

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 24-0503

GUARDIAN TAX MT, LLC,

Plaintiff,

vs.

JEANNETTE F. TASEY, and all other persons, unknown, claiming or who might upon claim any right, title, estate, or interest in or lien or encumbrance the real property described in the complaint adverse to Plaintiff’s ownership or any cloud upon Plaintiff’s title, whether the claim or possible claim is present or contingent,

Defendants.

**ANSWER BRIEF OF APPELLEE
GUARDIAN TAX MT, LLC**

Appeal from Cause No. DV-22-28

Montana Thirteenth Judicial District Court, Yellowstone County

Hon. Ashley Harada, Presiding

APPEARANCES:

D. Michael Eakin
Eakin & Berry, P.L.L.C.
P.O. Box 2218
Billings, Montana 59103
406-969-6001
Eakin.406law@gmail.com

Attorneys for Appellant

Eli J. Patten (MT Bar #11219)
David F. Knobel (MT Bar #212614)
CROWLEY FLECK PLLP
P.O. Box 2529
Billings, MT 59103-2529
Telephone: (406) 252-3441
Facsimile: (406) 252-3181
epatten@crowleyfleck.com
dknobel@crowleyfleck.com

Attorneys for Appellee

TABLE OF CONTENTS

STATEMENT OF THE ISSUES.....1

STATEMENT OF THE CASE.....1

STATEMENT OF FACTS.....5

STANDARDS OF REVIEW11

SUMMARY OF ARGUMENT12

ARGUMENT.....15

I. Tasey failed to establish genuine issues of material fact regarding delivery of the Personal Check due to her reliance on unsubmitted evidence and on inadmissible, baseless, and speculative assertions15

II. Even when liberally construed, the plain language of Mont. Code Ann. § 15-18-211 (2017) compelled the Treasurer to issue the Tax Deed when no party-in-interest redeemed by August 2, 202126

CONCLUSION.....33

CERTIFICATE OF COMPLIANCE36

TABLE OF AUTHORITIES

Cases

<i>Abshire v. Sch. Dist. No. 1 of Silver Bow Cnty.</i> , 124 Mont. 244, 245, 220 P.2d 1058, 1059 (1950)	28
<i>Adkins v. Redeye</i> 196 Mont. 114, 639 P.2d 485	27
<i>Apple Park, L.L.C. v. Apple Park Condos., L.L.C.</i> , 2008 MT 284, 345 Mont. 359, 192 P.3d 232	19, 23-25
<i>Beckman Bros v. Weir</i> , 120 Mont. 305, 307; 184 P.2d 347, 349 (1947)	27, 31
<i>Brookins v. Mote</i> , 2012 MT 283, 367 Mont. 193, 292 P.3d 347	12
<i>Com. Cause of Montana v. Argenbright</i> , 276 Mont. 382, 391, 917 P.2d 425, 430 (1996)	28
<i>Dick Anderson Constr., Inc. v. Monroe Prop. Co.</i> , 2011 MT 138, 361 Mont. 30, 255 P.3d 1257	11
<i>Ditto v. Kipp</i> , 2000 MT 162, 300 Mont. 278, 3 P.3d 647	27
<i>Hajenga v. Schwein</i> , 2007 MT 80, 336 Mont. 507, 155 P.3d 1241	11-12, 15, 21
<i>Hartman v. Nimmack</i> , 116 Mont. 392, 154 P.2d 279 (1944)	31
<i>In re Est. of Kemmer</i> , 2023 MT 234, 10, 414 Mont. 182, 539 P.3d 636	11
<i>Kostelecky v. Peas in a Pod LLC</i> , 2022 MT 195, 410 Mont. 239, 518 P.3d 840	23

<i>Lowry v. Garfield County et. al</i> , 122 Mont. 571, 208 P.2d 478 (1949)	14, 27
<i>MacKay v. State</i> , 2003 MT 274, 317 Mont. 467, 79 P.3d 236	28
<i>Matter of Investigative Records of City of Columbus Police Dept.</i> , 265 Mont. 379, 877 P.2d 470 (1994)	28
<i>Montana Democratic Party v. Jacobsen</i> , 2024 MT 66, 416 Mont. 44, 545 P.3d 1074	28
<i>Moran v. Robbin</i> , 261 Mont. 478, 863 P.2d. 395 (1993)	27
<i>Pilgeram v. GreenPoint Mortg. Funding, Inc.</i> , 2013 MT 354, 373 Mont. 1, 313 P.3d 839	32-33
<i>Redies v. Cosner</i> , 2002 MT 86, 309 Mont. 315, 48 P.3d 697	28
<i>RN & DB, LLC v. Stewart</i> , 2015 MT 327, 381 Mont. 429, 434, 362 P.3d 61	26
<i>Smith v. Burlington N. & Santa Fe Ry.</i> , 2008 MT 225, 344 Mont. 278, 187 P.3d 639	15, 19, 21
<i>State ex rel. Bell v. McCullough</i> , 85 Mont. 435, 279 P. 245 (1929).....	14, 26, 31
<i>State ex rel. Fed. Land Bank v. Hays</i> , 86 Mont. 58, 66, 282 P. 32, 36 (1929)	26
Statutes	
Mont. Code Ann. § 1-2-101	26, 31
Mont. Code Ann. § 15-18-111 (2017)	14, 27-29
Mont. Code Ann. § 15-18-112(3) (2017)	27

Mont. Code Ann. § 15-18-211 (2017)	4, 9, 13-14, 26, 28-31
Mont. Code Ann. § 15-18-215	8
Mont. Code Ann. § 15-18-413	2
Mont. Code Ann. § 26-1-501	23

Other Authorities

Revised Code of Mont. 84-4132 (Section 2201) (1947, repealed).....	30
SHALL, Black's Law Dictionary (11th ed. 2019)	28
SPECULATION, Black's Law Dictionary (11th ed. 2019).....	23

Rules

Mont. R. Civ. P. 37	19
Mont. R. Civ. P. 56	4-5, 11-13, 15-19, 21, 23, 25
Mont. R. Evid. 802.....	20
Unif. Dist. Ct. R. 2	5, 17-18

STATEMENT OF THE ISSUES

- I. Did the District Court correctly grant summary judgment when the duly submitted and admissible evidence on the record proves there is no genuine issue of material fact regarding delivery of the Personal Check on August 3, 2021?

- II. Does liberal construction provide a Treasurer unfettered discretion to refuse to issue a tax deed beyond the statutorily prescribed redemption period when all parties-in-interest failed to timely redeem?

STATEMENT OF THE CASE

This case pertains to Tasey's non-compliance with the civic obligations required of all real property owners in Montana. Montana's property tax system is responsible for funding Montana's local towns, local governments, and schools. These public programs are reliant upon Montana property owners fulfilling their civic obligation and timely paying property taxes. The failure to timely pay property taxes, as is the case in this matter, results in a tax lien. Montana's long maintained system permits the assignment of a tax lien to third parties, which ensure a reliable source of funding for state and local governments. Although tax deeds that result following a failure to redeem prior to the statutory deadline are often the products of misfortune, the statutory process is vital to ensure Montana's counties receive proper funding to operate and provide the services relied upon by citizens of this State and

also to remedy non-performing properties, from a taxation perspective, to return to compliance.

