



ORIGINAL

FILED

09/23/2024

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: OP 24-0567

IN THE SUPREME COURT OF THE STATE OF MONTANA

PETER THOMPSON,  
Petitioner,

Case No. \_\_\_\_\_

v.

GALLATIN COUNTY JUSTICE COURT, the Honorable Bryan Adams presiding  
Judge,

Respondent.

APPLICATION FOR DECLARATORY JUDGEMENT AND INJUNCTION\STAY OR IN THE  
ALTERNATIVE FOR AN EXTRAORDINARY WRIT OR SUPERVISORY CONTROL AND  
INJUNCTION\STAY

An Original Proceeding Arising From Rulings in the Gallatin Justice Court,  
Cause No.: CV-100-2024-0000137-OT

The Honorable Bryan Adams, Justice of the Peace presiding

Appearances:

PETITIONER:

PETER THOMPSON  
2988 Blackbird Drive  
Bozeman, Montana, 59718  
406-570-0268  
thompson0089@msn.com  
Pro Se

COUNSEL FOR  
CB PROPERTIES, LLC:

Eli J. Patten, Matthew M. Hibbs  
CROWLEY FLECK PLLP  
500 Transwestern Plaza II  
490 North 31st Street  
P. O. Box 2529  
Billings, MT 59103-2529  
Telephone: (406) 252-3441  
epatten@crowleyfleck.com  
mhibbs@crowleyfleck.com

FILED

SEP 23 2024

Bowen Greenwood  
Clerk of Supreme Court  
State of Montana

Comes now, Petitioner, Peter Thompson as a pro se affiant [<sup>1</sup>], and he respectfully moves this honorable Court to hold an expedited hearing of this emergency petition.

### **APPLICATION FOR WRIT OF REVIEW**

In a respectful appeal to the Court under Rule 14, M.R.App.P., Petitioner Peter Thompson (hereinafter referred to as "Thompson") seeks a declaratory judgement to invalidate the Order of Possession dated July 16, 2024.

Thompson contends that the Justice Court's record demonstrates that the Order of Possession was issued after the lower court's loss of jurisdiction, a consequence of Thompson's prior filings. Please refer to Exhibit B at 15-38 for Thompson's initial affidavit challenging the legitimacy of the ostensible deed that instigated CB Properties' wrongful detainer action. Also, refer to Exhibit B at 82-93 and Exhibit B at 100-108 for the subsequent affidavit and Affidavit Answer that vehemently disputes the validity of CB Properties' ostensible deed.

Applying this Court's reasoning from First Sec. Bank of Kalispell v. INCOME PROP., 675 P.2d 982, 208 Mont. 121 (1984), as follows "On [Jan.19, 2024, CB Properties] filed a complaint in Justice Court alleging unlawful

---

<sup>1</sup> The application is made in general conformance with "MCA 27-25-201...The application must be made on affidavit"

detainer and seeking possession and damages. [On June 28, 2024, Thompson], appearing pro se, filed an answer questioning the propriety of [CB Properties] title to the property. At this point, the Justice Court was deprived of jurisdiction, and the cause [should have been] certified to [the] district court [named in the updated lis pendens case wherein CB Properties and the State of Montana are named defendants].” See Exhibit B at 27-29 for the original lis pendens and see Exhibit B at 35-38 for the update to the original lis pendens. See also Exhibit B at page 23, ¶s 12-13 for the legal analysis of how federal and case law in Montana authorizes the updating of the original lis pendens due to interwoven events that occurred after the original lis pendens was originally filed.

