

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 24-0531

HOMERIVER GROUP,

Plaintiff and Appellee,

v.

ANDERS BUSINESS SOLUTIONS, LLC,

Defendant and Appellant.

ANSWER BRIEF OF APPELLEE

On Appeal from the Fourth Judicial District Court
Missoula County Cause No. DV-24-457, Hon. Robert L. Deschamps, III,
(affirming Missoula Justice Court orders in Cause No. CV-2024-581)

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STATEMENT OF THE ISSUES

- I. Whether the Justice Court correctly issued its Entry of Default and Order of Possession.
- II. Whether Appellant was entitled to stay of the Order of Possession post-execution.

STATEMENT OF THE CASE

Anders Business Solutions, LLC (“ABS”) was a commercial tenant at 1525 S. Russell Street, Missoula, Montana (“premises”), subject to a month-to-month tenancy. Due to accruing delinquent rent, HomeRiver Group, the landlord and property manager for the owner of the premises, gave ABS a written 30-day notice of termination and non-renewal of the lease term. The tenancy terminated on April 11, 2024, but ABS refused to vacate the premises. HomeRiver Group filed its *Verified Complaint for Unlawful Detainer* against ABS on April 15, 2024, in the Missoula County Justice Court. See Dkt. 1 and Appellee’s Appendix A. ABS was served on April 16, 2024. Pursuant to the issued *Summons* and Mont. Code Ann. § 70-27-114(1), ABS was required to appear and file an answer within 10 days of service.

Kris Hawkins attempted to file pleadings on behalf of ABS. Since ABS is a limited liability company and Hawkins is not authorized to practice law, the Justice Court issued an *Order Directing Defendant to Document Authority* on April 19, 2024, which directed Hawkins to provide documentation to the Court showing that she is a member of the LLC with a majority interest. See Dkt. 1 and Appellee's Appendix B. On April 23, 2024, Hawkins filed a Declaration with the Justice Court claiming that an Oklahoma entity, Anderson Trust, and not Hawkins, is the member with a majority interest in ABS. See Dkt. 1. Since Hawkins failed to present sufficient documentation that authorized her to represent the LLC, the Justice Court issued its *Order Striking Filings and Setting Order to Show Cause* on April 30, 2024, which ordered the court filings filed by Kris Hawkins stricken from the record and removed from the Court's docket. See Dkt. 1 and Appellee's Appendix C. The Justice Court also extended the Answer deadline and gave ABS until May 10, 2024, to file an Answer or other appearance through an attorney or person authorized to do so. "Failing that, the Defendant will be subject to entry of default." *Id.*

On May 13, 2024, with no Answer or other appearance having been filed by one having authority to do so, HomeRiver Group filed its *Request for Entry of*

Default and Order of Possession. See Dkt. 1. The following day, on May 14, 2024, the Justice Court issued its *Entry of Default and Order of Possession*. See Dkt. 1 and Appellant's Appendix 2. The Justice Court also issued a *Writ of Assistance* directing the Missoula County Sheriff to put HomeRiver Group in possession of the premises. See Dkt. 1 and Appellant's Appendix 3.

On May 17, 2024, Kris Hawkins, on behalf of Anderson Trust, filed a *Petition for Writ of Supervisory Control* with the Montana Supreme Court. See Appellee's Appendix D. The Petition argues that Anderson Trust is the member with a majority interest in ABS, and that since Hawkins is Trustee of the Anderson Trust, the Justice Court erred in striking her court filings and not allowing her to represent ABS in the Justice Court action. On May 29, 2024, the Montana Supreme Court issued its Order on Anderson Trust's (Hawkins's) *Petition for Supervisory Control*. *Anderson Trust v. Beal*, OP 24-0310, 2024 WL 2754577; See Appellee's Appendix E. The Supreme Court reviewed and considered the Justice Court's *Order Striking Filings* and Hawkins arguments as to whether she should be permitted to represent ABS in the Justice Court action. In its Order, the Supreme Court recognized Anderson Trust as a separate entity, determined that the

Justice Court was not proceeding under a mistake of law, and held that “Hawkins’s arguments lack merit.” *Id.*

In the meantime, On May 20, 2024, attorney P. Mars Scott appeared for ABS. Counsel for ABS did not file a motion to set aside the *Entry of Default and Order of Possession*. Instead, ABS filed its *Notice of Appeal and Motion to Stay*. Dkt. 1. No undertaking was filed with the Motion to Stay and ABS initially argued that no undertaking was required for the stay. On May 22, 2024, the Missoula County Sheriff executed on the *Writ of Assistance* and put HomeRiver Group in exclusive possession subject premises. That same day, following HomeRiver Group having been put into possession of the premises, the Justice Court issued its *Order Re: Request for Stay*, not knowing that its Order of Possession and Writ of Assistance had already been executed. See Dkt. 1 and Appellant’s Appendix 4. The Order recognized the prerequisite of an undertaking before a stay can be ordered and set the undertaking amount at \$8,800.00. ABS then filed the undertaking the following day, even though the Order of Possession already had been executed. No stay was ordered by the Justice Court because the undertaking was not posted until after execution of the Order of Possession.

