IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 24-0408

HEIDI A. GABERT

Plaintiff/Appellee,

and

DAWN FREEMAN

Intervenor/Appellee

v.

GARRY DOUGLAS SEAMAN,

Defendant/Appellant.

On Appeal from the Montana Nineteenth Judicial District Court
Cause No. DV-22-95
Hon. Shane Vannatta, Presiding

APPELLANT'S OPENING BRIEF

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STATEMENT OF ISSUES

1. Did the District Court err when, on a motion from Appellees to amend its previously issued order on the interpretation of a settlement agreement, it reversed itself and held that the provision "[p]ay all required taxes relating to the Property" excluded the payment of the capital gains tax from the planned liquidation of the Property?

STATEMENT OF THE CASE

The underlying matter was a tort case arising from Garry Seaman shooting and killing one person and shooting and injuring another person. The parties reached a settlement agreement in which Seaman's property was to be liquidated by a receiver, with Seaman receiving the amount of the homestead exemption at that time ($378,560.00), the receiver paying "all required taxes relating to the Property", and the remainder paid to the Plaintiffs, Heidi Gabert and Dawn Freeman. The Plaintiffs later tried to reword the settlement agreement and terms through a motion to ensure that Seaman did not receive the homestead exemption amount. When that did not work, they took the position that capital gains taxes were not taxes relating to the property and that those had to be paid by Seaman. The District Court initially held in favor of Seaman, agreeing that under the plain language of the settlement agreement capital gains had to be paid by the liquidating receiver. The Plaintiffs, however, then moved the District Court to amend its order

to hold the opposite, which the district court ultimately did. On the basis that the District Court reached the correct conclusion the first time it looked at the issue, Seaman now appeals the lower court's decision reversing itself.

STATEMENT OF FACTS

In May 2022, Appellant Garry Seaman was arrested and charged in Lincoln County with the shooting and severe wounding of Appellee Heidi Gabert, a former romantic partner with whom he has a child, and the fatal shooting of James Freeman, Appellee Dawn Freeman's estranged spouse. (Doc. 1, generally.)

In addition to his criminal case, both Gabert and Freeman sued Seaman for damages stemming from the shooting. (Doc. 1; *see also* Doc. 39.) In late June 2022, before serving a copy of her civil case on him, Gabert moved for the appointment of a receiver to take control of Seaman's assets under an assertion that without such a receiver, there was a risk Seaman would improperly dispose of such assets prior to her civil claims being adjudicated. (Docs. 2 and 3.) The District Court issued an *ex parte* order, prior to Seaman even being served the summons and complaint, appointing that receiver on July 5, 2022. (Doc. 6, referred to here as "Order Appointing Receiver".) The initial receiver, Christy Brandon, was sworn in the following day. From that moment forward, Seaman lost control over the management of his own property and financial decisions. Seaman later filed a response to the request for a receiver, and after a hearing and additional briefing,

the District Court issued an order in November 2022 affirming the receiver's appointment as permanent. (Doc. 67.)

On October 5, 2023, the parties signed a settlement agreement resolving both Gabert and Freeman's civil suits. (Exhibit A to Doc. 107, titled Memorandum of Understanding (included in the Appendix and referred to here as "Settlement Agreement").) Under that agreement (among other provisions): (1) Gabert and Freeman agreed not to object to the plea agreement in Seaman's criminal case or testify against him at sentencing (Settlement Agreement ¶ 14);[1] (2) Gabert and Freeman each received a $10 million civil judgment against Seaman (Settlement Agreement ¶ 2); (3) Seaman agreed his assets would be liquidated by a Liquidation Receiver and the proceeds used to pay a portion of those judgments (Settlement Agreement ¶¶ 1, 6); and (4) Seaman would receive from the sale of his assets the amount of $378,560.00, which was the homestead exemption amount at that time (Settlement Agreement ¶ 1).