Tasey's failure to pay property taxes in a timely manner resulted in numerous notices from the Yellowstone County Treasurer (the "Treasurer"), the imposition of a lien, the assignment of said lien, further notices from the Treasurer and Guardian, and ultimately, after several years, the issuance of a tax deed in accordance with Montana law. By issuing the tax deed, the State of Montana divested Tasey of her ownership in the subject property and granted Guardian absolute title. This action was in recognition of Guardian's advancement of the taxes, provision of notice to Tasey, and strict compliance with Montana's tax deed statutes.

After issuance of the tax deed, Guardian sought a judgment and decree quieting title to the subject real property pursuant to Mont. Code Ann. § 15-18-413.

Guardian moved the District Court for entry of summary judgment as the undisputed material facts demonstrated Guardian complied with all applicable statutory noticing requirements and despite notice, Tasey failed to redeem the real property tax lien prior to the expiration of the redemption period. Guardian's motion for summary judgment was supported by the Affidavit of Hank Peters, the tax supervisor in the Treasurer's Office, which established a redemption did not occur prior to the close of business on the August 2, 2021, as required by law. Additionally, Guardian's motion for summary judgment was supported by Tasey's own

admissions that Guardian complied with all statutory notice procedures and other obligations.

Tasey, in her response to Guardian's motion, asserted only one argument in defense of Guardian's motion for summary judgment, which was that a genuine issue of material fact existed regarding the United States Postal Service's delivery of a personal check (despite being told by the Treasurer that cash or certified funds was required) she mailed to the Treasurer's Office on the eve of the expiration of the redemption period. As part of her response, Tasey made unsubstantiated assertions that the personal check was delivered to the Treasurer's post office box on July 31, 2021, and the later delivery of the personal check to the Treasurer's Office was due to an internal delay of Yellowstone County's processing of its mail.

The District Court in its Order Granting Guardian's Motion for Summary Judgment determined, due to the failure to present admissible evidence, Tasey failed to demonstrate the existence of a disputed material fact regarding Tasey's attempted redemption. Order Granting Pl.'s Mot. Summ. J., pp. 9-10, July 22, 2024, Docket No. 55 (Guardian 000087-000088). The District Court held Tasey failed to present permissible evidence and instead relied upon impermissible hearsay or merely speculative or conclusory statements to refute Hank Peters' accounting of the Treasurer's receipt of the personal check. *Id.* Additionally, the District Court held that to the extent Tasey's evidence was not impermissible hearsay, Tasey failed to

provide sufficient foundation regarding her personal knowledge of the timing of the delivery of the personal check by the United States Postal Service (“USPS”). *Id.* Because Tasey failed to strictly comply with the evidentiary mandates of Mont. R. Civ. P. 56(e), the District Court found her unsupported assertions related to the arrival of the personal check, failed to raise a genuine issue of material fact. *Id.*

After determining that no genuine issue of material fact existed, the District Court determined that once the statutory redemption period expires, the redemptioner’s right to redeem a tax lien ceased. *Id.*, pp. 11-12 (Guardian 000089-000090). Since no redemption occurred prior to the expiration of the statutory deadline, the District Court held the Treasurer was statutorily obligated to issue the tax deed to Guardian pursuant to Mont. Code Ann. § 15-18-211. *Id.*, p.12 (Guardian 000090)

Finally, despite failing to respond to Guardian’s written discovery requests, Tasey impermissibly attempted to introduce additional evidence and new legal theories after the summary judgment motion was fully briefed and oral argument held on the motion. Tasey, under her own initiative and without leave of the District Court, filed a Post-hearing Brief at Docket No. 52 (the “Post-hearing Brief”) and an additional Declaration of Jeanette Tasey at Docket No. 53 (the “Post-hearing Declaration”) which attempted to submit new evidence and legal defenses not previously raised by Tasey. The Post-hearing Brief and Post-hearing Declaration

were filed in lieu of the proposed summary judgment order the District Court ordered the parties to submit. The District Court never ordered additional briefing, a stay under Mont. R. Civ. P. 56(f), or further evidentiary development and took the motion under advisement at the conclusion of the summary judgment hearing. Guardian's motion for summary judgment was deemed submitted at the conclusion of the hearing and the summary judgment record deemed closed pursuant to Uniform District Court Rule 2(e).

Guardian did not have an opportunity to respond or object to Tasey's new legal theories or "evidence" presented in the Post-hearing Brief and Post-hearing Declaration, and she now relies upon those documents in her opening brief before this Court. If the declaration would have been timely submitted in support of her response to Guardian's summary judgment motion, Guardian would have objected to the exhibits provided due to Tasey's failure to produce those documents as requested by Guardian in its requests for production during discovery. The District Court properly disregarded the contents of Tasey's Post-hearing Brief and Post-hearing Declaration and relied only upon that which was properly deemed and of record.

STATEMENT OF FACTS

The subject of this matter starts in 2017 when Tasey failed to timely pay duly assessed and levied property taxes on her certain real property located in

Yellowstone County, resulting in the attachment of a tax lien. Ex. A, Aff. Jared Hollinger, January 14, 2022, Docket No. 3 (Guardian 000005). Due to fiscal needs and pursuant to law, the Treasurer assigned the tax lien to Guardian after Guardian's payment of the back taxes, interest and penalties assessed due to Tasey's failure to pay the amounts owed. Ex. B, Aff. Hollinger (Guardian 000006). Tasey did not pay the levied taxes for the 3 years following the attachment of the tax lien, despite receiving notice and maintaining actual knowledge of the lien, which culminated in the Treasurer's issuance of a tax deed to Guardian. Ex. D, Aff. Hollinger (Guardian 000013); Decl. in Support of Mot. to Set Aside Default and Default J., ¶ 6, July 13, 2022, Docket No. 18 (Guardian 000073).

The Treasurer issued Tax Lien Certificate, Certificate No. 761510 on August 1, 2018 (the "Tax Lien Certificate"). Aff. Hollinger, ¶ 8 (Guardian 000002-000003); Ex. A, Aff. Hollinger (Guardian 000005). The Yellowstone County Clerk and Recorder recorded the Tax Lien Certificate on August 16, 2018, as document number 3858627. *Id.* The Tax Lien Certificate established a tax lien for delinquent taxes owed by Tasey and established a lien against certain real property located in Yellowstone County, commonly known as 12880 Medicine Man Trl., Molt, MT 59057 and more particularly described as (the "Subject Property"):

THAT PART OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 23 EAST OF THE PRINCIPAL MONTANA MERIDIAN, IN YELLOWSTONE COUNTY, MONTANA, DESCRIBED AS TRACT 8A, OF CERTIFICATE OF SURVEY NO. 1902 AMENDED CHIEF

JOSEPH ESTATES (PHASE 2), AMENDING TRACTS 7A AND 8,
ON FILE IN THE OFFICE OF THE CLERK AND RECORDER OF
SAID COUNTY, UNDER DOCUMENT NO. 1665766.