On August 19, 2024, the Montana Fourth Judicial District Court issued its *Order Affirming the Justice Court's Rulings*. Dkt. 24. ABS subsequently filed a *Motion for Order Staying Execution of Order of Possession and Writ of Assistance* (Dkt. 26), even though the Order of Possession already had been executed back on May 20, 2024, prior to any undertaking having been filed. The District Court denied ABS's motion. Dkt. 31. On September 6, 2024, ABS filed its Notice of Appeal with the Supreme Court. Dkt. 27.1.

Since the filing of the present appeal, ABS has filed with the District Court a *Petition for Writ of Mandamus* against the Justice Court (Missoula Fourth Judicial District Court, DV-3034-1088). See Appellee's Appendix F. The Petition requests the District Court to direct the Justice Court to issue a stay of execution on the same Order of Possession that already was executed back on May 20, 2024. That mandamus proceeding is being opposed by the Justice Court and currently is pending contemporaneously with this action.

STATEMENT OF FACTS

1. Anders Business Solutions, LLC, ("ABS") was a commercial tenant at the premises having an address of 1525 S. Russell Street, Missoula, Montana. Dkt. 1 and Appellee's Appendix A, ¶ 1; Dkt. 16, ¶ 2.

2. The commercial lot and building containing the premises leased by ABS are owned by LMG CRG Investments, LLC. Louis M. Gingerelli is a member of LMG CRG Investments, LLC. Dkt. 1 and Appellee's Appendix A, ¶ 2; Dkt. 16, ¶¶ 1-2.

3. Gingerelli previously owned the subject commercial premises in his individual name and leased the premises to Don Davenport. The initial lease term was from May 1, 1996, to April 30, 2001, and was subject to a written lease agreement. Dkt. 1 and Appellee's Appendix A, ¶¶ 2-3; Dkt. 16, ¶ 4.

4. The lease for the subject premises was renewed several times over the years. During that time period, Don Davenport began doing business as Anders Business Solutions. In 2015, Anders Business Solutions was registered as a Montana limited liability company. The monthly rent for the subject unit was paid by Anders Business Solutions, LLC. Dkt. 1 and Appellee's Appendix A, ¶¶ 4-5; Dkt. 16, ¶ 4.

5. In September of 2015, Gingerelli hired Summit Property Management to take over management and leasing of the subject premises on his behalf. Notice of Summit Property Management's management of the premises was provided to Don Davenport and ABS. The monthly rent then was paid to Summit Property

Management. Dkt. 1 and Appellee's Appendix A, ¶ 6; Dkt. 15, ¶ 5; Dkt. 16, ¶ 5.

6. Sometime prior to the end of 2018, management of ABS had been assumed by Don Davenport's son, Jim Davenport. Dkt. 1 and Appellee's Appendix A, ¶ 7.

7. In 2018, prior to the end of the most-recent extended renewal term, Summit Property Management provided Jim Davenport and ABS with a Commercial Lease Renewal Offer that included different renewal term options. Jim Davenport and ABS elected to continue the lease on a month-to-month basis beginning January 1, 2019. Also beginning January 1, 2019, Jim Davenport and ABS also agreed to pay monthly rent in the amount of \$4,400.00. Dkt. 1 and Appellee's Appendix A, ¶ 8.

8. In 2021, HomeRiver Group, a national property management company, acquired Summit Property Management. Since that time, Summit Property Management has been registered as a Montana limited liability company doing business as HomeRiver Group. ABS was notified of the HomeRiver Group acquisition and monthly rent subsequently was paid to HomeRiver Group. Dkt. 1 and Appellee's Appendix A, ¶ 9; Dkt. 15, ¶ 5; Dkt. 16, ¶¶ 5-6.

9. In January of 2022, HomeRiver Group was notified that Jim

Davenport had passed away. Jim's sister, Kris Hawkins (f/k/a Kris Davenport), appears to have assumed management of ABS at that time, along with a presumed friend, Terry Sullivan. Due to the impact of Jim's death on the business, Kris Hawkins requested a temporary reduction in monthly rent. It was agreed that, beginning February 2022, the monthly rent for the leased premises would be temporarily reduced from \$4,400.00 to \$2,000.00. Dkt. 1 and Appellee's Appendix A, ¶ 10.