The negotiation of the Settlement Agreement came together on a tight timeline in the days leading up to Seaman's sentencing, after counsel for the

[1] At Seaman's sentencing, Appellees' counsel said that they did not object to the plea agreement.

parties began exchanging emails and drafts of the agreement in late September 2023.[2] (Exhibits 9-17, 19 of June 3, 2024 hearing (included in Appendix.))

This appeal concerns who pays the capital gains taxes from the Liquidation Receiver's sale of Seaman's property. The Settlement Agreement substituted the Liquidation Receiver in for the previously appointed receiver, and included that the Liquidation Receiver would share some of the duties and responsibilities ordered by the District Court when it first appointed the initial receiver, including as follows:

> v. The Order appointing the Liquidation Receiver shall include the duties and responsibilities set forth in Paragraphs 1, 5, 6, 7, 8, 9, 10, 11, and 13 and shall include the specific Orders set forth on pages 6 and 7 of the Order Appointing Receiver dated July 5, 2022.

(Settlement Agreement, ¶ 6(c)(v).)

These powers and duties of the receiver that carried through from the Order Appointing Receiver to the Liquidation Receiver included that it must:

[2] There had also been a prior settlement agreement proposed by Seaman in June 2023, but that proposed settlement document was not signed by Gabert and Freeman. (Ex. 8 of June 3, 2024 hearing.)

f. Pay all expenses, and other obligations secured by, or which may give rise to, liens, and all other outstanding obligations to suppliers and servicers in the ordinary course of business, including obligations incurred prior to the date hereof;

m. Pay prior obligations incurred by Garry Seaman, his agents and servants, or any other person or entity charged with the responsibility of caring for the Property, if such obligations are deemed by Receiver to be necessary or advisable for the health and welfare of the Property;

n. Pay all required taxes relating to the Property;

o. Use and exercise all authority usually granted to receivers in the operation and management of the Property;

(Order Appointing Receiver, ¶ 5(f), (m)-(o).)

The language in Paragraph 6 of the Settlement Agreement, incorporating Paragraph 5 of the Order Appointing Receiver (including the "Pay all required taxes relating to the Property" language) was first added to what eventually became the final Settlement Agreement by counsel for Appellees. On October 1, 2023, Gabert's counsel emailed the attorneys for the parties a draft settlement agreement created by him and David Paoli, Appellee Freeman's counsel. (Exhibit 11 of June 3, 2024 hearing, p. 4.) That attached draft agreement included the

language incorporating the Order Appointing Receiver duties. (*Id.*, p. 8.) After that point, the incorporation of Paragraph 5 of the Order Appointing Receiver was never removed from the drafts of the settlement agreement.

Despite signing the Settlement Agreement, Gabert and Freeman later filed a *Motion for Approval of Designated Settlement Fund* in December 2023, requesting the creation of a new entity distinct from the Liquidation Receiver to "facilitate the liquidation of Seaman's assets." (Doc. 100.) Seaman contested the establishment of such a fund, including that it was done in an attempt to ensure that the capital gains would not be paid from the sale of the assets and that, if it was the case that the Liquidation Receiver was already under no such duty, there would be no need to ask the District Court to unilaterally amend the Settlement Agreement to change the mechanism of liquidating Seaman's assets. (Doc. 107.)

On February 20, 2024, the District Court issued its *Order Regarding Approval of Designated Settlement Fund* affirming a prior order (issued before Seaman's time to respond to the Appellees' motion had elapsed) creating the fund. (Doc. 120, referred to here as the "DSF Order.") In the DSF Order, the District Court discussed the issue of the payment of capital gains taxes given the language of the Settlement Agreement, and ultimately held that:

> 2. The Liquidating Receiver shall RESERVE FUNDS from the sale of Mr. Seaman's capital assets to pay any capital gains liability reasonably and timely determined by Mr. Seaman's tax preparer associated with the sale of each capital asset. Any unused portion of the reserved funds shall inure to the benefit of the judgment creditors – Plaintiff Gabert and Intervenor Freeman.

(DSF Order, p. 2.)

