

IN THE SUPREME COURT OF THE STATE OF MONTANA

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Supreme Court Cause No.: DA 24-0610

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360 RECLAIM, LLC, a Montana limited liability company,

Plaintiff and Appellant,

v.

WILLIAM M. RUSSELL, an individual, and  
MOUNTAIN VIEW INVESTMENTS, LC,  
an Idaho limited liability company,

Defendants and Appellees.

v.

WILLIAM M. RUSSELL,

Plaintiff and Appellee,

v.

360 RECLAIM, LLC, a Montana limited liability company,

Defendant, Counter-Plaintiff and Third-Party Plaintiff  
and Appellants

v.

WILLIAM M. RUSSELL,

Counter-Defendant and Appellee,

and

US TREASURY by and through the  
INTERNAL REVENUE SERVICE,

Third-Party Defendants.

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On Appeal from the Eleventh Judicial District Court, Flathead County  
Cause No.: DV-15-2019-305(A)

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**APPELLANT 360 RECLAIM, LLC's BRIEF IN OPPOSITION TO  
MOUNTAIN VIEW INVESTMENTS, L.C.'s MOTION TO DISMISS  
APPEAL**

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COMES NOW Plaintiff / Appellant 360 RECLAIM, LLC ("360 Reclaim") and submits its opposition to Mountain View Investments, L.C. ("MVI")'s Motion to Dismiss, arguing that 360 Reclaim's appeal is interlocutory. The October 1, 2024, Order issued by the District Court is a final, appealable order concerning the transfer of real property, meeting the criteria established under Mont. R. App. P. 6(3)(h) for final decisions on matters involving property transfer.

**I. ARGUMENT**

**1. Montana Law Recognizes the Finality of Property Transfer Orders for Purposes of Appeal.**

Under Mont. R. App. P. 6(3)(h), an order directing the delivery, transfer, or surrender of property is considered final and appealable if it constitutes the court's conclusive decision on the matter. Mont. R. App. P. 6(3)(h) states:

**(3) Orders appealable in civil cases.** In civil cases, an aggrieved party may appeal from the following, provided that the order is the court's **final decision on the referenced matter:**

(h) From **an order directing the delivery, transfer, or surrender of property;**

(Emphasis added) (M. R. App. P. 6(3)(h)).

Montana courts have repeatedly upheld this principle, recognizing the transfer of property as a distinct, severable issue that allows for immediate appeal upon a conclusive order.

Under Mont. R. App. P. 6(3)(h), orders that direct the delivery, transfer, or surrender of property are immediately appealable if they constitute a final decision on that issue. Despite Rule 6(3)(h), MVI alleges the appeal is not in good faith and has threatened sanctions. **Exhibit 1**. However, the Montana Supreme Court’s ruling in *Graveley v. MacLeod*, 175 Mont. 338, 573 P.2d 1166 (1978), is controlling and establishes that an order is final and appealable under Rule 6 when it compels specific action relating to property transfer, even if some aspects of the case remain unresolved. In *Graveley*, an order requiring specific performance of a contract to transfer property was deemed appealable despite being labeled “interlocutory.” *Graveley v. MacLeod*, 175 Mont. 338, 342, 573 P.2d 1166, 1168 (1978). The Court reasoned that any order compelling the immediate transfer of property creates finality regarding the property itself, thereby justifying appellate review to avoid irreversible consequences. *Id.*

Similarly, in the October 1, 2024 Order, the District Court conclusively directed 360 Reclaim to transfer possession of real property to William Russell. By setting an absolute compliance date, the order conclusively resolved the issue of real property transfer, meeting the requirements for appeal under Rule 6(3)(h) and

aligning with *Graveley*'s principles. As in *Graveley*, this Order mandates an irreversible action, property surrender, that requires immediate appeal to preserve 360 Reclaim's property rights. Montana's long-standing policy under Rule 6(3)(h) aligns with the idea that orders mandating property transfer should be appealable to prevent irreversible consequences to the party losing possession, thereby protecting parties from potential undue hardship and preserving the integrity of the appeal process. This logic supports 360 Reclaim's position that the real property transfer order is appealable as a final order under Rule 6(3)(h).

## **2. The Distinct Nature of Real and Personal Property Claims Reinforces the Finality of the Transfer Order.**

MVI's claim that the Order is interlocutory because it involves pending personal property issues misinterprets the legal separation between real and personal property matters. Montana law, illustrated in *Graveley*, supports the proposition that separate claims do not affect the finality of an order that conclusively resolves the transfer of specific property. The requirement for further briefing on personal property issues (which were never appealed) does not impact the finality of the real property order, which is both conclusive and enforceable under Mont. Code Ann. § 25-13-809(2). (Doc. 182.00).

This Court has recognized that an order directing property transfer retains finality when the real property claim is conclusively decided, even if related claims, such as personal property rights, remain. Following *Graveley*, this Court

should consider the October 1 Order as an independently appealable final judgment concerning the real property.