10. Approximately two years later, on December 11, 2023, HomeRiver Group notified ABS and Kris Hawkins that the temporary monthly rent reduction would expire, and the rent amount would return to \$4,400.00 per month beginning February 1, 2024. Dkt. 1 and Appellee's Appendix A, ¶ 11.

11. Historically, ABS paid its monthly rent obligation through an online tenant portal. The online tenant portal has consistently shown the tenant to be ABS, without objection or reservation from the tenant. Likewise, the monthly rent payments have been paid by ABS. In 2023, when ABS stopped using the online tenant portal to make its monthly rent payments, it tendered rent checks from "Anders Business Solutions," made payable to HomeRiver Group. Dkt. 15, ¶¶ 5-8, Ex. B.

12. After receiving the notice that the temporary reduction in rent was going to end, and even though previous rent payments had been paid to Summit Property Management and then to HomeRiver Group, Kris Hawkins and ABS suddenly questioned HomeRiver Group's authority to lease the premises and to change the monthly rent on behalf of Louis Gingerelli. In response, Gingerelli sent Kris Hawkins and ABS a notice on February 2, 2024, that confirmed HomeRiver Group was acting as the property manager for the premises, and that the monthly rent obligation returned to \$4,400.00 as of February 1, 2024. Dkt. 1 and Appellee's Appendix A, ¶ 12.

13. Despite the notice and confirmation from Louis Gingerelli regarding HomeRiver Group's management and the monthly rent obligation, and despite ABS having previously tendered rent checks payable to HomeRiver Group, ABS continued to tender monthly rent checks in the amount of \$2,000.00 and also made the rent checks payable to Louis Gingerelli. Those checks were returned to ABS with a notice that the monthly rent obligation is \$4,400.00 and must be paid to HomeRiver Group. Dkt. 1 and Appellee's Appendix A, ¶ 13.

14. HomeRiver Group made repeated attempts to work with ABS regarding the monthly rent payments, but ABS continued with its failure or refusal

to pay rent to HomeRiver Group and to pay the total monthly rent obligation. Dkt. 1 and Appellee's Appendix A, ¶ 14.

15. Due to the accruing delinquent rent, and given the month-to-month lease term, a written 30-day notice of termination and non-renewal of the lease term was provided to ABS. The tenancy terminated April 11, 2024. Dkt. 1 and Appellee's Appendix A, ¶ 15.

16. Since ABS failed or refused to vacate the premises and failed or refused to bring current its delinquent rent obligations, this unlawful detainer action was commenced in the Missoula County Justice Court on April 15, 2024, as CV-610-2024-581. See Dkt. 1 and Appellee's Appendix A.

17. The purported written Lease dated December 28, 2018, between Louis M. Gingerelli and Anderson Trust (Dkt. 13, No. 1) and that is relied upon by Appellant in this action, is a fraudulent document.

18. Prior to the present action, Louis Gingerelli had never heard of Anderson Trust, nor had he seen the document identified as "Lease dated December 28, 2018." Gingerelli did not sign any such document, and he would never have agreed to the terms and conditions in that purported lease. Gingerelli's signature was fraudulently attached to that purported Lease document without his

knowledge or consent. Dkt. 16, ¶¶ 9, 12.

19. In 2018, at the time of the purported Lease dated December 28, 2018, Summit Property Management was the property manager for the subject premises and handled all lease agreements or lease extensions, pursuant to a property management agreement. Any lease subject to the premises would have been through Summit Property Management, and not Louis Gingerelli personally. Moreover, in 2018, the subject premises was not owned in Louis Gingerelli's personal name. Therefore, he would not have been able to lease the premises at that time in his personal name. Dkt. 16, ¶ 10.

20. The January 2022 email correspondence from Kris Hawkins (a/k/a Kris Davenport) and HomeRiver Group, wherein Hawkins requested the temporary reduction in the monthly rent amount, makes no reference to a December 2018 lease agreement between Gingerelli and Anderson Trust. Dkt. 15, ¶ 8; Dkt. 1 and Appellee's Appendix A, Ex. F.

21. In December of 2023, Louis Gingerelli received a Christmas card and handwritten letter from Kris Davenport (a/k/a Kris Hawkins) wherein she states that she has been contacted by HomeRiver Group about the leased premises and requests a copy of the original lease from "decades ago." The letter makes no

mention of any 2018 lease between Gingerelli and Anderson Trust. Dkt. 16, ¶ 11.

22. Kris Hawkins' first mention of Anderson Trust to HomeRiver Group was in March of 2024, around the time ABS received the 30-day notice of termination and non-renewal of the tenancy. Anderson Trust was never the tenant for the premises and no lease agreement for the premises has ever existed with Anderson Trust. Dkt. 15, ¶ 9.

23. On May 22, 2024, HomeRiver Group was put into exclusive possession of the premises pursuant to the Justice Court's *Entry of Default and Order of Possession* and *Writ of Assistance*. Dkt. 1 and Appellant's Appendix 2, 3.