Ex. A, Aff. Hollinger (Guardian 000005).

The Treasurer issued an Assignment of County's Interest in Property Tax Lien, assignment no. 110722 (the "Assignment Certificate"), to Guardian on August 30, 2018. Aff. Hollinger, ¶ 8 (Guardian 000002-000003); Ex. B, Aff. Hollinger (Guardian 000006). The Yellowstone County Clerk and Recorder recorded the Assignment Certificate on September 12, 2018, as document no. 3862163. *Id.* The Assignment Certificate assigned to Guardian the tax lien established by the Tax Lien Certificate due to Guardian's payment of the delinquent taxes, penalties, interest, and costs assessed against the Subject Property and owed to the Treasurer. *Id.* As shown by the Tax Lien Certificate and Assignment Certificate, the Treasurer's tax code associated with the levied taxes and tax lien is Tax Code: D04186. Exhibit A-B, Aff. Hollinger (Guardian 000005-000006).

Guardian received a litigation guarantee dated April 12, 2021 (the "Litigation Guarantee") for the Subject Property. Aff. Eli J. Patten ¶ 3, April 5, 2024, Docket No. 44 (Guardian 000015); Ex. A, Aff. Patten (Guardian 000018-000035). On Schedule C of the Litigation Guarantee, the following address was the only one disclosed for known individuals who had a record interest in the Subject Property other than Guardian:

Jeannette F. Tasey
12880 Medicine Man Trail,
Molt, MT 59057

Ex. A, Aff. Patten (Guardian 000023).

Guardian drafted a Notice That a Tax Deed May Issue following the form provided in Mont. Code Ann. § 15-18-215 (2017) (the “Notice”). Ex. C, Aff. Hollinger (Guardian 000008-000009); Aff. Patten at ¶ 5 (Guardian 000015). The Notice disclosed that the amount of taxes, penalties, interests, and fees due as of the date of the Notice was \$17,194.16 (the “Redemption Amount”). Aff. Hollinger at ¶ 10 (Guardian 000003); Ex. C, Aff. Hollinger (Guardian 000008-000009). The Notice also disclosed that a failure to pay the Redemption Amount by August 2, 2021 (the “Redemption Period”) may result in a tax deed being issued to the possessor of the tax lien the day following the Redemption Period. Aff. Hollinger at ¶ 9 (Guardian 000003); Ex. C, Aff. Hollinger (Guardian 000009).

On May 7, 2021, Guardian mailed two Notices via certified mail, return receipt requested. Ex. C, Aff. Hollinger (Guardian 000010); Aff. Patten at ¶ 6 (Guardian 000015). Guardian individually addressed two of the Notices, one for Occupants and the other to Tasey at the street address of the Subject Property. *Id.* Guardian also published the Notice in the *Yellowstone County News* on May 7, 2021, and May 14, 2021. Ex. C, Aff. Hollinger (Guardian 000012); Aff. Patten at ¶ 7 (Guardian 000016). Tasey admits that Guardian provided her notice that a tax deed

may issue if the amounts owing under the tax lien were not paid on or before August 2, 2021. Notice of Deemed Admis., May 30, 2024, Docket No. 50 (Guardian 000012); TRO Hr’g Tr. 15: 25 - 16: 4, May 30, 2024 (Guardian 000056-000057).

Guardian, through counsel, prepared a proof of notice and filed it with the Yellowstone County Clerk and Recorder. Aff. Hollinger at ¶ 9 (Guardian 000003); Ex. C, Aff. Hollinger (Guardian 000007-000012); Aff. Patten at ¶ 9 (Guardian 000016). The Clerk and Recorder recorded the proof of notice on June 2, 2021, as document no. 3974716 (the “Proof of Notice”). *Id.* The Proof of Notice contained true and correct copies of (a) the Notice, (b) proof of the Notices’ return receipts marked unclaimed, and (c) the Affidavit of Publication by Jonathan McNiven of the *Yellowstone County News*. Ex. C, Aff. Hollinger (Guardian 000007-000012); Aff. Patten at ¶ 10 (Guardian 000016). Tasey admits that Guardian recorded the Proof of Notice and a copy of the Notice in the public records of Yellowstone County as Document No. 3974716 on June 2, 2021. Notice of Deemed Admis. (Guardian 000038-000039); TRO Hr’g Tr. 15: 25 - 16: 4 (Guardian 000056-000057).

Tasey admits that Guardian fully complied with its duties and obligations under Mont. Code Ann. § 15-18-211, *et seq.*, prior to the issuance of the Tax Deed. Notice of Deemed Admis. (Guardian 000038-000039); TRO Hr’g Tr. 15: 25 - 16: 4 (Guardian 000056-000057). Although Guardian provided notice that a tax deed may issue, the Redemption Amount was not paid prior to the expiration of the

Redemption Period. Aff. Henry Peters, ¶ 9, April 5, 2024, Docket No. 43 (Guardian 000066).

On July 30, 2021, Tasey mailed via the USPS a personal check, check no. 1130 (the “Personal Check”), executed by Tasey in the amount of \$23,158.81 for payment of Real Estate Tax assessed to Tax Code: DO4186. Aff. Peters at ¶¶ 7-8 (Guardian 000066). On the envelope, the USPS provided a “Expected Delivery Day” of Saturday, July 31, 2021. Aff. Peters at ¶ 8 (Guardian 000066); Ex. A, Aff. Peters (Guardian 000069). Henry Peters, the Treasurer’s tax supervisor in August 2021 (“Peters”), received the Personal Check on behalf of the Treasurer on August 3, 2021, evident by the Treasurer’s received stamp on the envelope. Aff. Peters at ¶¶ 3, 7 (Guardian 000066). It is the Treasurer’s policy that if any taxpayer’s payment for purposes of redemption is received after the applicable redemption period, no matter the payment’s form, the attempted redemption will be rejected as untimely. Aff. Peters at ¶ 10 (Guardian 000067). Since the Personal Check was received by Peters on August 3, 2021, the Treasurer determined the Personal Check to be an untimely attempt to redeem the tax lien and assignment associated with Tax Code: D04186 and immediately rejected Tasey's attempt to redeem accordingly. Aff. Peters at ¶ 11 (Guardian 000067).

Guardian mailed to the Treasurer the fees to issue and record a tax deed for the Subject Property on August 4, 2021. Aff. Patten at ¶ 12 (Guardian 000016).