In part, the District Court concluded that, although it found no ambiguity in the Settlement Agreement on the issue, to the extent it did, that uncertainty would be construed against Gabert as the party who drafted the initial Order Appointing Receiver which contained the "[p]ay all required taxes relating to the Property" language that the Settlement Agreement incorporated as a duty of the Liquidation Receiver. (DSF Order, pp. 8-9 (citing Mont. Code Ann. § 28–3–206 that in cases of ambiguity, contract language should be interpreted most strongly against the party who caused the uncertainty to exist.))

The District Court also noted that it appeared the proposed Designated Settlement Fund, the new mechanism Appellees proposed to replace the Liquidation Receiver, had been "specifically designed to pay no capital gains arising from the liquidation of assets." (DSF Order, p. 3.)

Gabert and Freeman then filed a *Motion to Alter or Amend Judgment Under Rule 59(e)* on March 19, 2024. (Doc. 124.) The corresponding brief asked the

District Court to reverse its position regarding the payment of capital gains taxes and to instead order that Seaman must pay those taxes. (Doc. 125, p. 23.)

The issue was briefed (*see* Docs. 147 (Seaman's Response) and 153 (Gabert and Freeman's Reply)) and the District Court received exhibits and heard oral argument at a hearing on June 3, 2024. (Transcript of Proceedings Motion to Amend Judgment, June 3, 2024 (referred to here as the "June Hearing"; Exhibits 1-19 of June Hearing; *see also* Doc. 154.)

On June 7, 2024, the District Court issued its *Order & Opinion Re Motion to Amend Judgment* from which this appeal is taken. (Doc. 155, referred to here as "Amended Judgment".)

The Amended Judgment struck the paragraph in the DSF Order requiring the Liquidation Receiver to reserve funds from the sale of the assets to pay capital gains taxes. (Amended Judgment, p. 2.) Contrary to what it stated in the DSF Order, the District Court concluded that the "all required taxes relating to the Property" provision was ambiguous after all, and examined extrinsic evidence regarding the formation and drafting of the Settlement Agreement. (Amended Judgment, p. 6.) The District Court then concluded that the parties had "no intent" to include a reservation and payment of capital gains taxes in the Settlement Agreement. (*Id.*) Additionally, the District Court decided that capital gains taxes should be considered income taxes, not property taxes, and the District Court

concluded that because of this finding, it would exclude capital gains taxes from the Settlement Agreement provision regarding paying all "taxes relating to the Property." (Amended Judgment, pp. 10-11.)

Seaman timely appealed the District Court's Amended Judgment.

STANDARD OF REVIEW

The construction and interpretation of a contract, including whether a term is ambiguous, is a question of law that is reviewed *de novo*, where the Court determines whether the trial court's interpretation of the law is correct. *Wood v. Anderson*, 2017 MT 180, ¶ 7, 388 Mont. 166, 399 P.3d 304.

When an ambiguity exists in a contract, the interpretation of the intent of the parties is a question of fact that is reviewed under the clearly erroneous standard, where the Court determines whether the findings are not supported by substantial credible evidence, whether the district court misapprehended the effects of the evidence, or whether the record leaves the Court with a definite and firm conviction that a mistake has been made. *In re Marriage of Mease*, 2004 MT 59, ¶ 30, 320 Mont. 229, 93 P.3d 1148; *Performance Mach. Co. v. Yellowstone Mt. Club, LLC*, 2007 MT 250, ¶ 11, 339 Mont. 259, 169 P.3d 394.

SUMMARY OF THE ARGUMENT

This appeal is about contract interpretation, not punishing Seaman. The Appellant has been charged, plead guilty, and sentenced to prison. Seaman expects

that Gabert and Freeman, as they have throughout this matter, will lean heavily on reciting in detail Seaman's conduct and the damage he caused to the victims. They may even urge the Court to consider that conduct in upholding the District Court's ruling.

