (title 26 USC 6065). Dobrowski sent correspondence to BTE to figure out what happened, Doc 1 p. 6, and they didn't respond to any correspondence from



Dobrowski. Dobrowski has a right to due process and to defend himself. The BTE has not produced a valid contract, or responded to his administrative process, (MCA title 25 chapter 20, rule 55), this case is over, Dobrowski is owed his money back.

### STATEMENT OF FACTS

- 1) In 2019 Dobrowski received an invoice from BTE for 950.00 for dues and assessments and there was a notice of intent on the invoice that said Dobrowski must pay my dues or legal action will be taken. Dobrowski paid dues in full, bringing him current.
- 2) In November of 2020 the BTE filed a complaint along with a foreclosure lien against the property of Dobrowski, for a breach of contract, (DV 2021-27) without proper notice of intent or a valid contract. Doc.1 error transferring case p.4 Affidavit of truth
- 3) Under duress for fear of losing his property, Dobrowski paid the lien, totaling \$5110.25.
- 4) Dobrowski claims he did not breach any contract and initiated an administrative process, U.C.C. 1-205, U.C.C. 1-201(3), to find out the reason for the complaint filing against him and why they would not send him a notice before filing. Doc. 1. ERROR TRANSFERRING CASE p.6
- 5) Dobrowski sent a certified letter to BTE asking for a copy of the contract they claim Dobrowski breached, U.C.C. 3-502, (U.C.C. 3-305(2) (b)&(c) as

set forth in U.C.C. 1-201(3), for his examination and BTE failed to respond or provide a legally signed contract. Doc. 1. ERROR TRANSFERRING CASE p.6

- 6) The certified letter sent June 14<sup>th</sup>, 2022, was directed to have BTE, under the requirements of (U.C.C. 3-305(1) , send Dobrowski a copy of any valid contract or negotiable instrument that would give the BTE the right to file a foreclosure lien against Dobrowski's property and was given 30 – 45 days (about 1 and a half months), (U.C.C.1-205) to respond. The documented letter explained that the BTE had a duty to respond and failure to do so would imply silence is guilt (FRCP 26 a-d). Doc. 1. ERROR TRANSFERRING CASE p.6
- 7) The BTE failure to respond led Dobrowski to believe that their contract was a fraudulent unconscionable contract as outlined in, (U.C.C. 2-302) (MT RCP Rule 55) and the BTE needs to reimburse Dobrowski the \$5110.25 dollars spent on satisfying the lien minus \$510.00 for dues and a \$50.00-dollar late charge totaling \$4550.25. Doc. 1 ERROR TRANSFERRING CASE p.2, Doc 4 ORDER TRANSFERRING CASE p. 3, 6.
- 8) Dobrowski went to the small claims court in Livingston Mt to obtain a Clerks Default Judgment under (rule 55) MCA title 21 chapter 20. The certified letter along with the Clerks Default Judgment filing was rejected, not denied, by the Small Claims Judge. Doc 4 ORDER TRANSFER p. 5, 6, Doc. 1 ERROR TRANSFERRING CASE Complaint p. 2
- 9) The Small Claims Clerk and Judge erred when they informed Dobrowski they will not allow a clerk's default and informed Dobrowski he had to file a

complaint to get the Default Judgment. Rule 8(d) federal Rules of civil procedure Doc.3 ORDER TRANSFERRING CASE P. 1-2