Prior to issuance of the Tax Deed, the Treasurer confirmed the proper recording of the Proof of Notice. Aff. Peters at ¶ 14 (Guardian 000067). The Yellowstone County Treasurer accepted Guardian’s payment on August 4, 2021. Ex. B, Aff. Patten (Guardian 000036). Subsequently, the Treasurer issued and recorded a tax deed conveying the Subject Property to Guardian on August 5, 2021. The Yellowstone County Clerk and Recorder recorded the tax deed on August 5, 2021, as document no. 3983167 (the “Tax Deed”). Ex. D, Aff. Hollinger (Guardian 000013); Aff. Hollinger at ¶ 11 (Guardian 000003); Aff. Peters at ¶ 15 (Guardian 000067-000068).

STANDARDS OF REVIEW

The Court reviews district courts’ summary judgment rulings and statutory interpretation de novo for conformance with Mont. R. Civ. P. 56 and proper interpretation of statutory construction. *Dick Anderson Constr., Inc. v. Monroe Prop. Co.*, 2011 MT 138, ¶ 16, 361 Mont. 30, 255 P.3d 1257; *In re Est. of Kemmer*, 2023 MT 234, ¶¶ 6, 10, 414 Mont. 182, 187, 539 P.3d 636, 640. “Summary judgment is proper when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c)(3). If the movant meets its initial burden, the evidentiary burden shifts to the responding party to prove a genuine issue of material fact exists by presenting “material and substantial evidence rather than merely conclusory or speculative statements.” *Hajenga v.*

Schwein, 2007 MT 80, ¶ 13, 336 Mont. 507, 155 P.3d 1241. That obligation requires the non-moving party to set out specific facts showing the existence of a genuine issue of material fact by more than mere denial, speculation, or pleading allegation. Mont. R. Civ. P. 56(e)(2). The district court's conclusions of law are reviewed for correctness, while findings of fact are reviewed to determine whether they are clearly erroneous. *Brookins v. Mote*, 2012 MT 283, ¶ 22, 367 Mont. 193, 199-200, 292 P.3d 347, 353.

SUMMARY OF ARGUMENT

This case involves the question of whether the District Court erred in granting a motion for summary judgment when the opposing party failed to submit any admissible evidence establishing genuine issues of disputed material fact. The District Court granting Guardian's motion for summary judgment was proper as the undisputed material facts and Tasey's own admissions demonstrate Guardian complied with the statutory notice requirements by warning the necessary parties that a tax deed would be issued if the delinquent property taxes, interests, costs, and penalties were not paid by August 2, 2021. Guardian's strict compliance with the tax deed noticing statutes provided the needed jurisdiction to the Treasurer to issue the tax deed if no redemption occurred by the expiration of the redemption period on August 2, 2021. Further, the material facts show that no party – including Tasey – timely redeemed the tax lien prior to the deadline, despite having notice of the

amount due and the exact date due. Because redemption did not occur, Mont. Code Ann. § 15-18-211 mandates the Treasurer to issue a tax deed to Guardian. By issuing the tax deed, the Treasurer conveyed to Guardian new and absolute title to the Subject Property, free and clear of all encumbrances not exempted by statute, as of the date of the tax deed.

Tasey's argument related to genuine issues of material fact is unpersuasive as Tasey failed to meet the evidentiary mandates of Mont. R. Civ. P. 56(e). The admissible and reliable evidence properly established in the District Court record establishes no genuine issues of material fact regarding the delivery of Tasey's Personal Check to the Treasurer. All other assertions raised by Tasey in her effort to avoid the entry of summary judgment were either not submitted as part of the summary judgment record or are inadmissible assertions that are hearsay, made without personal knowledge, or based on impermissible speculative and conclusory statements. Mont. R. Civ. P. 56(e) requires such assertions be excluded from consideration in determining if a genuine factual issue exists. Although inference should be made in favor of the non-moving party, acceptance of Tasey's argument would require the Court to ignore the established summary judgment record and rely entirely on inferences based on speculation and inadmissible evidence.

Finally, Tasey's argument that Montana's redemption statutes should be liberally construed to permit the Treasurer to allow redemption up to issuance of a

tax deed is misplaced as it relies upon precedent analyzing redemption statutes that were no longer applicable in 2021.¹ See, Mont. Code Ann. § 15-18-211 (2017); *Lowry v. Garfield County et. al*, 122 Mont. 571, 208 P.2d 478 (1949); Revised Code of Mont. 84-4132 (Section 2201) (1947, repealed). Although liberal construction is required, the right to redeem a tax lien is wholly statutory and the party seeking to redeem must bring themselves within the statute's provisions. *State ex rel. Bell v. McCullough*, 85 Mont. 435, 279 P. 245 (1929). Even with the application of liberal construction, this Court cannot ignore the unambiguous text and plain meaning of Mont. Code Ann. § 15-18-211 (2017), which requires redemption of tax liens issued in 2018 by August 2, 2021 (and statutorily compelled issuance of tax deeds to assignees who complied with the tax deed noticing provisions). Despite receiving the Personal Check on August 3, 2021, and due to Guardian's provision of proper notice, the Treasurer had a statutory obligation to comply with the provisions of Mont. Code Ann. § 15-18-211 (2017) by rejecting the belated attempt to redeem and issuing the Tax Deed to Guardian. Mont. Code Ann. § 15-18-111 (2017).

¹ Guardian cites to the 2017 versions of Montana's tax deed statutes (Title 15, Chapter 18 of the Mont. Code Ann.) as the applicable statutory authority governing Guardian's execution of the tax deed application process and the statutory standards related to the tax deed process for this case. After the issuance of the tax lien in this matter, Montana's Legislature subsequently revised Montana's tax deed statutes by the passing 2019 Senate Bill 253 and 2021 House Bill 23. However, SB 253's amendments and additional requirements are only applicable to tax liens attached or assignments granted after the effective date of SB 253. HB 23's revisions modified provisions added by SB 253 and only applied to tax liens for which the redemption period expired on or after the effective date of HB 23. Neither bill's applicability instructions implicate the tax lien issued against the Subject Property, Guardian's assignment, or the applicable redemption period related to the tax lien making Montana's 2017 tax deed statutes the controlling statutory authority for this matter.

ARGUMENT

I. Tasey failed to establish genuine issues of material fact regarding delivery of the Personal Check due to her reliance on unsubmitted evidence and on inadmissible, baseless, and speculative assertions.

Summary judgment should be granted if the “pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Mont. R. Civ. P. 56(c)(3). If the movant meets its initial burden, the responding party has the burden to prove the existence of a genuine issue of material fact by presenting “material and substantial evidence rather than merely conclusory or speculative statements.” *Hajenga*, at ¶ 13. Further, any supporting affidavit in opposition must be made on personal knowledge and set out facts that would be admissible in evidence. Mont. R. Civ. P. 56(e)(1).