But, ultimately, this is not an appeal about the shooting or how to punish Seaman. This is a case about an area of law that affects all Montanans: contract interpretation. Appellant does not wish to make light of the impact his conduct has had. However, the acts for which he is now in prison are simply not relevant to the legal issue on appeal.

This case is about a straightforward question: does the "[p]ay all required taxes relating to the Property" provision require the Liquidation Receiver to pay, or withhold funds to pay, the capital gains taxes from the sale of the property?

The provision is not ambiguous. Courts have held that "relating to" language deserves broad interpretation, and capital gains taxes from the sale of an asset are clearly related to that asset. Even if the Court determines the provision is ambiguous, the question about the payment of capital gains taxes should still be resolved in Seaman's favor, as Gabert is the party who drafted that language. The District Court initially agreed with Seaman on this interpretation, before reversing itself at Appellees' request. The Court should reverse the District Court's

conclusion and hold that the capital gains taxes incurred from the planned sale of Seaman's assets are included in the Liquidation Receiver's responsibility to pay.

ARGUMENT

The District Court reached the correct conclusion the first time it looked at this issue, finding in the February 2024 DSF Order that there was no ambiguity in the provision requiring the Liquidation Receiver to pay "all required taxes relating to the Property," that capital gains taxes fall under this broad provision, and that, even if there was an ambiguity, it should be interpreted against Appellees, as they are responsible for the term being included.[3]

I. The Settlement Agreement is not ambiguous and requires the Liquidation Receiver to pay the capital gains taxes.

It is well settled that when there is a written contract, it is the duty of the Court to enforce the terms of that written contract and "not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1–4–101; *Nordwick v. Berg*, 223 Mont. 337, 342, 725 P.2d 1195, 1199 (1986) (citations omitted); *Conagra, Inc. v. Nierenberg*, 2000 MT 213, ¶ 31, 301 Mont. 55, 7 P.3d. 369.

The Settlement Agreement is a contract, governed by the laws relating to contracts. *Murphy v. Home Depot*, 2012 MT 23, ¶ 8, 364 Mont. 27, 270 P.3d 72.

[3] The District Court did not address this rule of contract interpretation in its Amended Judgment.

And when the language of a contract is clear, unambiguous and, as a result, susceptible to only one interpretation, the duty of the court is to apply the language as written. *American Music Co. v. Higbee*, 2004 MT 349, ¶ 17, 324 Mont. 348, 103 P.3d 518; *Corp. Air v. Edwards Jet Center*, 2008 MT 283, ¶ 32, 345 Mont. 336, 190 P.3d 1111; Mont. Code Ann. § 28–3–303. To do otherwise is to defeat the very purpose of written contracts.

The parties signed a contract to settle the claims at issue. *State Highway Comm'n v. Arms*, 163 Mont. 487, 490, 518 P.2d 35, 36 (1974) (compromises are favored by the Court). That contract includes an unambiguous term that the Liquidation Receiver, charged with the sale of Seaman's assets, must also "[p]ay all required taxes relating to the Property." This term clearly includes the payment of capital gains taxes from the sale of those assets.

a. The Liquidation Receiver paying capital gains is consistent with other provisions of the Settlement Agreement.

Whenever possible, the intention of the parties is to be ascertained from the contract's language alone, with all provisions taken together and given effect. Mont. Code Ann. § 28–3–303; § 28–3–202; § 28–3–401. The contractual language used is to be interpreted by its plain, ordinary meaning. *Ophus v. Fritz*, 2000 MT 251, ¶ 23, 301 Mont. 447, 11 P.3d 1192. And merely that the parties disagree about the interpretation a court should give a contract's provision does not render that provision ambiguous: such a determination must be made on an objective basis.

Mary J. Baker Revocable Tr. v. Cenex Harvest States, Coops., Inc., 2007 MT 159, ¶ 20, 338 Mont. 41, 164 P.3d 851.