- 10) Dobrowski filed a complaint in the Small Claims Court along with the Affidavit of Truth Doc. 1 p.4, and the BTE Defense Attorney (hereafter defense) filed a cross complaint against Dobrowski for breach of contract again without notice of intent citing the bylaws as the contract (Doc. 9 p. 3,6). Then Dobrowski informed the Judge he will not attend mediation because the Defense does not have a valid binding contract with Dobrowski, the Small Claims Court Judge then transferred the case to District Court and said this case is out of her jurisdiction. Doc.1 ERROR TRANSFERRING CASE p. 1
- 11) Dobrowski then filed notice of error, to Small Claims Court, of the transfer to District Court. Doc. 3 ORDER TRANSFERRING CASE P.1-2
- 12) The Defense sent Dobrowski a 30 notice of intent to Dobrowski that was not signed, not notarized and did not send it certified and sent to a post office box Dobrowski stopped using 3 years prior and Dobrowski didn't get the notice. The woman who is occupying the P.O. box signed an affidavit of truth stating she did not give Dobrowski any mail from BTE, the document did not get filed with the courts (title 26 USC 6065), also the Defense entered on the record a copy of the BTE bylaws, the Bylaws state homeowners can pay interest and penalties on dues and assessments if late and don't give a timeframe on when they can file suit against homeowners of BTE also the liens indicated in bylaws are mechanical or labor or equivalent

Doc. 9 p. 30-31, and you don't have to file suit to initiate the lien.

Dobrowski received an email of a letter of intent from BTE in 2023 and has paid his interest, penalties and assessments and is current on his dues.

Doc.49 OBJECTION p. 5 Doc. 9. DEFENDANT AND COUNTER-  
PLAINTIFF'S FIRST AMENDED ANSWER AND COUNTERCLAIM.P.30-31

- 13) Dobrowski continued to object to every BTE and District Courts Judge filings including, Mediation order and order for summary Judgment because the defense does not have a valid contract and filed lien without first giving notice of intent, (TITLE 26 USC 6065).the District Court doesn't have jurisdiction to try this case without consent, the 11<sup>th</sup> Amendment, CJS vol. 7 sec.4, federal rules of evidence 602, 603, and 803, the BTE doesn't have any evidence and Dobrowski is the only live human in this case.

### STANDARD OF REVIEW

BTE took legal action against Dobrowski in District Court in 2020 for violation of a contract, citing BTE bylaws as the contract, without first giving notice of intent before filing a suit and foreclosure lien against Dobrowski's property forcing him to pay attorney's fees. The bylaws say they can file a lien in the same manner as a labor lien or materials lien which means they must give proper notice of intent.

MCA title 71-chapter 3 part 5. Dobrowski received a notice of intent in 2019 from BTE and he paid in full, then again in 2023 Dobrowski received a notice of intent in an e-mail, from BTE and he paid in full. BTE made an error when they did not give notice to Dobrowski because legal action was unnecessary. Dobrowski tried to resolve the issues with BTE and as economically as possible using an administrative process that follows due process Doc. 1 p. 6 letter to BTE



## ARGUMENT

Dobrowski believes this case needs to be overturned and judgment in favor of Dobrowski because the District Court Judge did not consider this case to be a matter of contract law in a common law venue. without a Contract there is no nexus that binds Dobrowski to a Commercial venue,

(11<sup>th</sup> Amendment to the Constitution).

A Valid Contract must contain an agreement between parties with Capacity, this element indicates that each signatory to the contract has demonstrated the “legal capacity” to understand what they are signing. The Bylaws do not give a timeline as to when the suit is to be initiated and have a signature as per (U.C.C. 3-401). BTE Bylaws lack full disclosure and signature and are not a valid contract, they are Bylaws. The bylaws state,

3.Any delinquent assessments, plus interest and penalties, shall be a lien upon the appurtenant lot, and any be recorded and collected in the same manner as authorized for a laborer or materialman lien under the laws of the State of Montana, by decision of the Board of Directors, and/or may be subject to collections by Suit to recover same. MCA title 71-chapter 3-part 5 notice of intent, the party filing must give notice of intent.

When Dobrowski sent the letter to BTE to settle this dispute as economically as possible, Doc 1 p.6, giving BTE and Dobrowski a chance to resolve, BTE was obligated to respond under (U.C.C. 3-305). When the BTE Board Members failed to respond they halted the process and left Dobrowski no choice but to file. At this point, the case is over. The Rule 8(d) federal Rules of civil procedure, MCA Title 21 Chapter 20 (rule 55)

At this point the Small Claims Court Judge should have approved or denied the Clerks Default Filing instead of rejecting it.