If the movant meets its evidentiary burden, the opposing party then has an affirmative duty to set forth specific facts showing genuine issues for trial which cannot be done by mere denials and allegations and must be supported by affidavit or means otherwise permitted by Rule 56. Mont. R. Civ. P. 56(e)(2). In Montana, strict compliance with the evidentiary standards within Mont. R. Civ. P. 56(e) is required by both the movant and the respondent. *Smith v. Burlington N. & Santa Fe Ry.*, 2008 MT 225, ¶ 41, 344 Mont. 278, 293, 187 P.3d 639, 650. If any affidavit

does not comply with the requirements of Rule 56(e) it does not raise a genuine issue of material fact. *Id.*

Here, no genuine issue of material fact was presented and the District Court properly entered summary judgment in favor of Guardian. The assertions and inferences presented by Tasey in her opening brief fail to establish genuine issues of material fact. Consequently, the summary judgment motion was properly granted, as Tasey relied on unsubmitted and impermissible evidence. In her opening brief, Tasey predominantly relies on the Post-hearing Declaration to support a redemption delivery date of July 31, 2021; however, the Post-hearing Declaration should be excluded from consideration as it was not deemed submitted and a part of the summary judgment record under Uniform District Court Rule 2. The remaining contentions related to a July 31, 2021, delivery date were also properly disregarded as such contentions relied upon 1) impermissible hearsay statements; 2) inferences based on mere speculation as to USPS's delivery of the Personal Check pursuant to an expected delivery date; and, 3) there was nothing presented by Tasey suggesting an actual delivery occurred on July 31, 2021.

Despite the general requirement that all inferences be viewed in favor of Tasey, she failed to meet her evidentiary burden under Mont. R. Civ. P. 56(e). Specifically, she did not raise a genuine issue of material fact regarding the delivery of the Personal Check, as the only permissible and admissible evidence in the

summary judgment record demonstrating actual delivery to the Treasurer is Peters' testimony.

- a. *Under Uniform District Court Rule 2, Tasey's Post-hearing Declaration containing the USPS tracking statement was not submitted as part of the summary judgment record and should not be considered now.*

A summary judgment motion is deemed submitted upon the expiration of the time limits set for briefs or upon completion of oral arguments. Unif. Dist. Ct. R. 2(e). Upon service of a summary judgment motion, the party opposing the motion must file their response and opposing affidavits with the court within 21 days of service after which the movant has 14 days to file its reply. Mont. R. Civ. P. 56(c)(1). If oral argument is ordered, a summary judgment motion is deemed submitted upon closing of the parties' argument unless additional briefing is ordered. Unif. Dist. Ct. R. 2(e). If the party opposing a summary judgment motion shows by affidavit it cannot present facts essential to justify its opposition, the District Court may order a continuance to enable affidavits to be obtained or other discovery to be undertaken. Mont. R. Civ. P. 56(f).

Here, the Post-hearing Declaration and the USPS tracking statement attached thereto was appropriately ignored by the District Court and reference or argument based upon such pleadings should not be considered now. Under Unif. Dist. Ct. R. 2, Guardian's summary judgment motion was deemed submitted and the record set for the District Court's considerations upon the closing of the parties' oral argument

on May 30, 2024, as the District Court took the matter under its advisement without ordering for additional briefing or evidentiary development. TRO Hr'g Tr. 21: 12 - 22: 13 (Guardian 000061-000062). Tasey made no reference to the USPS Tracking statement in her pre-hearing declaration at Docket No. 19 which she relied upon in her response brief. Decl. in Support of Mot. to Set Aside Default and Default J., ¶¶ 1-11 (Guardian 000072-000074). At the hearing, counsel for Tasey only made a vague reference to the availability of USPS's mail tracking services and did not attempt to admit the USPS's tracking statement as evidence. TRO Hr'g Tr. 20: 18 - 21: 11 (Guardian 000060-000061). Additionally, Tasey took no affirmative action for relief as permitted under Mont. R. Civ. P. 56(f) in order to undertake additional discovery for purposes of opposing Guardian's motion for summary judgment.

Tasey had an affirmative obligation to submit her opposing affidavits within the 21-day response period after service of Guardian's motion for summary judgment or request a stay under Mont. R. Civ. P. 56(f). Even with a less strict interpretation of the Unif. Dist. Ct. R. 2, Tasey was required to submit any evidence to the District Court prior to Guardian's motion being deemed submitted and ripe for the District Court's consideration. Tasey failed to provide the Post-hearing Declaration within the timeframe allowed, depriving Guardian of the opportunity to respond or object to the newly supplied evidence, and the District Court properly

ignored Tasey’s post-hearing filings.² Therefore, on appeal Tasey cannot rely on the contentions and assertions presented in the Post-hearing Brief or the Post-hearing Declaration, and anything provided therein cannot now allow for a determination that a genuine issue of material fact was present that precluded the entry of summary judgment.

b. *Under Mont. R. Civ. P. 56(e) Tasey failed to establish a genuine issue of material fact regarding the delivery date of the Personal Check, due to her evidentiary support being based on non-exempt hearsay and made without adequate personal knowledge.*

Hearsay evidence proffered by a party opposing summary judgment intended to raise a factual issue has been and should be excluded from consideration as inadmissible evidence. *Apple Park, L.L.C. v. Apple Park Condos., L.L.C.*, 2008 MT 284, ¶¶ 18-20, 345 Mont. 359, 363-364, 192 P.3d 232, 236. “Hearsay is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted.” *Apple Park*, at ¶ 18. Hearsay is inadmissible unless it meets a statutory or regulatory exception outlined in Mont. R. Evid. 802. *Id.* Statements made in a filed affidavit without personal knowledge and based on hearsay evidence should not be considered in the determination of a motion for summary judgment. *Smith* at ¶ 39.

² If Tasey submitted the Post-hearing Declaration as part of her summary judgment response or at the hearing, Guardian would have objected to the submission of such evidence and the attached exhibits as Tasey failed to produce the documents during discovery pursuant to relevant requests for production from Guardian and served on Tasey on or about February 27, 2024. TRO Hr’g Tr. 13: 21 - 14: 2 (Guardian 000054-000055). In fact, Tasey failed to respond to all of Guardian’s interrogatories, requests for production, and request for admissions duly served on Tasey during discovery. Pursuant to Mont. R. Civ. P. 37(c)(1) if a party fails to provide the information requested in accordance with the discovery rules, the party is prohibited from using such evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or harmless.

Here, Tasey's assertions regarding the actual delivery of the Personal Check are based on out of court statements made by the USPS, which is inadmissible hearsay. The only assertion in the summary judgment record supporting the delivery of the Personal Check on July 31, 2021, is Tasey's own statements in her filed declaration at Docket No. 18. In paragraph 2 of Docket No. 18, Tasey generally states the Personal Check was received by the Treasurer's office on July 31, 2021. Decl. in Support of Mot. to Set Aside Default and Default J., ¶ 2 (Guardian 000072). In her response to Guardian's motion, Tasey relied on this paragraph 2 to make the following assertion, "the post office indicated [the Personal Check] was delivered to the County Treasurer's P.O. Box on July 31, 2021." Resp. to Pl. Mot. for Summ. J., p. 1, May 5, 2024, Docket No. 47 (Guardian 000076). When considering the following statements collectively, it appears that the primary basis for Tasey's assertion regarding the delivery of the Personal Check relies on alleged out-of-court statements by the USPS. Even if the USPS tracking statement was not inadmissible hearsay, the plain text of the statement does not support the proposition that the Personal Check was delivered, but rather was still in the USPS system to later be delivered. Tasey provided these statements to prove the truth of the matter asserted concerning her alleged timely redemption, which constitutes impermissible hearsay under Mont. R. Evid. 802.