24. The subject premises contain several personal property and equipment items, which currently are being secured until ABS makes arrangements to take possession of the same. ABS has not contacted HomeRiver Group or its counsel to coordinate possession of the personal property and equipment items. Dkt. 21, pg. 4. Instead, ABS has filed multiple motions throughout this case in an effort to regain possession of the premises. Dkt. 19, 26; see also *Rule 22 Motion for Relief from District Court Order* filed in this appeal; see also *Petition for Writ of Mandamus* filed with the Fourth Judicial District as Cause No. DV-24-1088 (Appellee's Appendix F).

STANDARD OF REVIEW

The Supreme Court reviews a District Court's review from a Justice Court of record as if the appeal had originally been filed with the Supreme Court.

Stanley v. Lemire, 2006 MT 304, ¶ 26, 334 Mont. 489, 148 P.3d 643. An appeal to District Court from a Justice Court of record is confined to a review of the record and questions of law. Mont. Code Ann. § 3-10-115(1). Factual findings are reviewed under a clearly erroneous standard, discretionary rulings are reviewed for abuse of discretion, and questions of law are reviewed for correctness. *Stanley*, ¶¶ 25-26.

SUMMARY OF ARGUMENT

The Justice Court correctly issued its *Entry of Default and Order of Possession*. ABS was served with the *Verified Complaint for Unlawful Detainer* on April 16, 2024. Failure to file an answer within 10 days of service subjected ABS to default and entry of judgment in favor HomeRiver Group. Mont. Code Ann. §§ 70-27-114(1), 117. The Justice Court extended the answer deadline to May 10, 2024. No answer was filed by one having authority to do so. The *Entry of Default and Order of Possession* was entered on May 14, 2024. Even upon obtaining legal representation, ABS did not move to set aside the *Entry of Default*

and Order of Possession.

The Justice Court did not err in striking Kris Hawkins's pleadings from the court record. ABS must be represented before the Justice Court either by an attorney authorized to practice law or by a member possessing a majority interest in the company. *Sagorin v. Sunrise Heating and Cooling, LLC*, 2022 MT 58, ¶ 11, 408 Mont. 119, 506 P.3d 1028; Mont. Code Ann. § 25-31-601(3). Hawkins is not authorized to practice law, and she failed to demonstrate to the Justice Court that she possesses a majority interest in ABS. See Dkt. 1 and Appellee's Appendix B, C.

Furthermore, the issue of whether Hawkins, as the Trustee of the purported member of ABS, can represent ABS in the Justice Court action already has been reviewed by the Montana Supreme Court in *Anderson Trust v. Beal*, OP 24-0310, 2024 WL 2754577. See Appellee's Appendix D, E. This Court determined that Hawkins/Anderson Trust failed to demonstrate that the Justice Court was proceeding under a mistake of law by prohibiting Hawkins from representing ABS. This Court further determined that Hawkins's/Anderson Trust's arguments lack merit. *Id.*

ABS was not entitled to a stay of the Order of Possession post-execution.

The *Entry of Default and Order of Possession* was a judgment and final determination as to the issue of possession. Since the Order of Possession directs the delivery of possession of real property, its execution cannot be stayed unless and written undertaking is executed. Rule 6(a)(3), Mont. Uniform Municipal Rules of Appeal to District Court. When ABS filed its *Notice of Appeal and Request for Stay*, it argued that no undertaking was required for a stay. On May 20, 2024, without any undertaking having been filed or stay having been issued, the Missoula County Sheriff executed on the *Entry of Default and Order of Possession* through a *Writ of Assistance* by putting HomeRiver Group into exclusive possession of the premises. ABS filed its undertaking the following day, having full knowledge that the Order of Possession already had been executed. No stay was issued by the Justice Court because execution occurred prior to any undertaking being filed.

ABS's arguments that HomeRiver Group and ABS are not the proper parties to this case are not within the scope of this appeal. Even so, ABS's arguments are without merit. HomeRiver Group is a national property management company that acquired Summit Property Management. Since the acquisition, Summit Property Management has been registered as a Montana limited liability company doing

business as HomeRiver Group. Dkt. 15, ¶¶ 5, 6. The owner of the premises authorized HomeRiver Group to act as its property manager. Dkt. 16, ¶¶ 5, 6. Even if it were to be determined that HomeRiver Group is not the real party in interest, the case is not subject to dismissal until “a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.” Rule 17(a)(3), M.R.Civ.P.

The tenant of the premises has held itself out and paid rent as “Anders Business Solutions.” There is no document, evidence, or course of conduct to support Anderson Trust being the tenant. The premises owner had not heard of Anderson Trust until after the commencement of this action, and HomeRiver Group never heard of Anderson Trust until the time when ABS received the 30-day notice of termination and non-renewal of the tenancy. Dkt. 16, ¶ 8; Dkt. 15, ¶ 8.