The District Court Judge should not have taken this case Because There is no defendant, Courts and Lawyers are artificial entities and (without a contract), cannot interact with a live human being as per the 11<sup>th</sup> amendment (quote)

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects Of any Foreign State.

Federal Rules of Evidence 602, need for personal knowledge, The HOA's attorney was not a witness. And their testimony is hearsay.

Federal Rules of evidence, 603 Oath or affirmation to testify truthfully.

Federal Rules of evidence 803, The rules against hearsay, Hearsay is not admissible.

CJS vol.7 sec. 4, His first duty is to the courts. Not to justice

The Affidavit of Truth from the plaintiff stands as truth. Doc 3 ORDER TRANSFERRING CASE p. 1-2

Dobrowski filed objections to every District Judge and BTE filings and rulings.

Administrative courts cannot issue judicial rulings without a contract or consent, and I do not consent to a commercial venue.

The defense has not produced a valid contract, has no evidence in this case, Dobrowski is the only live human in this case and has evidence sufficient to prove his case. DAVID MILLS, ET AL.v.GALYN MANOR HOMEOWNER'S ASSOCIATION, INC.

6 Am Jur 2d., 155

Since the constitution is intended for the observance of the judiciary as well as other departments of government and the judges are sworn to support its provisions, the courts are not at liberty to overlook or disregard its commands or counteract evasions thereof, it is their duty in authorized (Common Law Courts of Montana)proceedings to give full effect to the existing constitution and to obey all constitutional provisions. Irrespective of their opinion as to the wisdom or the desirability of such provisions and irrespective of the consequences.

The Continued claim against Dobrowski and this action constitutes Ultra Vires, harassment, and barratry. The BTE is using dues money paid by Dobrowski to go after him, which presents a conflict of interest.

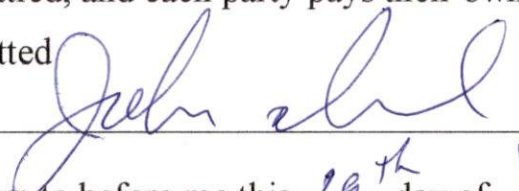
## CONCLUSION

Dobrowski Submits the BTE failed to Respond to the letter or produce a valid contract as asked from the beginning. Dobrowski has the right to defend himself with an administrative process without having to go all the way to the supreme court. The subject matter places jurisdiction is in the common law court, the BTE

has no evidence in this case (FRE 602,603 and 802) and Dobrowski is the only live human in this case.

wherefore Dobrowski respectfully asks this court to reverse the District Courts Order in his favor and compensation making him whole. Dobrowski respectfully demands an injunction against BTE and their attorneys from further action against him, all accounts settled, and each party pays their own attorney's fees.

Respectfully Submitted

  
Subscribed and sworn to before me this 19<sup>th</sup> day of January, 2024.

Certificate of compliance

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,308 words, excluding certificate of service and certificate of compliance.

John A. A. A.

January 19, 2024

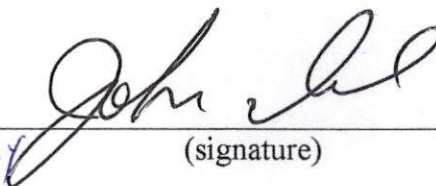
CERTIFICATE OF SERVICE

I hereby certify that I served true and accurate copies of the foregoing <sup>DA 23-0674</sup> by  
depositing said copies into the U.S. mail, postage prepaid, addressed to the following:

Attorney for .....  
(address) .....

DATED this ~~27~~ day of ~~Dec.~~ 200~~3~~

Dated this 19<sup>th</sup> day Jan. 2024

  
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