Therefore, this Court, like the District Court below, should not consider any assertion pertaining to issues of material fact based on hearsay statements. If Tasey needed more time to acquire admissible testimony, she maintained the right to seek such an order from the District Court pursuant to Mont. R. Civ. P. Rule 56(f). She failed to do so in a timely fashion and holding open the summary judgment record indefinitely to allow Tasey to introduce new issues and theories is inappropriate and only leads to inefficiency and a waste of judicial resources.

To the extent Tasey's statements were not hearsay, the District Court correctly found that Tasey failed to provide sufficient foundation regarding her personal knowledge of the Treasurer's receipt of the Personal Check. "Personal knowledge must be based on 'firsthand observation or experience, as distinguished from a belief based on what someone else has said.'" *Smith* at ¶ 39. Use of exhibits to support affidavits is permitted "so long as they are accompanied by an affidavit or sworn discovery responses of an individual with personal knowledge of their genuineness, relevance, and contents..." *Id.* Merely conclusory statements are insufficient to raise a genuine issue of material fact. *Hajenga*, at ¶ 13.

Here, Tasey's unsupported statements providing the Personal Check was delivered on July 31, 2021, failed to raise genuine issues of material fact as such statements are merely a conclusory statement made without personal firsthand knowledge or evidentiary support. Tasey's declaration provided no factual basis

supporting her conclusion that the Personal Check arrived earlier than the submitted evidence and testimony of Hank Peters, which provided that the Personal Check was delivered on August 3, 2021, and in the improper form (Tasey was notified that cash or certified funds were required for a redemption). First, Tasey has no firsthand knowledge of the Personal Check's actual delivery because she utilized a third-party servicer to deliver the Personal Check and she did not deliver it herself. Second, Tasey failed to timely produce the tracking statement or additional exhibits, properly attested to, from the USPS or other sources underlying her belief that the Personal Check arrived on July 31, 2021. Finally, Tasey failed to produce or respond to any of Guardian's discovery requests or requests for production which resulted in Guardian receiving no discovery containing evidence from USPS or some other sources that supported Tasey's belief that the Personal Check arrived on July 31, 2021.

Based on the summary judgment record, Tasey's statements regarding a pre-August 3rd delivery of the Personal Check are unsupported and merely conclusory, meaning those statements cannot under applicable law raise a genuine issue of material fact.

- c. *Inferring timely delivery of the Personal Check based on an "Expected" delivery date is pure speculation and is insufficient to create genuine issues of material fact.*

Although reasonable inference must be drawn in favor of the non-moving party, the inference must be based on duly proved facts and circumstances supported by evidence on the record. *Kostelecky v. Peas in a Pod LLC*, 2022 MT 195, ¶ 37, 410 Mont. 239, 268, 518 P.3d 840, 858. “An inference is a permissible “deduction” made “from the record evidence.” *Id.*; Mont. Code Ann. § 26-1-501; Mont. R. Civ. P. 56(c)(3) requires trial courts to make reasonable inferences from the pleadings, the discovery and disclosure materials on file and a “reasonable inference requires more than mere suspicion, imagination, or apprehension of ‘something wrong or hurtful without proof or on slight evidence.’” *Kostelecky* at ¶ 37 (internal citation omitted). “An inference has probative value as evidentiary proof of a disputed fact only if it is based on duly ‘proved’ record facts and circumstances ... and can be reasonably deduced as a logical consequence thereof.” *Id.* (internal citation omitted).

It is well settled that speculation is not a sufficient basis to create a probative inference to raise a genuine issue of material fact under Mont. R. Civ. P. 56. *See, Apple Park*, at ¶ 24; *Kostelecky*, at ¶36. “Speculation” is defined as “the practice or an instance of theorizing about matters over which there is no certain knowledge.” SPECULATION, Black's Law Dictionary (11th ed. 2019).

It is established Montana Supreme Court precedent to disregard purely speculative statements provided by a party to simply create factual issues regarding

a properly established material fact. *Apple Park.*, at ¶¶ 22-24. Specifically, this Court in *Apple Park* upheld a district court’s reliance only on non-speculative evidence when confronted with a similar situation as presented here where the party opposing summary judgment tendered mere speculation in an attempt to create a disputed material fact. *Id.*, at ¶ 24.

Tasey’s reliance on a “Expected” delivery date of the Personal Check to create an inference of timely delivery is purely speculative and did not create a genuine issue of material fact or otherwise contradict Peters’ testimony and evidence showing an actual delivery date to the Treasurer office on August 3, 2021. Although the USPS provided an expected delivery date, timely delivery of the Personal Check by the date specified was by no means guaranteed by the USPS and ultimately did not occur as evidenced and stated by Peters’ affidavit. Tasey offered and now offers nothing but speculation and theory based on her own perceived expectations regarding the timeliness of the delivery, which was offered without actual knowledge. However, like in *Apple*, such speculation holds no probative value when compared to Peters’ testimony regarding the Treasurer’s actual receipt of the Personal Check.

The only evidence considered by the District Court that was not speculative is Peters’ actual firsthand accounting of the receipt of the Personal Check. Aff. Peters, ¶¶ 7-9 (Guardian 000066). Peters’ affidavit testimony was further supported

by relevant contemporaneous business records of the Treasurer's office which confirm the delivery date after the redemption period expired. Aff. Peters, ¶ 2 (Guardian 000065); Ex. A, Aff. Peters (Guardian 000069-000070). Considering the holding in *Apple Park*, Tasey's speculative statements regarding a presumption of timely delivery of the Personal Check based on the USPS's "Expected" delivery date was insufficient to raise a genuine issue of material fact as to the known and supported delivery date of August 3, 2021.

Tasey's only argument raised at the District Court in opposition to the motion for summary judgment as part of her attempt to create genuine issue of material fact was and is presently unpersuasive as Tasey failed to strictly comply with evidentiary requirements of the Mont. R. Civ. P 56(e). Primarily, Tasey relies on factual assertions based on evidence filed after the motion for summary judgment was deemed submitted. Moreover, these assertions were impermissible hearsay evidence, testimony without proper foundational support or even personal knowledge, and merely speculative or conclusory statements, all of which are insufficient grounds to raise a genuine issue of material fact.

The District Court's disregard of the improperly submitted "evidence" by Tasey as part of her effort to conjure a disputed material fact to survive summary judgment was well within the bounds of this Court's precedents. Since Tasey raised

no other defenses in her response to the motion for summary judgment, upsetting the District Court's findings and conclusions would be improper.

II. Even when liberally construed, the plain language of Mont. Code Ann. § 15-18-211 (2017) compelled the Treasurer to issue the Tax Deed when no party-in-interest redeemed by August 2, 2021.

