

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No.
DA 23-0716

RODNEY BRANDT and HEIDI BRANDT,
MARSHALL FLADAGER and NEVA
FLADAGER, and LARRY LAUTARET and RENA LAUTARET,

Plaintiffs/Counter-Defendants/
Appellees/Cross-Appellants,

v.

R&R MOUNTAIN ESCAPES, LLC,

Defendant/Counterclaimant/
Appellant/Cross-Appellee.

On Appeal from the Montana Eleventh Judicial District
Flathead County Cause No. DV-22-1201E, Hon. Danni Coffman

**APPELLEES’ OPPOSITION TO MOTION FOR LEAVE
TO FILE FOR *AMICUS CURIAE* BRIEF**

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Appellees, through counsel, hereby file their opposition to the Motion for Leave to File *Amicus Curiae* Brief on behalf of Bridger Canyon Property Rights Coalition (“BCPRC”).

OPPOSITION ARGUMENT

1. THIS COURT HAS DISCRETION TO DENY BCPRC’S MOTION.

The right to be heard as amici curiae is within the discretion of this Court. *Reichert v. State*, 2012 MT 111, ¶ 25, 365 Mont. 92, 278 P.3d 455 (citing *State ex rel. Bennett v. Bonner*, 123 Mont. 414, 420-21, 214 P.2d 747, 751 (1950)).

2. BCPRC’S MOTION IS UNTIMELY AND PREJUDICIAL.

This matter has been on appeal since December 23, 2023. Both Appellant and Appellees’ principal briefs were filed by July – nearly four months ago. The reply briefs and a short supplemental brief are all that remain.

In contrast, *amicus* Montana Landlords Association timely filed its brief more than four months ago.

Allowing BCPRC to file a brief at this late stage after Appellees have already filed their principal brief would result in prejudice to Appellees.

3. BCPRC FAILED TO SHOW A STRONG INTEREST IN THE ISSUES.

An *amicus* must have a “strong interest” in the subject matter. M.R.App.P.

2(2); *Reichert*, ¶ 25.

The subject matter in this case is the application of *Craig Tracts Homeowners' Ass'n v. Brown Drake, LLC*, 2020 MT 305, 402 Mont. 223, 477 P.3d 283 to the *particular* covenants at issue for a small subdivision in Whitefish where the neighbors (Appellees) have protected their covenants against short-term rental use and have suffered adversely by Appellant's use of its property as a short-term rental.

In contrast, the subject matter of BCPRC's issue involves "recent decisions by the Gallatin County Planning Department and County Commission [which] imposed durational thresholds not listed in the applicable zoning regulations" and those regulations' definition of "single-family residential use." *Mot.* at 2. The subject matter of the current appeal deals with neither decisions of the Flathead County Planning Department or County Commissioners, nor recent amendments to the Flathead County Zoning Regulations imposing durational limits. BCPRC's issue is wholly separate and distinct from the present issues.

BCPRC argued that this case implicates issues critical "to [its] mission," but its mission fails to satisfy the "strong interest" standard required to intervene in this case. *Mot.* at 2. According to the Secretary of State's website, BCPRC was formed only a few short months ago in March 2024. (Exhibit A) According to Facebook, it only has 39 members, which is woefully insignificant compared to

Montana’s population of over one million residents. (Exhibit B) According to its website, it is “working to restore property rights in Bridger Canyon Zoning,” yet the events in this appeal took place in Flathead County. *Id.* Finally, BCPRC claims to have an interest in the outcome of this case “and what it means for its members’ property rights,” but its interest is indistinguishable from the thousands of other homeowners’ associations in this state. In sum, it has a *general* interest in the subject matter like any other homeowners’ association, not a *strong* interest in the particular issues on appeal. Random homeowners’ associations would not be allowed to file *amicus* briefs, and neither should one who labeled itself a “coalition” and hired a team of lawyers from the Los Angeles office of a world-wide law firm to present an argument on what property rights should be in Montana.

Finally, BCPRC’s brief would provide no meaningful help or analysis. BCPRC “believes it can provide important insight into the real-world implications that reading implied durational limits into restrictive covenants (or zoning restrictions) can have on Montana property owners.” *Mot.* at 3. Covenants are construed as contracts, and the interpretation of a contract is a matter of law. *Craig Tracts*, ¶ 9. BCPRC’s “insight into the real-world implications of durational limits” is a verbose way of saying that it wants to argue the inequity of such an interpretation, but equity is not a consideration in the interpretation of a contract.

Also, this Court has already interpreted a durational requirement in the term “residential use” in *Craig Tracts*, ¶ 13, and *stare decisis* is a “fundamental doctrine” in Montana. *McDonald v. Jacobsen*, 2022 MT 160, ¶ 30, 409 Mont. 405, 515 P.3d 777. Finally, the only “real-world implications” at issue are those presented in the facts for the Appellee Neighbors and the particular subdivision on appeal, not for the landowners in Bridger Canyon.

CONCLUSION

Appellees request that this Court DENY BCPRC’s motion for leave to file an *amicus curiae* brief.

DATED this 24th day of October, 2024.

FRAMPTON PURDY LAW FIRM

By: _____


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CERTIFICATE OF SERVICE

I, Sean S. Frampton, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 10-24-2024:

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Dated: 10-24-2024