The purported Lease between Gingerelli and Anderson Trust, which is referenced in *Appellant’s Opening Brief*, is a fraudulently produced document. Louis Gingerelli did not sign the document, would not have agreed to its terms, and first saw the document during the District Court appeal. Dkt. 16, ¶ 9. In addition, Gingerelli did not own the premises in December of 2018 and could not have entered into the purported Lease in his individual capacity. Dkt. 16, ¶ 10.

Moreover, multiple representations made by Kris Hawkins subsequent to the date of the purported Lease demonstrate that no such document existed. Dkt. 15, ¶ 8; Dkt. 16, ¶ 11; Dkt. 1 and Appellee's Appendix A, Ex. F.

ARGUMENT

I. The Justice Court correctly issued its Entry of Default and Order of Possession.

On a complaint for unlawful detainer, the defendant must appear or file an answer within 10 days of service. Mont. Code Ann. § 70-27-114(1). Otherwise, the court is to enter the defendant's default and enter judgment in favor of the plaintiff, as requested in the complaint. Mont. Code Ann. § 70-27-117; *see also* Rule 21.A.(8)(a)(1), Mont. Justice and City Court Rules of Civil Procedure. The record shows that ABS was served with the Summons and Verified Complaint on April 16, 2024. Dkt. 1. The Justice Court extended ABS's answer deadline to May 10, 2024, to give ABS additional time to find counsel. Dkt. 1 and Appellee's Appendix C. The *Entry of Default and Order of Possession* was not issued until May 14, 2024. Dkt. 1 and Appellant's Appendix 2. ABS does not cite any legal authority that obligates the Justice Court to stay the case indefinitely until a defendant finds legal representation.

Even after obtaining legal representation, ABS's counsel immediately filed a Notice of Appeal rather than a motion to set aside the *Entry of Default of Order of Possession*. Dkt. 1. ABS never gave the Justice Court an opportunity to determine whether good cause existed to set aside the entry of default. Therefore, since ABS never filed a motion to set aside the entry of default, its arguments that good cause existed to set aside the *Entry of Default and Order of Possession* are immaterial to this appeal. "[I]t is fundamentally unfair to fault the trial court for failing to rule on an issue it was never given the opportunity to consider." *Wheelsmith Fabrication, Inc. v. Montana Dept. of Labor and Industry*, 2000 MT 27, ¶ 11, 298 Mont. 187, 993 P.2d 713.

II. The Justice Court did not err in striking Kris Hawkins's pleadings from the court record.

ABS is a Montana limited liability company. Generally, a limited liability company may not appear in court *pro se* through one of its members. *Sagorin*, ¶ 11. As a limited exception to this general rule, a member with a majority interest in a limited liability company may act as attorney for the limited liability company in the Justice Court. Mont. Code Ann. § 25-31-601(3). Upon receipt of the pleadings filed by Kris Hawkins, the Justice Court appropriately ordered Hawkins to provide documentation showing that she is a member of the LLC with a

majority interest. Dkt. 1 and Appellee's Appendix B. The requested documentation was not provided.

Hawkins produced a copy of the ABS's Annual Report. The Annual Report shows the LLC is a manager-managed company. Anderson Trust, an Oklahoma entity, is identified as the Manager. The Annual Report does not identify any members of ABS. Hawkins also produced a copy of the ABS's Articles of Organization. The Articles identify Jim Davenport is the Manager of the LLC. Neither document produced by Kris Hawkins demonstrates that she is a member of ABS. Dkt. 1 and Appellees' Appendix C. Hawkins' Declaration asserts that Anderson Trust is the member with a majority interest in ABS and that she is a Co-Trustee of the Trust, even though no documentation was provided that shows Anderson Trust to be a member of ABS. Dkt. 1. Moreover, as correctly stated by the Justice Court, "The Anderson Trust appears to be an Oklahoma entity, lacking corporeal form, and thus not able to appear as an attorney in this Court." Dkt. 1 and Appellees' Appendix C.

The issue of whether Kris Hawkins, as Trustee of the Anderson Trust, may represent ABS in Justice Court action has already been reviewed by this Court on Hawkins's/Anderson Trust's *Petition for Writ of Supervisory Control*. See

Anderson Trust v. Beal, OP 24-0310; Appellee’s Appendix D. In its Order denying the Petition, this Court determined that Hawkins/Anderson Trust failed to demonstrate that the Justice Court was proceeding under a mistake of law by prohibiting Hawkins from representing ABS. The Supreme Court further determined that Hawkins’s /Anderson Trust’s arguments lack merit. *Anderson Trust v. Beal*, OP 24-0310, 2024 WL 2754577; Appellee’s Appendix E.