As discussed above, Thompson's filings repeatedly contested the legitimacy of the alleged deed of trust, which served as the basis for the Gallatin Justice Court's action, Cause No.: CV-100-2024-0000137-OT. Thus the Justice Court was deprived of jurisdiction, see *First Sec. Bank of Kalispell v. INCOME PROP* above, also applying *Stanley v. Lemire*, 148 P.3d 643, 2006 M.T. 304, 334 Mont. 489 (2006), paragraphs 54, 55, 56 and 67, as follows “[Thompson’s US District Court] claim of title to the subject property...divested the [Justice] court of jurisdiction [because he]...timely asserted it [and because there are no statutory provision granting Justice Court’s concurrent jurisdiction with US District Court actions over the same parties and subject matter].” According to

Mont. R. Civ. P, Rule 12(h)(3), this Court is obligated to vacate the judgement if a jurisdictional defect remains unaddressed. This rule is underscored by the precedent set in *Caterpillar Inc. v. Lewis*, 519 US 61 - Supreme Court 1996 [<sup>2</sup>], and further reinforced by Mont. R. Civ. P, Rule 12(h)(3), which mandates the dismissal of an action if the court determines at any point that it lacks subject matter jurisdiction. See also *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) on page 13 below.

In the event that the petition for review is not granted, Thompson respectfully requests a writ of Mandamus, Supervisory Control, or a Writ of Review (certiorari). This request is grounded in the principle that pro se pleadings must be liberally construed and the applicable law applied, regardless of whether the pro se litigant has explicitly named it (*Dluhos v. Strasberg*, 321 F.3d 365 (3d Cir. 2003) as cited in *KASHER v. Wesner*, 2008 and 134 similar citations).

Thompson's motion to dismiss and answers were affidavit statements that raised "questions of title to real property [that] shall not be decided by the justices' courts", applying *Stanley v. Lemire*, 148 P.3d 643, 2006 M.T. 304, 334

---

<sup>2</sup> "if...a jurisdictional defect remains uncured, the judgment must be vacated. See Fed. Rule Civ. Proc. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.")" Emphasis added, quoting *Caterpillar Inc. v. Lewis*, 519 US 61 - Supreme Court 1996.

Mont. 489 (2006). The filings contesting the validity of CB Properties' ostensible title effectively deprived the Justice Court of jurisdiction, See First Sec. Bank of Kalispell v. INCOME PROP., 675 P.2d 982, 208 Mont. 121 (1984) as applied on pages 2-3 above. Furthermore, the affidavit answer (Exhibit B at 102-106\_¶s 3,4,8 and ¶11) incorporated an updated lis pendens that named CB Properties and the State of Montana as liable defendants with non-severable damages exceeding the Justice Court's Jurisdiction.

In such circumstances as described above, the Justice Court is obligated to dismiss the entire action because Justice Courts lack jurisdiction to hear cases where non-severable counter claims raising the issue of state liability are pleaded, see MCA Section § 3-10-301(2), and 25-31-102(2) which provides that "[j]ustices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money." In such circumstances, the Justice Court "shall" dismiss the entire action, see Exhibit B at 178 at top see (2), under the heading of Relevant Statute for full text of the law on this subject.

All proceedings and Orders issued after Thompson's filing of his affidavit Answer (Exhibit B at 100-108) that deprived the Justice Court of jurisdiction are void and can be attacked collaterally upon certiorari, see Rose v. Dist. Court of Eighth Judicial Dist., 628 P.2d 662, 192 Mont. 341 (1981) on page 12 below.

Given the emergency circumstances arising from the forceful eviction of

Thompson and his family on August 22, 2024, and the unlawful deprivation [3] of their personal property in violation of the contested July 16, 2024, writ of assistance, the Court's immediate intervention is required. The Justice Court estimates that a normal appeal process will run from July through December 2024 (Exhibit B at 259\_¶1, at last sentence). Considering that the eviction order is void on the face of the record, equity requires the immediate restoration of possession of the Real Property and the personal property to Thompson.

---

<sup>3</sup> On August 22, 2024, the Sherriff's office smashed through the front door of 2988 Blackbird Drive. They secured the property and called Thompson on his cell phone informing Thompson that he would be arrested if he set foot on the property for any reason, including any efforts to retrieve his personal property or vehicles parked in the driveway.

The Sherriff's office failed to comply with the terms of the writ that said they were to eject Thompson *with* his personal property and instead the Sherrif's office determined to *unlawfully* give CB Properties possession and control of all Thompson's personal property, including but not limited to tax returns, medical information, confidential legal correspondence, original unreplaceable evidence in pending litigation, cell phones, computers, external hard drives and similar sensitive information that in part could have been used to make the case for criminal and civil allegations against CB Properties and others named as defendants in the updated lis pendens matters.