The Settlement Agreement included that the Liquidation Receiver would be subject to certain enumerated duties and responsibilities previously held by the initial receiver under the District Court's July 2022 Order Appointing Receiver. (Settlement Agreement ¶¶ 6(b) and (c).) Specifically included in this list was Paragraph 5 of the Order Appointing Receiver, which required the receiver to "[p]ay all required taxes relating to the Property" and exercise all authority "usually granted to receivers." (Order Appointing Receiver, at ¶ 5(n) & (o).) Additionally, the receiver (and so, by extension, the Liquidation Receiver) was to "Pay all expenses, and other obligations secured by, or which may give rise to, liens[.]" (*Id.* ¶ 5(f).)

In its DSF Order, the District Court correctly concluded that the "pay all required taxes relating to the Property" language was not solely about property or sales taxes, but "all" taxes:

> However, equally clear is the duty of the original Receiver, and the Liquidation Receiver, to "[p]ay all taxes relating to the Property". The clear language does not limit taxes to merely property or sales taxes, but to all taxes relating to the property.

(DSF Order, p. 7.)

The District Court additionally cited guidance from the IRS in concluding that capital gains taxes are a tax "relating to the property."

> Tax liability for the capital gain realized on the sale of the property is a tax "relating to the property".
>
> > When you sell a capital asset, the difference between the adjusted basis in the asset and the amount you realized from the sale is a capital gain or a capital loss. Generally, an asset's basis is its cost to the owner … . You have a capital gain if you sell the asset for more than your adjusted basis. … Net capital gains are taxed at different rates depending on overall taxable income … .

(*Id.* (citing Topic No. 409, Capital Gains and Losses (available at https://www.irs.gov/taxtopics/tc409).)[4]

That the requirement to pay all taxes "relating to the Property" from the Order Appointing Receiver and incorporated into the Settlement Agreement is not ambiguous is even more clear read in the overall context of the Settlement Agreement. *See Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 19, 364

[4] The District Court also correctly observed that public policy favored having the Liquidation Receiver pay the capital gains taxes from the proceeds of the sale of assets because it would ensure that the tax amounts would actually be paid. (DSF Order p. 9, n. 2 (noting that "Taxes are what we pay for a civilized society" and that if taxes go unpaid, it increases the burden on other taxpayers.)

Mont. 455, 276 P.3d 922 (ambiguity exists when a language in a contract "taken as a whole" could reasonably be given two different meanings).

In addition to the provision on the payment of taxes, the Settlement Agreement includes that, from the proceeds of the sale of the Property (which comprises all of his assets) Seaman will be paid the agreed homestead exemption amount of $378,560.00. (Settlement Agreement ¶ 1.) Further, Gabert and Freeman agreed not to execute on their judgments against that homestead exemption amount indefinitely. (Settlement Agreement ¶ 9.) There would be no reason for Seaman to have negotiated for the homestead amount if he was also agreeing to accept the capital gains tax liability that will greatly exceed the exemption amount, and if all of the homestead exemption money would be spent paying off the capital gains taxes, there would be no point for the protection against execution to be included.[5] Mont. Code Ann. § 28–3–202 (every part of a contract must be given effect if reasonably practicable); s*ee also* Settlement Agreement, ¶ 9 (Gabert and Freeman also agreed not to execute on their judgments on any assets Seaman *acquired* with the amount he received under the Settlement Agreement). Seaman clearly negotiated for a monetary benefit that he would obtain and keep. The Settlement Agreement's provisions, giving him a protected amount of money, would be

[5] Homestead exemptions are normally protected from execution for eighteen months after the sale of a property. Mont. Code Ann. § 70–32–213.

pointless if he was also subject to millions in capital gains tax liability. Mont. Code Ann. § 28–3–401 (a contract's terms govern its interpretation so long as they do not involve an absurdity). Under Gabert and Freeman's view, Seaman intentionally: (1) negotiated for a sum certain amount of money to receive from the sale of the property that he would immediately have to use to cover only a portion of the capital gains tax that would be generated from the sale of his property; and (2) understood that despite negotiating for the payment, he would be left with no money and significant tax debt. This is simply not a reasonable interpretation of the Settlement Agreement given provisions where Seaman both received a payout and clearly intended to keep it safe from Gabert and Freeman. *Krajacich*, ¶ 19 (ambiguity only exists when the language could *reasonably* be given two different meanings).