Montana's statutory tax deed proceedings are a strict statutory enforcement scheme that requires strict technical compliance by all parties involved. *RN & DB, LLC v. Stewart*, 2015 MT 327, ¶ 22, 381 Mont. 429, 434, 362 P.3d 61, 65. Tax liens and deeds are "exclusively creatures of statute" for which a comprehensive statutory scheme has been crafted by the legislature and it is Montana's courts' responsibility to strictly enforce such scheme, as written. *RN & DB, LLC*, at ¶ 33. "When the terms of a statute are plain, unambiguous, direct, and certain, the statute speaks for itself; there is naught for the court to construe." *State ex rel. Fed. Land Bank v. Hays*, 86 Mont. 58, 66, 282 P. 32, 36 (1929); *see also*, Mont. Code Ann. § 1-2-101. Therefore, "if the property tax lien is not redeemed in the manner prescribed by the statutes or in the time allowed by law, the purchaser of the lien acquires the property by tax deed, § 15-18-211, MCA, imposing 'the ultimate sanction of losing title to the property.'" *RN & DB, LLC*, at ¶ 29 (*citation omitted*).

"The right to redeem is wholly statutory, and such statutes are liberally construed; yet the person seeking to redeem must bring himself within their provisions." *State ex rel. Bell*, 85 Mont. at 438-439; 279 P. at 247. Redemption

obligates the redeemer to “pay, in addition to the amount of the property tax lien, including penalties, interest, and costs, the subsequent taxes assessed, with interest and penalty at the rate established for delinquent taxes.” Mont. Code Ann. § 15-18-112(3) (2017). If a redemption is not “exercised in the manner and *within the time* provided by statute the right becomes lost.” *Beckman Bros v. Weir*, 120 Mont. 305, 307; 184 P.2d 347, 349 (1947).

If notice is provided, a party-in-interest has until the end of the redemption period to redeem the tax lien, or the County Treasurer is required to issue a tax deed. Due to the fundamental rights at stake, an interested party’s right to redeem continues indefinitely until such time a notice that a tax deed may issue is provided to said party. *Ditto v. Kipp*, 2000 MT 162, ¶ 11, 300 Mont. 278, 281, 3 P.3d 647, 649. The provision of notice is analogous to effective process in court and effective notice of the redemption right complies with due process to effectively strip an individual of a vested property right if redemption does not occur. *Lowry*, 122 Mont. at 581, 208 P.2d at 483-484; *Moran v. Robbin*, 261 Mont. 478, 483, 863 P.2d. 395, 398 (1993), *citing Adkins v. Redeye*, 196 Mont. 114, 119, 639 P.2d 485, 487 (1981).

Upon receipt of the notice a tax deed may issue, an owner, occupant, or any other interested party of the property may redeem the tax lien on the property by the first working day in August, three years after the attachment of the tax lien. Mont. Code Ann. § 15-18-111(1) (2017). However, “[i]f the property tax lien is not

redeemed in the time allowed under 15-18-111, the county treasurer **SHALL** grant the assignee a tax deed for the property.” Mont. Code Ann. § 15-18-211 (2017) (emphasis added). “Shall” is commonly understood to mean, “has a duty to; more broadly, is required to.” SHALL, Black's Law Dictionary (11th ed. 2019).

Consistent with the legal definition for the word “shall,” this Court has regularly held that “[s]hall indicates a mandatory requirement.” *Redies v. Cosner*, 2002 MT 86, ¶ 19, 309 Mont. 315, 48 P.3d 697; *Matter of Investigative Records of City of Columbus Police Dept.*, 265 Mont. 379, 381–82, 877 P.2d 470, 471 (1994) (“shall is understood to be compelling or mandatory”); *Abshire v. Sch. Dist. No. 1 of Silver Bow Cnty.*, 124 Mont. 244, 245, 220 P.2d 1058, 1059 (1950) (the use of “shall” in a statutory provision is mandatory); *MacKay v. State*, 2003 MT 274, ¶ 21, 317 Mont. 467, 79 P.3d 236 (“‘shall’ is mandatory”); *Com. Cause of Montana v. Argenbright*, 276 Mont. 382, 391, 917 P.2d 425, 430 (1996) (the Montana statute at issue “contains the mandatory ‘shall’”); *Montana Democratic Party v. Jacobsen*, 2024 MT 66, ¶ 67, 416 Mont. 44, 545 P.3d 1074 (‘shall’ is mandatory language).

Here, all parties who could redeem the tax lien, including Tasey, failed to effectuate a redemption by the close of business on August 2, 2021; therefore, the Treasurer was required to reject Tasey’s late attempt to redeem and to issue the Tax Deed to Guardian. The language presented by Montana Code requires this outcome

as the deadline to redeem a property tax lien is established by statute and a treasurer must issue a tax deed if the redemption period has expired.

Tasey acknowledges she received effective notice that a tax deed may issue, thereby satisfying due process and triggering the requirement to redeem by the expiration of August 2, 2021. Although Tasey drafted personal check no. 1130 and mailed it to the Treasurer, the check was not received by the Treasurer until August 3, 2021, one day after the statutory redemption period expired. *Aff. Peters* at ¶ 11 (Guardian 000067). While such a result may seem harsh, the mandates of Montana law cut off the ability to redeem after the expiration of the redemption period provided under Mont. Code Ann. § 15-18-211 and the Treasurer was left with no other option than to issue the Tax Deed to Guardian upon its application just a few days later. Deviation from the current statutory text would require legislation amending these provisions, and upsetting unambiguous statutory language in this proceeding would be improper.

Mont. Code Ann. § 15-18-211 (2017) and the Legislature's utilization of the past tense "redeemed" requires that for a successful redemption to have occurred, Tasey must have paid the tax lien amount, all subsequent taxes, interest, fees, and costs prior the expiration time period set in Mont. Code Ann. § 15-18-111, or August 2, 2021, in this circumstance. Nowhere in Mont. Code Ann. § 15-18-211 does it say the tax lien redemption period extends beyond the period provided or to the issuance

of a tax deed. Since payment of the Redemption Amount by August 2nd did not occur, the Treasurer was required to issue the Tax Deed to Guardian under the mandates of Mont. Code Ann. § 15-18-211.

Tasey's reliance on case law from the 1940's (and prior iterations of statutes long since revised) in support of the position that liberal construction permits redemption until the issuance of the tax deed, is misinformed as such interpretation was based upon a statute permitting redemption beyond the 3-year deadline. Tasey's citation and analysis related to the extended redemption period focuses on Section 2201 of the Revised Codes of Montana (1947), which provides such an extended redemption period:

“A redemption of the property sold may be made by the owner, or any party having any interest in or lien upon such property, within thirty-six (36) months from the date of purchase, or any time prior to the giving of the notice and the application for a deed as provided in this act.”