CB Properties is unlawfully inventorying Thompson's personal property, see Exhibit B at 288-289. One of the pending counter claim allegations against CB Properties is that their attorney, in a consensually recorded phone conversation, threatened (Exhibit B at 107\_¶15) to obtain a writ of eviction, regardless of the fact that there was no legal path for them to do so, CB Properties denies this allegation (Exhibit B at 241\_¶15). What if the recording of this contested conversation becomes unretrievable after CB Properties unlawful possession of it, their unlawful inventorying of devices where it resides and their eventual return to Thompson's possession? Again, emergency circumstances exist because CB Properties is unlawfully in possession of Thompson's personal property which includes vast amounts of confidential information.

Given the Justice Court's estimated timeline for a normal appeal process, there is no speedy and equitable resolution to the forcible eviction of Thompson and his family. Waiting for an appeal process (which does not exist pursuant to the lower court's prior ruling, Ex.B at 111 ) that runs into December, is not an adequate remedy under the immediate circumstances.

Wherefore the reasons above, Thompson respectfully moves the Court to take judicial notice of the fact that the lower Court's July 16, 2024, Order (Exhibit B at 246-249) is void as it was issued after the June 28th, 2024, affidavit answer (Exhibit B at 100-108) contesting the validity of the CB Properties ostensible deed was filed. If the Court does not grant the requested declaratory judgement, the Thompson family would remain needlessly homeless into at least December of 2024. MT Civil Rule 60 (d) (1) authorizes independent action and M.R.App.P. Rule 14 (4), also authorizes attacks against void judgements. Other courts have reasoned that when a judgement is void "relief is not a discretionary matter; it is mandatory." Quoting *Orner v. Shalala*, 30 F.3d 1307 (10th Cir. 1994).

MCA 27-26-102 (2) is applicable in this case as it states, "The writ must be issued in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law." Thompson's appeal is thus grounded in the pursuit of justice and the urgent need for a swift resolution.

### **THE PETITION IS TIMELY FILED**

In accordance with Rule 14 (5) (a) of the M.R.App.P., the petition has been filed in a timely manner. This rule stipulates, "A petition may be made to the supreme court at any time." This is further reinforced by the court's rationale in *Gottlob v. Desrosier*, 470 P.3d 188, 2020 M.T. 210, 401 Mont. 50 (2020), which posits that "Subject matter jurisdiction can be challenged or reviewed at any time, either by motion or by the court itself, and cannot be established or maintained by consent or waiver of the parties."

If the Court considers the timeframe for filing pro se petitions for review of a Justice Court's interlocutory order (Exhibit B at 249 item E) for possession of real estate and personal property to be a procedural issue akin to the procedure for filing notice of appeal, the petition remains timely, because the Court has consistently held that "where no notice of entry was filed, the time for filing an appeal did not begin to run until the clerk of court issued the notice of entry of judgment", as reasoned in *Busch v. Atkinson*, 925 P.2d 874, 278 Mont. 478 (1996).

Thompson respectfully requests the Court to acknowledge that the 7/16/2024 Order of Possession, which self-identifies as an interlocutory order, states that "claims and issues are yet to be addressed in this matter" (Exhibit B at 249 E). Furthermore, the Record Of Action (Exhibit B at 286-287) indicates that no notice of entry of judgement has been given in the ongoing Justice Court proceedings.



However, the unserved notes in the ROA (Exhibit B at 286) reveal that on 7/15/2024, a Judgement by Judge Trial was granted for \$15,000.00, and the Case Status was changed to "Disposed" on 07/16/2024. If these ROA notes were intended to be binding, they should have been published in accordance with Justice Court Rule 21. Entry of judgment because compliance with this rule ensures equitable communication of the bench's intentions to the parties. However, these ROA Entries contradict the Court's direct communications with the Parties, because there were other pending motions and counterclaims when the 07/15/24 ROA entry was made.