b. Courts across the country have construed "relating to" broadly

That the Liquidation Receiver's requirement to pay all "taxes relating to the Property" includes capital gains taxes from the planned sale of the assets is also consistent with the definition of the key word "relating." Black's Law Dictionary defines related as "Connected in some way; having relationship to or with something else" and "relate" as "To have some connection to; to stand in relation to[.]" (Related and Relate, Black's Law Dictionary (12th ed. 2024.)) This is an extremely broad definition, and courts have routinely applied it that way in both

contractual and statutory contexts. *See Mary J. Baker Revocable Tr.*, ¶ 20 (the interpretation of a contract term is made on an objective basis).

The United States Supreme Court has held that, when Congress uses the term "relating to" it means to create a broad application of a law. *Morales v. TWA*, 504 U.S. 374, 383, 112 S. Ct. 2031, 2037 (1992). The *Morales* Court looked at the preemption provision of the Airline Deregulation Act, which said states could not enforce any law "relating to rates, routes, or services" of any air carrier. *Morales* at 378-79. In that case, the National Association of Attorneys General adopted a set of guidelines regarding the air travel industry and several states sent airlines letters saying that their violations of those guidelines constituted a violation of state consumer protection laws. The airlines sued, arguing the states' claims fell under the Airline Deregulation Act's preemption clause.

Calling the "relating to" language the "key phrase" at issue, the United States Supreme Court ruled that the state claims were preempted, holding that "The ordinary meaning of these words is a broad one" meaning to "stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with[.]" *Morales* at 383 (citing Black's Law Dictionary.)

Referring to the other cases where it held similar language had an "expansive sweep" the *Morales* Court noted that the choice of language was "conspicuous for its breadth" with the standard of what fell under the "relating to"

umbrella being anything that has a "connection with, or reference to" the subject. *Id.* at 384; *see also Latiolais v. Huntington Ingalls, Inc*, 951 F.3d 286, 292 (5th Cir. 2020) (citing *Morales* in recognizing, under statutory authority for removal jurisdiction of cases "relating to" an act taken under the color of federal office, that the ordinary meaning of relating to "is a broad one[.]"); *United States v. Weis*, 487 F.3d 1148, 1152 (8th Cir. 2007) (construing a sentencing enhancement for defendants with a prior conviction "relating to" abusive sexual conduct involving a minor as having a broad ordinary meaning); *United States v. Sonnenberg*, 556 F.3d 667, 671 (8th Cir. 2009) (under similar facts as *Weis*, reaching the same conclusion that "relating to" has a broad meaning that involves "to stand in some relation to; to have bearing or concern[.]").

Similarly, in arbitration clauses, courts have found that "relating to" should be interpreted as having a broad scope. *Pennzoil Exploration & Prod. Co. v. Ramco Energy*, 139 F.3d 1061, 1068 (5th Cir. 1998) (under an arbitration clause for disputes arising out of "or in relation to" a joint operations agreement, the language should be construed broadly and "it is only necessary that the dispute 'touch' matters covered by [the agreement] to be arbitrable."); *United Communs. Hub, Inc. v. Qwest Communs., Inc*., 46 Fed.App'x 412, 413 (9th Cir. 2002) (the phrase "relating to" in an arbitration clause shows a "broad and inclusive meaning."); *Collins & Aikman Prods. Co. v. Bldg. Sys*., 58 F.3d 16, 20 (2d Cir.

1995) (an arbitration clause covering "any claim or controversy arising out of or relating to the agreement" is the "paradigm of a broad clause."); *Tracer Research Corp. v. Nat'l Envtl. Servs. Co.*, 42 F.3d 1292, 1295 (9th Cir. 1994) ("Arising under" is a narrower provision when not accompanied by "relating to[.]")