Collateral estoppel bars the reopening of a previously determined issue if the following elements are met:

- (1) the identical issue raised was previously decided in a prior adjudication;
- (2) a final determination on the merits was issued in the prior adjudication;
- (3) the party against who collateral estoppel is now asserted was a party or in privity with a party to the prior adjudication; and
- (4) the party against who preclusion is asserted was afforded a full and fair opportunity to litigate the issue that may be barred.

Baltrusch v. Baltrusch, 2006 MT 51, ¶ 18, 331 Mont. 281, 130 P.3d 1267.

The issue of whether Hawkins can represent the LLC in the court action is identical to the issue raised in the *Petition for Writ of Supervisory Control*. The Supreme Court considered the issue and made a final determination. As the

purported member of ABS, Anderson Trust is in privity with ABS. Thus, Hawkins /Anderson Trust had a full and fair opportunity to argue in its Petition that the Justice Court erred in not allowing Hawkins to represent ABS. Each element of collateral estoppel has been met, yet Hawkins and ABS now seek a determination inconsistent with and contrary to the Supreme Court's prior determination of the issue.

Given the lack of any evidence showing Kris Hawkins to be a majority member of ABS, the Justice Court had no basis to permit her representation of ABS in the action. As such, her court filings were appropriately stricken from the record. In addition, this Court previously determined that, in striking Hawkins's pleadings, the Justice Court did not operate under a mistake of law. *Anderson Trust v. Beal*, OP 24-0310, 2024 WL 2754577; Appellee's Appendix E.

III. ABS was not entitled to a stay of the Order of Possession post-execution.

"The Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court of record." Mont. Code Ann. § 3-10-115(4). Pursuant to Rule 6(a)(3) of the Montana Uniform Municipal Court Rules of Appeal to District Court, "when the judgment appealed from directs the delivery of possession of real property, the

execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties,” in accordance with subsections (a)(3)(A) and (B) of the Rule. A party who does not satisfy requirements for a stay runs the risk of having his appeal become moot. *Kennedy v. Dawson*, 1999 MT 265, ¶ 34, 296 Mont. 430, 989 P.2d 390.

Here, the case record shows that the Justice Court issued both its Order of Possession and its Writ of Assistance on May 14, 2024. Dkt. 1 and Appellant’s Appendix 2, 3. The Writ of Assistance directs the Missoula County Sheriff to put HomeRiver Group in exclusion possession of the subject premises pursuant to the Order of Possession. ABS’s *Notice of Appeal and Motion to Stay* was filed almost one week later on May 20, 2024. Dkt. 1. However, the Motion to Stay makes no mention or offer of an undertaking, as required by Rule 6(a)(3) of the Montana Uniform Municipal Court Rules of Appeal to District Court. Also on May 20, 2024, HomeRiver Group filed a Brief in Opposition due to the lack of the required undertaking. Dkt. 1. The following day, on May 21, 2024, ABS filed an Answer Brief, wherein it argued that no undertaking was required. Dkt. 1.

During the morning hours of May 22, 2024, with no undertaking and therefore no order staying execution of the Order of Possession and Writ of

Assistance, the Missoula County Sheriff executed on the Order and Possession and Writ of Assistance and put HomeRiver Group in exclusion possession of the premises. Dkt. 1. Later that same day, the Justice Court issued its *Order Re: Request for Stay*. Dkt. 1. The order correctly recognizes the requirement for an undertaking prior to any stay and sets the undertaking amount at \$8,800.00. Since the Justice Court was unaware that the Writ of Assistance had already been executed, HomeRiver Group filed a *Notice Re: Execution of Writ of Assistance* on May 23, 2024. Dkt. 1. Also on May 23, 2024, while fully aware that the Writ of Execution already had been executed and that HomeRiver Group had been put in exclusive possession of the premises the day prior, ABS filed the undertaking amount. Dkt. 1. The Justice Court did not issue an order staying its Order of Possession and Writ of Execution because execution occurred prior to the filing of the undertaking.

Since there can be no stay prior to the filing of an undertaking, and since it is clear that execution of the Order of Possession and Writ of Assistance occurred prior to any undertaking being filed and any order of stay being issued, ABS was not entitled to a stay of execution. Any stay on the issue of possession of the premises is now moot. *Kennedy*, ¶ 34. ABS quotes from Rule 7(a) of the Montana

Uniform Municipal Court Rules of Appeal to District Court to argue that upon filing of the required undertaking, the court must stay the execution of the judgment or order. However, the quoted portion of that Rule applies where execution has not yet occurred, and a stay still is available. Here, execution of the Order of Possession occurred prior to the filing of the undertaking. ABS also quotes portions of Rule 7(a) that apply to personal property levied upon and in possession of the execution officer. Here, the execution officer, Missoula County Sheriff, is not in possession of the subject premises or of any property that is deliverable to ABS.