During the July 8th, 2024, hearing, Thompson recalls [4] that the Judge stated he was still considering the status quo motion, which was not adjudicated until after the order of possession was issued. Given that the Justice Court's July 2, 2024, (Exhibit B at 111), reasoning was that an appeal of a judgment\order which does not constitute a final determination of all the rights and obligations of the parties in the action or proceeding is not an appealable matter, it follows that the Exhibit B at 110-111 Order establishes that the law of this case is that there can be no appeal of any interlocutory orders. Consequently, CB Properties was judicially estopped from proposing order text for the July 16th, 2024, possession order that

---

<sup>4</sup> See Exhibit B at 175 indicating that Thompson has endeavored but failed to obtain a transcript of the July 8<sup>th</sup>, 2024, hearing.

contradicts the Justice Court's reasoning in their prior July 2, 2024, Order (Exhibit B at 111). Therefore, there is no realistic path for appeal of an interlocutory Order from Justice Court, making this application under Rule 14, M.R.App.P. both appropriate and timely.

Alternatively, within 30 days of the issuance of the July 16, 2024 Writ of Assistance, Thompson sought relief from the Justice Court's actions after it was deprived of jurisdiction by way of a motion to declare the Writ Moot and in the alternative for reconsideration (Exhibit B at 260-264). The motion for relief from the July 16th, 2024, Order (Exhibit B at 260-264) has not yet been ruled on, thus the Justice Court's July 16, 2024, Order does not currently constitute a final determination of all the rights of parties. Therefore, this Petition for relief is timely filed. In contrast to FIRST SEC. BANK OF HARVE v. Harmon, 841 P. 2d 521 - Mont: Supreme Court 1992, Thompson did file a motion in the alternative for reconsideration (Exhibit B at 260-264) within the 30-day time period from the July 16, 2024, interlocutory order. Therefore, the motion successfully suspended the thirty-day limit for filing notice of appeal. See Exhibit B at 275\_¶2 for the timely 30 day calculation.

Alternatively, this petition is timely filed, premised on the principle that "a party never forfeits subject matter jurisdiction and that either the party or the court can raise the issue of subject matter jurisdiction at any point during a proceeding."

Furthermore, "a Justice court's jurisdictional determination is always open to de novo review, irrespective of the context in which the decision is made." This was the Court's reasoning in *Stanley v. Lemire*, 148 P. 3d 643 - Mont: Supreme Court 2006, see *Jones v. NINETEENTH JUDICIAL DIST. COURT*, 37 P. 3d 682 - Mont: Supreme Court 2001, Justice TRIEWEILER's dissenting opinion clarified that "if the petition was akin to an appeal, the appeal could not have been initiated within thirty days from the Court's order as the order was provisional and did not conclusively settle all issues in the case."

Given the unresolved Counter Claims and pending motion work in the Justice Court, and the absence of a served notice of entry of judgement, it follows that Thompson is presently precluded from filing a motion for relief from judgement under Justice Court Rule 22, in much the same fashion as he is precluded from filing an appeal July 16<sup>th</sup> 2024 interlocutory order for possession. Furthermore, any immediate appeal of a single interlocutory order, when there are 5 other orders adjudicating 7 other motions that Thompson would/will appeal if and when a legitimate procedural path and need arise, it follows that there is presently no efficient procedural path to a swift resolution of the contested July 16, 2024 Order of Possession.

In support of the alternative petition relief, this Court has previously reasoned that "Judicial economy and inevitable procedural entanglements have

been cited as appropriate reasons for this Court to issue a writ of supervisory control. In such an instance, the denial of a speedy remedy by supervisory control would be a denial of justice. *Stokes v. Mont. Thirteenth Judicial Dist. Court*, 2011 MT 182, ¶ 5, 361 Mont. 279, 259 P.3d 754.”