In 2019, this Court found that an arbitration agreement that required arbitration for "[a]ny controversy or Claim" between the parties "arising out of or relating to" their agreement should be read broadly. *Stowe v. Big Sky Vacation Rentals, Inc.*, 2019 MT 288, ¶ 8, 398 Mont. 91, 454 P.3d 655. In *Stowe*, a property management company in Big Sky, BSVR, contracted with a company that provided home automation services tailored to the property management and vacation rental industry. *Id.* ¶ 3. The property management company then offered those services to its own clients.

One of BSVR's clients sued after a fire, alleged to have occurred in part because of a failure to respond to notification from the automation service, destroyed their property. *Id.* ¶ 9. BSVR brought third party claims against the home automation company, PointCentral, including for indemnity and contribution. *Id.* ¶ 10. PointCentral moved to dismiss based on the arbitration provision, which required claims "arising out of or relating to" its agreement with BSVR to be subject to arbitration.

This Court, calling the arbitration language "broadly worded" reversed the lower court's finding that the provision was unenforceable. *Stowe*, ¶¶ 7, 17; *see also Granziano v. Stock Farm Homeowners Assoc*., 2010 Mont. Dist. LEXIS 299 at *23 (Montana 21st Judicial District Court) (arbitration provision for all disputes "arising out of or relating to" the covenants of a housing development is "the broadest language the parties could reasonably use" for the scope of what disputes are subject to arbitration).

Here, the Liquidation Receiver has the duty to pay "all required taxes relating to the Property." Capital gains taxes from the agreed sale of Seaman's assets (the Property) under the Settlement Agreement are clearly related to those same assets. They are only incurred because of the sale of that property. The taxes are clearly, at minimum, "connected in some way" to the property whose sale creates them. Related, Black's Law Dictionary (12th ed. 2024); *Morales* at 383.

Gabert and Freeman argue that the "taxes relating to the Property" provision in the Settlement Agreement should only be read to include property taxes. (Transcript of June Hearing, 11:20-23.) But the language "relating to" has routinely been given broad connotation. If the parties only intended for the Liquidation Receiver to pay property taxes, such language would not be used. This is reinforced by the idea that the Liquidation Receiver also had to pay any expenses that could give rise to a lien, such as owed taxes.

The provision requiring payment of "all required taxes relating to the Property" taken in the context of the entire Settlement Agreement, is not ambiguous. Its plain language interpretation is a broad one, and the other provisions of the agreement back up the conclusion that it was clearly intended that Seaman would both receive, and keep, the agreed homestead exemption payout. These provisions would not be consistent with the concept of him immediately paying millions in capital gains taxes.

A decision that the term is ambiguous will have a destabilizing effect on contracts throughout the state that incorporate this common language and the longstanding interpretation of "relating to" being read broadly.

II. Even if the Court concludes the term "Pay all required taxes relating to the Property" is ambiguous, it should be interpreted to include paying capital gains taxes.

Should the Court break from the United States Supreme Court and other courts around the country and decide that "relating to" should not be read with a broad context, an ambiguity about the key provision of the Settlement Agreement should still be resolved in Seaman's favor. *Corp. Air v. Edwards Jet Ctr. Mont. Inc.*, 2008 MT 283, ¶ 32, 345 Mont. 336, 190 P.3d 1111 (when there is an ambiguity, the court can look to extrinsic evidence to determine the intent of the parties).

Based on the rest of the Settlement Agreement and the language it incorporates, as well as the work of the receiver that had been in place at the time the Settlement Agreement was negotiated, it is clear that paying tax obligations was a duty of the receiver, and therefore a duty of the Liquidation Receiver. The initial receiver, Christy Brandon, was charged with paying "all expenses, and other obligations . . . which may give rise to liens[.]" (Order Appointing Receiver, ¶ 5(f).) This duty was incorporated into the Liquidation Receiver's obligations. (Settlement Agreement, ¶ 6(c)(v) (incorporating Paragraph 5 of the Order Appointing Receiver as a duty of the Liquidation Receiver.)