Revised Code of Mont. 84-4132 (2201) (1947) (repealed). Noticeably different from its modern-day counterpart is that Section 2201 provides two separate deadlines for which redemption could occur: **1)** within 36 months (3 years) from issuance the certificate of purchase **OR 2)** prior to the giving of notice **AND** the application for tax deed. This Court's prior liberal construction of Section 2201 to permit redemption up to the time an application for a tax deed was based upon express statutory provisions now not found in Montana Code. Further, even when providing

liberal construction of the relevant statutory provisions, this Court did not permit parties to venture beyond the periods allowed by the plain language of the statute. *Beckman Bros.*, 120 Mont. at 308 (“Beckman Bros. Inc did not exercise its right of redemption before the issuance of the tax deed ... The time for asserting such statutory right thus expired and the right of redemption was lost”); *Hartman v. Nimmack*, 116 Mont. 392, 397, 154 P.2d 279, 280 (1944) (“[i]n section 2201 the Legislature has expressly provided that anyone entitled by law to redeem may do so at any time prior to the giving of the notice and the application for a deed”); *State ex rel. Bell*, 85 Mont. at 438; 279 P. at 247 (“[a] redemption of the property sold may be made by the owner at any time prior to the giving of the notice and the application for a deed, as provided for in this Act (Sec. 2201, Rev. Codes 1921)”).

Mont. Code Ann § 15-18-211 required Tasey’s redemption to be paid prior to the close of business on August 2, 2021. A failure to redeem prior to August 2, 2021 resulted in the Treasurer being statutorily required to issue a tax deed to Guardian. The Court’s role is simply to ascertain the substance of the statute contained therein, “not insert what has been omitted or to omit what has been inserted.” Mont. Code Ann. § 1-2-101. Acceptance of Tasey’s position with respect to the expiration of the redemption period would require the Court to ignore the clear statutory mandates placed upon the Treasurer and therefore contradict the clear statutory intent of the Legislature on the topic of redemption (and issuance of a tax deed). Since

redemption did not occur by the expiration of the redemption period, Tasey's right to redeem expired and the Treasurer was statutorily compelled to reject the Personal Check that arrived after the redemption period expired and issue the Tax Deed to Guardian.

Finally, Tasey in her opening brief offers a new and novel theory involving negotiable instruments that had not been previously raised asserting that payment was tendered upon delivery to the P.O. Box. Appellant's Opening Brief, p. 8, December 1, 2024, Appeal Docket No. 10. Again, Tasey only raised one legal argument at summary judgment which was that a genuine issue of material fact existed as to timing of the delivery of the Personal Check. Nowhere in the summary judgment pleadings, other filings, or the hearing transcript has Tasey raised the contention that delivery of an uncertified check to the Treasurer's P.O. Box constitutes tender, or payment, of the delinquent taxes. Tasey has also provided no legal support or citation to support such a position.

Tasey cannot introduce this position for the first time on appeal, as doing so would result in fundamental unfairness to both Guardian and the District Court. *Pilgeram v. GreenPoint Mortg. Funding, Inc.*, 2013 MT 354, ¶ 22, 373 Mont. 1, 8, 313 P.3d 839, 843. ("It is fundamentally unfair for a party to withhold an argument below, gamble on a favorable outcome on the party's chosen legal theory, and then assert a separate legal theory in the event the chosen strategy may later fail on

appeal.”). Additionally, there are no extenuating circumstances that justify Tasey’s failure to raise this legal theory at the District Court level. *Id.* Consequently, this new argument should be entirely disregarded for purposes of determining whether to uphold the District Court’s grant of summary judgment.

CONCLUSION

For the foregoing reasons, Guardian respectfully requests the Montana Supreme Court affirm the District Court in full.

The District Court properly determined the absence of genuine disputed material facts when it granted summary judgment in favor of Guardian. Tasey failed to provide any evidentiary support for the speculative statements proffered in response to Guardian’s motion for summary judgment.

As Guardian’s strict compliance with the statutory tax deed noticing process was undisputed at the District Court, Tasey’s sole argument focused on whether she had availed herself of the statutory right of redemption, which expired on August 2, 2021. However, Tasey failed to proffer credible and admissible evidence to rebut the uncontroverted evidence presented by Guardian in support of the motion for summary judgment, which demonstrated Tasey did not redeem the property tax lien prior to the expiration of the redemption period. On appeal, Tasey relies on assertions based on evidence not properly submitted to the District Court and not a part of the summary judgment record. Reliance on these positions is inappropriate

as such assertions are impermissible hearsay evidence, commentary offered without personal knowledge, or that is merely speculative or conclusory statements, all of which was insufficient to raise a genuine issue of material fact and inappropriate now to demonstrate the District Court erred in granting the motion for summary judgment. Pursuant to Montana law, the Court must disregard evidence improperly offered by Tasey to dispute the date the Treasurer received the attempted redemption.

The legal conclusions reached by the District Court, based upon the evidence before it, were proper as Tasey failed to demonstrate the presence of genuine issues of material fact. Because Tasey failed to redeem prior to August 2, 2021, the statutory right to redeem was lost, and the Treasurer was statutorily obligated to issue the Tax Deed to Guardian and Guardian was entitled to the entry of the summary judgment and ultimately the judgment and decree of quiet title entered by the District Court.

Therefore, this Court should affirm the District Court's order granting Guardian's motion for summary judgment.

//

//

//

Respectfully submitted January 30, 2025.

CROWLEY FLECK PLLP

By: /s/ David F. Knobel

DAVID F. KNOBEL
ELI J. PATTEN P.O. Box 2529
Billings, MT 59103-2529
Attorneys for Plaintiff and Appellee
Guardian Tax MT, LLC

CERTIFICATE OF COMPLIANCE

Consistent with Mont. R. App. P. 11(3)(e), I certify that this document is proportionally spaced using Times New Roman typeface of 14 points, is double spaced, and contains 8,459 words as calculated by Microsoft Word, excluding the table of contents, table of citations, certificate of service, certificate of compliance, or any appendix containing statutes, rules, regulations, and other pertinent matters.

CROWLEY FLECK PLLP

By: /s/ David F. Knobel
DAVID F. KNOBEL
ELI J. PATTEN
P.O. Box 2529
Billings, MT 59103-2529
Attorneys for Plaintiff and Appellee
Guardian Tax MT, LLC

CERTIFICATE OF SERVICE

I, David Francis Knobel, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 01-30-2025:

Eli Jacob Patten (Attorney)
P.O. Box 2529
Billings MT 59103
Representing: Guardian Tax MT, LLC
Service Method: eService

Dennis Michael Eakin (Attorney)
208 N. 29th St., Suite 204
Billings MT 59101
Representing: Jeannette F. Tasey
Service Method: eService

Robert Joseph Joki (Attorney)
900 N Last Chance Gulch
Suite 200
P.O Box 797
Helena MT 59624
Service Method: eService
E-mail Address: rjoki@crowleyfleck.com

Electronically signed by Debbie Kobold on behalf of David Francis Knobel
Dated: 01-30-2025