**A WRIT OF REVIEW (CERTIORARI) IS APPROPRIATE**

In the light of *Rose v. Dist. Court of Eighth Judicial Dist.*, 628 P.2d 662, 192 Mont. 341 (1981), and *Herzog v. Reinhardt* (1965), 2 Ariz. App. 103, 406 P.2d 738, it is established that citizens are shielded from the arbitrary actions of the Justice Court and any violation of fundamental constitutional rights during the writ issuance process leading up to the July 16, 2024 Order of Possession, can render the order void and subject to collateral attack upon certiorari.

Further, *Earle v. McVeigh*, 91 US 503 - Supreme Court 1876, posits that for a Justice Court’s order to have any binding effect, the court must have jurisdiction over the person and the subject-matter. The lack of jurisdiction renders the order void and unenforceable, in part because MCA, § 25-31-101(1) explicitly bars a Justice Court from hearing evidence of contested real property ownership, as presented in the June 7, 2024 Motion to Dismiss and the contested ownership issues in the June 28, 2024 Affidavit Answer and Counter Claims.

Thompson urgently petitions the Court to issue an injunction to prevent CB Properties from completing incomplete construction, maintaining possession of the real property, and continuing to inventory, box, and store Thompson's personal property, which includes vast amounts of confidential information (pursuant to § 27-25-203). After adequate notice, briefing, and hearing, Thompson requests the Court to vacate the writ of possession entered against him.

Rule 14 defines a writ of certiorari as a discretionary writ that the Supreme Court may issue to a court of limited jurisdiction when the latter has exceeded its jurisdiction. Section 27-25-102(2), MCA, states that a writ of review may be granted by the supreme court when a lower tribunal exercising judicial functions has exceeded its jurisdiction and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.

Applying *Lee v. Lee*, 996 P.2d 389, 2000 M.T. 67, 299 Mont. 78 (2000), our standard for review pursuant to our granting a writ of certiorari is first to determine whether the court which issued the writ of possession acted within its jurisdiction. Relatedly, in *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998) the court reasoned that "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes....The requirement that jurisdiction be established as a threshold matter "spring[s] from the nature and

limits of the judicial power of the United States" and is "inflexible and without exception."

The Justice Court lost jurisdiction the moment it became clear that Thompson's pleadings contested the validity of CB Properties deed of trust attached to their verified complaint, see Exhibit B at 176-184 for Thompson's respectful brief on this topic. The Justice Court was misled into exceeding its jurisdiction by opposing counsel who spuriously advised that the Justice Court bench could disregard the binding precedent in *Stanley v. Lemire*, 148 P.3d 643, 2006 M.T. 304, 334 Mont. 489 (2006) and *In First Sec. Bank of Kalispell v. INCOME PROP.*, 675 P.2d 982, 208 Mont. 121 (1984).

Thompson respectfully requests this Court to take judicial notice of the fact that the updated notice of lis pendens names CB Properties and the State of Montana as non-severable counter claim defendants. There are no statutes authorizing Justice Courts to have concurrent Jurisdiction with US District Court's over the same parties and same property disputes.

Applying *Fox v. Clarys*, 738 P. 2d 104 - Mont: Supreme Court 1987, the doctrine of lis pendens was created to hold the subject matter of litigation within the jurisdiction and control of the US District court during the pendency of the lis pendens actions. The Justice Court was misled into believing it has jurisdiction to

disturb the status quo during the pendency of lis pendens noticed US District Court proceedings via spurious reasoning presented in CB Properties June 17th, 2024, Answer to the June 7th Motion to dismiss, which falsely advised the Justice Court that “it is important to understand that a lis pendens does not prevent CB from exercising its rights to the Real Property. Instead, it only authorizes Thompson to be restored to his original position should he become successful in...the...lawsuits he has filed related to the Real Property” See Exhibit B at 46 for the original text of this spurious advice to the Justice Court, see also Exhibit B at 80 evidencing the Justice Court adopted the spurious advice. See also, Exhibit B at 134 and 139 for Thompson’s rebuttal of the above-described false statements by opposing counsel.

In contrast to CB Properties above referenced reasoning, binding precedent and the obvious meaning of maintaining the status quo precludes the Justice Court and CB Properties from disturbing the status quo because “A lis pendens preserves the status quo with regard to property interests throughout a legal action”...Fox v. Clarys above.