ABS was leasing the subject real property pursuant to a month-to-month tenancy. That tenancy was terminated upon 30-days' written notice. Dkt. 1 and Appellee's Appendix A. The Justice Court issued an *Entry of Default and Order of Possession* and *Writ of Assistance*. Dkt. 1 and Appellant's Appendix 2, 3. The Missoula County Sheriff executed the Writ of Assistance and put HomeRiver Group in exclusive possession of the premises prior to the filing of any undertaking and prior to any order staying the case. ABS does not cite any legal authority nor provide any procedural basis to support the issuance of a stay for an already executed order of possession.

The subject premises does contain several personal property and equipment items, which currently are being secured until ABS makes arrangements to take possession of the same. Despite multiple requests, ABS has failed or refused to contact HomeRiver Group or its counsel to coordinate possession of the personal property and equipment items. Dkt. 21, pg. 4.

IV. HomeRiver Group and ABS are the proper parties to this case.

ABS incorrectly argues that Anderson Trust, not ABS, is the proper defendant, and that HomeRiver Group is not the proper plaintiff. A determination of that argument would require factual findings, which are outside the scope of this appeal. Even so, ABS's argument is demonstrably false and without any merit.

As shown by the *Verified Complaint for Unlawful Detainer* and the Affidavits of Louis M. Gingerelli and Chira Gingerelli-Hegg, the original lease agreement for the premises was between Louis Gingerelli and Don Davenport. Dkt. 1 and Appellee's Appendix A; Dkt. 15; Dkt. 16. The lease was renewed several times over the years. During the renewal terms, Don Davenport began doing business as and leasing the premises under the name Anders Business Solutions, which was eventually registered as a limited liability company. Dkt. 16, ¶ 4. Beginning in 2015, Summit Property Management was hired to be the

property manager and take over management and leasing of the subject premises. In 2021, Summit Property Management was acquired by HomeRiver Group, a national property management company. Dkt. 16, ¶¶ 5, 6. Since that time, Summit Property Management has been registered as a Montana limited liability company doing business as HomeRiver Group. ABS was notified of the HomeRiver Group acquisition and monthly rent subsequently was paid to HomeRiver Group. Dkt. 15, ¶¶ 5-6.

There is no document or evidence to support Anderson Trust being the tenant. Attached to the *Verified Complaint for Unlawful Detainer* as Exhibit D is a Commercial Lease Renewal Offer and agreement between Summit Property Management and ABS. Dkt. 1 and Appellee's Appendix A, Ex. D. In addition, since 2015, Summit Property Management and HomeRiver Group have maintained an online portal for ABS to review its account ledger, view documents, and pay rent directly to the property manager. A copy of the Tenant Ledger since 2015 is attached to the *Affidavit of Chira Gingerelli-Hegg* as Exhibit A. Dkt. 15, Ex. A. The online portal consistently has shown the tenant to be ABS, without objection or reservation from the tenant. Likewise, ABS, not Anderson Trust, has made the monthly rent payments. Dkt. 15, ¶ 6. Even when ABS stopped using the online

tenant portal to make rent payments, the physical rent checks were from “Anders Business Solutions” and made payable to HomeRiver Group. Dkt. 15, ¶ 7, Ex. B. Moreover, the owner of the subject premises had never even heard of Anderson Trust until this case, and the property manager never heard of Anderson Trust until March of 2024, when Hawkins first mentioned the Trust around the time ABS received the 30-day notice of termination and non-renewal of the tenancy. Dkt. 16, ¶ 8; Dkt. 15, ¶ 9.

“Anders Business Solutions” has not been a registered assumed business name with the Montana Secretary of State since 2019. Thus, given the tenant has continued to hold itself out as “Anders Business Solutions” and pay rent to HomeRiver Group as “Anders Business Solutions,” the appropriate tenant and defendant in this matter is the only registered entity having that name, Anders Business Solutions, LLC. All references to “Answers Business Solutions” and “ABS” in the pleadings have been to the LLC, which is the named defendant in the case.

As the property management company that acquired Summit Property Management, HomeRiver Group is the real party in interest to prosecute this action. Dkt. 15, ¶ 5. No court determination has been made otherwise. However,

even if it were determined that Summit Property Management, LLC, d/b/a HomeRiver Group, and not merely HomeRiver Group, is the correct named Plaintiff, the case is not subject to dismissal until “a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action.” Rule 17(a)(3), M.R.Civ.P. Absent a court determination regarding ABS’s objection to HomeRiver Group as the named Plaintiff, and absent an opportunity for substitution should the objection be sustained, there are no grounds for dismissal of the case or for reversal of the Justice Court’s rulings.