Further, the initial receiver already was paying capital gains taxes from the sale of Seaman's property. (Transcript of June Hearing, 72:7-10 (Seaman's counsel discussing the "course of performance" of the existing receiver selling assets and paying the taxes); 78:4-10 (Gabert's counsel acknowledging that capital gains taxes were paid by the receiver as part of Seaman's 2022 tax return.)) In other words, Seaman would of course have reasonably assumed that an obligation carrying forward the receiver's duty regarding paying taxes would be handled in the same way that the existing receiver had already been performing. Gabert and Freeman argue that the lack of discussion in the emails between counsel specifically mentioning payment of capital gains taxes somehow means they were not meant to be included in the requirement of paying "all required taxes relating

to the Property." But it would be flatly unreasonable for Seaman or his counsel to assume the course of performance would change, with the same written obligation, between the receiver and the Liquidation Receiver. The language of the duty did not change, and there is no reason why they would assume they needed to specifically require something that was already occurring.

Finally, as the District Court noted in its DSF Order, but did not mention in its Amended Judgment, in the event there is an ambiguity in a contract, it should be interpreted most strongly against the party that caused it to exist. Mont. Code Ann. § 28–3–206.

The language central to the dispute here, "Pay all required taxes relating to the Property" comes from the July 2022 Order Appointing Receiver. Seaman played no role in that order, it was granted *ex parte* before he was even served with Gabert's lawsuit. It was Gabert's attorney who drafted the proposed order setting out the duties of the initial receiver, including for the payment of all taxes relating to the Property, which the District Court incorporated into the Order Appointing Receiver. (Doc. 2, Ex. 6.)

And it was Appellees attorneys who first offered its incorporation into what became the Settlement Agreement. (Exhibit 11 to June Hearing, p. 4 (email from Mr. Cotner to counsel for the parties including a draft settlement agreement); Exhibit 11, p. 8 (section of draft including the incorporation of Order Appointing

Receiver Paragraph 5.) That portion of the draft remains through the negotiations over the following days and into the ultimate Settlement Agreement. Appellees were therefore both the side to write the "Pay all required taxes relating to the Property" and the reason why that language ended up incorporated into the Liquidation Receiver's duties.

If there is an ambiguity, it is there because of language Gabert wrote into the order appointing the initial receiver more than two years ago, then incorporated into the Settlement Agreement. Should the Court determine that the "all required taxes relating to the Property" language is ambiguous, this language must then be resolved against Gabert, and in favor of Seaman.

CONCLUSION

The Court should reverse the District Court's conclusion that the language of the Settlement Agreement, and the Gabert-drafted language from the Order Appointing Receiver it incorporates, requires Seaman to pay the capital gains taxes from the liquidation of the property, and order that the Liquidation Receiver must reserve funds from the sale of the assets to pay those capital gain taxes.

DATED: January 20, 2025.

WORDEN THANE P.C.
Attorneys for Defendant/Appellant Garry Seaman

/s/ *Reid Perkins*
Reid Perkins

CERTIFICATE OF COMPLIANCE

Under Mont. R. App. P. 11, I certify that this Opening Brief is proportionally spaced in 14-point Times New Roman font, double-spaced, and contains 5,547 words, excluding the table of contents, table of authorities, certificate of service and this compliance certificate.

/s/ Reid Perkins
Reid Perkins

CERTIFICATE OF SERVICE

I certify that on January 20, 2025, I served a copy of the preceding document by the Montana Supreme Court's electronic filing service on the following:

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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 24-0408

HEIDI A. GABERT

Plaintiff/Appellee,

and

DAWN FREEMAN

Intervenor/Appellee

v.

GARRY DOUGLAS SEAMAN,

Defendant/Appellant.

On Appeal from the Montana Nineteenth Judicial District Court
Cause No. DV-22-95
Hon. Shane Vannatta, Presiding

APPELLANT'S APPENDIX

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