### **3. Appellate Review Serves Judicial Economy and Prevents Irreversible Consequences.**

Reviewing this Order on appeal aligns with judicial economy and Montana's interest in protecting parties from premature and irreversible loss of property rights. Compliance with the Order requires 360 Reclaim to surrender its possessory interests, a step that cannot be undone if the appellate court later finds the Order improper. Judicial resources and equity favor immediate review, preventing unnecessary harm and preserving 360 Reclaim's rights. Immediate appeal avoids unwarranted litigation complexities and reduces the risk of a wrongful transfer of property by allowing timely judicial review.

### **4. Mont. R. App. P. 6(5) and MVI's Interpretation Are Not Applicable.**

MVI's reliance on Mont. R. App. P. Rule 6(5) to argue against appealability misinterprets its scope. Rule 6(5) pertains to non-final orders in cases involving multiple claims, or parties, but does not apply to orders that conclusively resolve the transfer of real property. *Graveley* reinforces that an order mandating property transfer is uniquely final under Rule 6, even where additional claims remain, thereby allowing appellate review of the property-related decision without impacting the trial court's jurisdiction over remaining issues.

## 5. Mont. R. App. P. 6(3)(e) Provides an Avenue for Immediate Appeal.

MVI's reliance on Mont. R. App. P. Rule 6(5) to argue against appealability misinterprets its scope. Under Mont. R. App. P. 6(3)(e), an order granting an injunction is considered final and appealable if it constitutes the court's conclusive decision on the matter. Mont. R. App. P. 6(3)(e) states:

**(3) Orders appealable in civil cases.** In civil cases, an aggrieved party may appeal from the following, provided that the order is the court's **final decision on the referenced matter**:

(e) From an order granting or dissolving, or refusing to grant or dissolve, an injunction or an attachment...

(Emphasis added) (M. R. App. P. 6(3)(e)).

Such orders have consistently been upheld to be immediately appealable. Provided that the order is the court's **final decision on the referenced matter**, orders granting or denying injunctive relief are immediately appealable. *Montana Cannabis Indus. Ass'n v. State*, 2012 MT 201, ¶ 13, 366 Mont. 224, 286 P.3d 1161. Rule 6(3)(e) thus allows immediate appeal of an order granting or denying an injunction.

Here, as argued above, the Court's October 1 Order in effect forces 360 Reclaim to transfer the Property to Russell or face potential contempt of Court. This decision arises from the grant of a preliminary injunction and corresponding permanent injunction (Doc. 182.00). Thus, the legally required act of transfer is a

final order under Rule 6, even where additional claims remain. Appellate review of the property-related decision is proper.

### **CONCLUSION**

For the reasons stated above, and in accordance with Montana law and precedent, 360 Reclaim respectfully requests that this Court deny MVI's Motion to Dismiss and recognize the October 1, 2024 Order as a final, appealable order under Mont. R. App. P. 6(3)(h) and/or (e). Proceeding with the appeal ensures a fair opportunity for 360 Reclaim to contest the immediate transfer and avoids the prejudicial and potentially irreversible consequences of compliance with the real property transfer order.

DATED this 12th day of November, 2024.

OMVIG HAMMER LAW, P.C.

By: /s/ Benjamin J. Hammer  
Benjamin J. Hammer  
Attorneys for Defendant / Appellant  
360 Reclaim, LLC

**CERTIFICATE OF SERVICE**

I, Benjamin J. Hammer, one of the attorneys of the law firm of OMVIG HAMMER LAW, P.C., do hereby certify that on the 12th day of November, 2024, I served a true and correct copy of the foregoing document upon the person(s) named below, at the address set out below, either by mailing, hand delivery, or Federal Express, in a properly addressed envelope, postage prepaid, or by telecopying a true and correct copy of said document.

William M. Russell 310 East Day Street Pocatello, ID 83201-7205	<input type="checkbox"/> E-Filing Service <input checked="" type="checkbox"/> U.S. Mail (first class postage) <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Telefacsimile <input checked="" type="checkbox"/> Other: E-mail: midnightmopper@gmail.com
Nicholas J. Lofing Garlington, Lohn & Robinson, PLLP PO Box 7909 Missoula, MT 59807-7909 <i>Attorneys for Mountain View Investments, LC</i>	<input checked="" type="checkbox"/> E-Filing Service <input type="checkbox"/> U.S. Mail (first class postage) <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand-Delivery <input type="checkbox"/> Telefacsimile <input type="checkbox"/> Other: E-mail: njlofing@garlington.com

/s/ Benjamin J. Hammer \_\_\_\_\_

**From:** Nick J. Lofing <njlofing@GARLINGTON.COM>  
**Sent:** Tuesday, October 15, 2024 2:19 PM  
**To:** Benjamin Hammer <ben@ohlawmt.com>; Kristin Omgig <kristin@ohlawmt.com>  
**Cc:** Christopher C. Melton <ccmelton@GARLINGTON.COM>  
**Subject:** RE: 360 Reclaim

Thanks for reaching out. I'll send a calendar invite and video link for 10 Wednesday.

The appeal is not in good faith. It's plainly interlocutory and we'll fight it on those grounds, seeking sanctions.

Nick

## CERTIFICATE OF SERVICE

I, Benjamin James Hammer, hereby certify that I have served true and accurate copies of the foregoing Brief - Other to the following on 11-12-2024:

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Electronically signed by Ann M. Thamert on behalf of Benjamin James Hammer  
Dated: 11-12-2024