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Attorneys for Plaintiff/Appellee

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

HOMERIVER GROUP,

Plaintiff and Appellee,

v.

ANDERS BUSINESS SOLUTIONS,  
LLC,

Defendant and Appellant.

Cause No: DA-24-0531

**APPELLEE'S RESPONSE IN  
OPPOSITION TO APPELLANT'S  
RULE 22 MOTION FOR RELIEF  
FROM DISTRICT COURT ORDER**

COMES NOW Appellee HomeRiver Group, by and through counsel, and opposes Appellant Anders Business Solutions, LLC's (ABS) *Rule 22 Motion for Relief from District Court Order*. The Motion should be denied because it fails to comply with Rule 16(3) of the Rules of Appellate Procedure and because there is no District Court Order from which a stay may be issued. Rule 16(3) requires that motions "be submitted in a single document limited to 1,250 words or less if

proportionately spaced or 5 pages of text if prepared in monospaced typeface.”

ABS’s Motion exceeds both limitations.

The Justice Court issued an *Entry of Default and Order of Possession* against ABS on May 15, 2024. The order was a final determination as to the possession of the subject real property. It granted HomeRiver Group immediate possession of the premises located at 1525 S. Russell Street, Missoula, MT 59801. A copy of the *Entry of Default and Order of Possession* is attached as **Exhibit 1**.

On May 20, 2024, upon representation by counsel, ABS filed with the Justice Court a *Notice of Appeal and Motion to Stay*. A copy of that Justice Court filing is attached as **Exhibit 2**. “The Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice’s court of record.” Mont. Code Ann. § 3-10-115(4). Pursuant to Rule 6(a)(3) of the Montana Uniform Municipal Court Rules of Appeal to District Court, “when the judgment appealed from directs the delivery of possession of real property, the execution of the same **cannot** be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties,” in accordance with subsections (a)(3)(A) and (B) of the Rule (emphasis added). ABS neither provided an undertaking nor mentioned the undertaking

requirement in its *Notice of Appeal and Motion to Stay*. In fact, in its briefing on the *Motion to Stay*, ABS argued that no undertaking was required.

On the morning of May 22, 2024, with no stay having been issued and no undertaking having been filed, the Missoula County Sheriff executed on the *Order of Possession* through a *Writ of Assistance* and put HomeRiver Group into exclusive possession of the premises. Later that day, the Justice Court issued its *Order Re: Request for Stay*, unaware that the Sheriff already had put HomeRiver Group into possession of the premises. ABS filed a copy of that order with this Court. Since the *Order of Possession* already had been executed, the Justice Court did not issue a stay.

On May 23, 2024, while fully aware that the *Order of Possession* already had been executed and that HomeRiver Group had been put into possession of the premises, ABS filed an untimely undertaking. While a party is not required to seek a stay of execution, “a party choosing not to seek such a stay runs the risk of having his appeal become moot.” *Kennedy v. Dawson*, 1999 MT 265, ¶ 34, 296 Mont. 430, 989 P.2d 390. “A party may not claim an exception to the mootness doctrine through that party’s own failure to seek a stay of the judgment.” *Turner v. Mountain Engineering and Const., Inc.*, 276 Mont. 55, 60, 915 P.2d 799, 803 (1996). ABS filed a *Motion to Stay* but failed to seek compliance with the

undertaking prerequisite. Given that delivery of possession of the real property had already occurred, any subsequent stay of the *Order of Possession* had been rendered moot.

ABS filed multiple motions with the District Court seeking a stay of the already executed *Order of Possession*. (See Docs. 19, 24). Those motions were denied because the *Order of Possession* was executed prior to any undertaking being provided or stay being issued. (See Docs. 26, 31).

ABS incorrectly argues that the undertaking required by Rule 6(a)(3) of the Montana Uniform Municipal Court Rules of Appeal to District Court does not apply to the *Order of Possession* because it was not titled as a judgment. Such a narrow reading of Rule 6(a)(3) ignores both its clear intent as well as the practical effect of the *Order of Possession*. The Justice Court's *Order Re: Request for Stay*, correctly notes that while Rule 6(a)(3) uses the term "judgment," a reading of the Rules, as a whole, reveals that they also apply to "orders.". A final judgment is a final determination of the rights of the parties. *Harland v. Anderson Ranch Co.*, 2004 MT 132, ¶ 37, 321 Mont. 338, 92 P.3d 1160. The Justice Court's *Entry of Default and Order of Possession* was a default judgment on the issue of possession. It was a final determination of the rights of the parties as to possession of the subject real property.

ABS also incorrectly argues that a monetary judgment is a prerequisite to the undertaking requirement. Rule 6(a)(3) of the Uniform Municipal Court Rules of Appeal to District Court applies to judgments (or orders) that direct the delivery of possession of real property. The purpose and amount of the undertaking is to compensate appellee for “the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof...” Rule 6(a)(3)(B). The Rule does not require a monetary judgment.

ABS incorrectly relies upon Rule 7(a)(3) of the Uniform Municipal Court Rules of Appeal to District Court. Rule 7(a)(3) applies to an execution officer’s relinquishment of property levied upon to satisfy a monetary judgment, where a stay has been issued. Here, no stay has been issued and the executed order was for possession of real property, not a monetary judgment. In addition, the execution officer or Sheriff cannot relinquish property that is does not possess. The Sherrif did not execute on any personal property. The fact that ABS’s personal property remains on the premises is because ABS neglected to remove such personal property prior to execution of the *Order of Possession*. That neglect has continued during the course of this appeal, as ABS has failed to make any reasonable requests or efforts to coordinate possession of its personal property.

No undertaking was provided, and no order of stay was entered, prior to execution of the Justice Court's *Order of Possession*. The *Order of Possession* was a final determination as to the possession of the subject real property. The Missoula County Sheriff completed execution of the *Order of Possession* by putting HomeRiver Group into exclusive possession of the real property. Since the Justice Court's *Order of Possession* already has been executed, there is no District Court order from which a stay may be issued. ABS's Motion should be denied.

Dated this 29<sup>th</sup> day of October, 2024.

JONES & HOUSTON, PLLC

By: /s/ Joseph D. Houston  
Joseph D. Houston  
Attorney for Appellee

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on the 29<sup>th</sup> day of October, 2024, a copy of the foregoing Response was served by eService and First Class Mail, postage prepaid, at Missoula, Montana, to the following:

Charles H. Carpenter  
Carpenter Law Firm, PLC  
210 North Higgins Avenue  
Higgins Buildings, Suite 336  
Missoula, MT 59802

/s/ Joseph D. Houston

## **CERTIFICATE OF SERVICE**

I, Joseph David Houston, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 10-29-2024:

Charles H. Carpenter (Attorney)  
210 N. Higgins Ave.  
Ste. 336  
Missoula MT 59802  
Representing: Anders Business Solutions, LLC  
Service Method: eService

Electronically Signed By: Joseph David Houston  
Dated: 10-29-2024