V. The purported Lease between Gingerelli and Anderson Trust is a fraudulently produced document.

ABS’s *Opening Brief* and *Appendix* in the District Court appeal references and produces a purported written Lease between Louis Gingerelli and Anderson Trust dated December 28, 2018. Dkt. 12, 13. The same purported Lease is referenced in *Appellant’s Opening Brief* filed in the present appeal. That purported Lease is a fraudulently produced document. Louis Gingerelli had not seen that lease document prior to this appeal. Dkt. 16, ¶¶ 9, 12. The premises has never been leased to Anderson Trust. Gingerelli did not sign the lease document and never would have agreed to the terms and conditions in that purported lease. Dkt.

16, ¶¶ 9, 12. It is apparent that a copy or reproduction of Gingerelli's signature was fraudulently attached to the document without his knowledge or consent.

At the time of the purported 2018 Lease, Summit Property Management was Louis Gingerelli's property manager and handled all lease agreements or lease extensions for the subject premises. Dkt. 16, ¶ 10. Any lease for the premises at that time would have been through Summit Property Management, not Gingerelli personally. Moreover, in 2018, Gingerelli did not own the premises in his personal name, and thus, could not have leased the premises in his personal name, as suggested by the lease document. Dkt. 16, ¶ 10.

Attached to the *Affidavit of Louis M. Gingerelli* as Exhibit A is a Christmas card and hand-written letter that Gingerelli received from Kris Hawkins (she went by Kris Davenport at the time) in December of 2023. Dkt. 16, Ex. ¶ 11, Ex. A. In the letter, Hawkins (Davenport) acknowledges that she has not been involved in the business "all these years" and states that because of her father's death and her brother's death, she does not know where the lease is. Hawkins (Davenport) asks Louis Gingerelli for a copy of the original lease for the premises "entered decades ago." If Hawkins and Anderson Trust truly had entered into the purported 2018 Lease with Louis Gingerelli, Hawkins would not have made those statements in

her December 2023 letter to Gingerelli, and she would not have requested a copy of the original lease from “decades ago.” It is clear from the statements in Hawkins’ December 2023 letter that the purported 2018 Lease between Anderson Trust and Louis Gingerelli did not exist.

In addition, the purported Lease between Anderson Trust and Louis Gingerelli is contradictory to Kris Hawkins’s 2022 email exchange with HomeRiver Group wherein Hawkins requests a reduction in the monthly rent amount. Dkt. 15, ¶ 8. Attached to the *Verified Complaint for Unlawful Detainer* as Exhibit F is January of 2022 email correspondence between Hawkins (Davenport) and HomeRiver Group wherein she requests a temporary reduction in the monthly rent amount to \$2,000.00 due to financial problems of the business and her brother Jim’s death. Dkt. 1 and Appellee’s Appendix A, Ex. F. The purported 2018 Lease states that the monthly rent is to be reduced upon the death of her brother, Jim. Dkt. 15, ¶ 8. Yet, Hawkins’s 2022 email exchange and request for reduction of rent makes no mention of the purported 2018 Lease, which mandates the rent reduction. If Hawkins and Anderson Trust truly had entered into the purported Lease with Louis Gingerelli dated December 28, 2018, Hawkins would have referenced that Lease in her 2022 correspondence with HomeRiver

Group and she would not have had any need to request a rent reduction. Moreover, the fraudulent Lease inexplicably purports to predict Jim's death years in advance of his diagnosis and passing in November of 2021. There was no reason to contemplate Jim's passing in a 2018 lease agreement. It is even more clear from the content of the fraudulent document and Hawkins's own statements in her December 2022 email exchange with HomeRiver Group that the purported 2018 Lease between Anderson Trust and Louis Gingerelli did not exist.

CONCLUSION

The District Court was correct in affirming the Justice Court's decisions in this case. Appropriate grounds existed to support the Justice Court's *Entry of Default and Order of Possession*. In addition, ABS was not entitled to a stay of the Order of Possession post-execution. It is respectfully requested that this Court affirm the lower court's decisions and remand the case to the Justice Court for further proceedings.

DATED this 7th day of February, 2025.

JONES & HOUSTON, PLLC

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

CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. P. 11, I certify that this Brief is printed with proportionately-spaced Times New Roman text of 14 points; is double spaced; and the word count calculated by Microsoft Word does not exceed 10,000 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and appendices.

/s/ Joseph D. Houston
Joseph D. Houston
Attorney for Appellees

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 7th day of February, 2025, the foregoing Answer Brief of Appellee was served by eService and by First Class Mail, postage prepaid, at Missoula, Montana, to the following:

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/s/ Joseph D. Houston

CERTIFICATE OF SERVICE

I, Joseph David Houston, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-07-2025:

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Dated: 02-07-2025