The Justice Court was misled into believing it has jurisdiction over unripe and or moot claims because binding precedent implies that CB Properties lacks standing to presently bring a wrongful detainer action under a clouded title, as follows “While our case law has not squarely addressed this issue, we have implicitly recognized that a lis pendens casts a "cloud on title" which impairs the

ability to sell the property to others.” Reilly v. Farm Credit Bank of Spokane, 863 P. 2d 420 - Mont: Supreme Court 1993.

### Conclusion

This Court ordering a transcript of the record and proceedings in the Justice Court pursuant to section 27-25-202 MCA, will produce a record that shows that CB Properties obtained the writ of possession in violation of Montana’s fundamental doctrine of Stare Decisis that is designed to afford Thompson and other citizens, stability, predictability and equal treatment and that CB Properties failed to meet their burden of proof as the party who ostensibly obtained an order that overturns well-settled case law in Montana. On July 9th, Thompson filed a motion requesting the Justice Court to take judicial notice of the rules that necessitated the dismissal of the action. This motion was based on the fact that Thompson's June 28th pleadings were sworn under oath and that the resolution of the action inherently involved a question of title. Thompson cited the statute stating that if the defendant's answer, verified by oath, suggests that the resolution of the action may involve the question of title or possession to real property, the justice should suspend all further proceedings in the action. Please see Exhibit B at 176-190 for full text of this motion. CB Properties Answer is in Exhibit B at 197-204. The Order denying this motion was issued *without* first allowing Thompson to file a timely reply to CB Properties Answer. At this point in the proceedings, it is implied



that the Justice Court is proceeding in willful violation of the rules of procedure and controlling case law. In the matter of State ex rel. Whiteside v. District Court, 63 P. 395 – 1900, the court held that “one of the functions of supervisory control is to "enable this court to control the course of litigation in the inferior courts where these courts are proceeding within the jurisdiction, but by a mistake of law, or willful disregard of it, are doing a gross injustice, and there is no appeal, or the remedy by appeal is inadequate." Emphasis added. In this same case the court explained that the powers of rule 14 writs are in part to "keep the [lower] courts themselves within bounds, and to insure the harmonious working of our judicial system."

I, Peter Thompson, am a party in this action, as such have personal knowledge of the facts and matters herein and the statements above, except where stated to be based on information or belief, and where so stated I believe the same to be true.

Respectfully submitted this 23<sup>rd</sup> day of September 2024.

By:

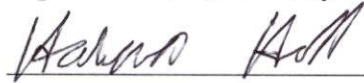


Peter Thompson

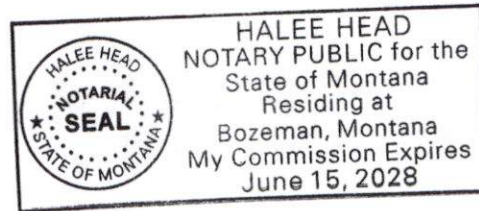
2988 Blackbird Drive  
Bozeman, Montana, 59718  
406-570-0268  
[thompson0089@msn.com](mailto:thompson0089@msn.com)

State of Montana, County of Gallatin. This instrument was signed and sworn to before me on

September 23<sup>rd</sup>, 2024, by Peter Thompson



Signature of Notary



CERTIFICATE OF COMPLIANCE

I hereby certify that under Rule 11(2), M.R.app.P., this document is proportionately spaced in 14-point Times New Roman typeface; and under Rule 11(4)(c), M.R.App.P., the foregoing Application filed under Rule 14, M.R.App.P., is 3,950 words is compliant.

DATED this 23<sup>rd</sup> day of September, 2024.

By: 

Certificate of Service

I HEREBY CERTIFY that on the day of 23<sup>rd</sup> day of September 2024, a true and correct copy of this document was duly served upon the respondent by hand delivery to the Clerk of Gallatin County Justice Court and it was served the opposing party's counsel by email as follows:

Eli J. Patten  
Matthew M. Hibbs  
epatten@crowleyfleck.com  
mhibbs@crowleyfleck.com

By: 

Peter Thompson