

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No.: DA 24-0610

360 RECLAIM, LLC, a Montana limited liability company,

Plaintiff and Appellant,

v.

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

Defendants and Appellees.

v.

WILLIAM M. RUSSELL,

Plaintiff and Appellee,

v.

360 RECLAIM, LLC, a Montana limited liability company,

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

v.

WILLIAM M. RUSSELL,

Counter-Defendant and Appellee,

and

US TREASURY by and through the
INTERNAL REVENUE SERVICE,

Third-Party Defendants.

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

**APPELLANT 360 RECLAIM, LLC'S REPLY TO WILLIAM RUSSELL'S
BRIEF**

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TABLE OF CONTENTS

<u>Contents</u>	<u>Page No.</u>
I. INTRODUCTION.....	1
II. ARGUMENT.....	1
A. Russell’s Response Brief is Deficient and Untimely and Should be Stricken.....	1
B. Russell’s Response Misrepresents this Court’s Remand Directive.....	2
C. Russell’s Claim of Res Judicata is Misplaced.....	3
D. Russell’s Response Relies on Conclusory Allegations Rather than Legal Argument.....	4
III. CONCLUSION.....	5

TABLE OF AUTHORITIES

Contents

Page No.

CASES

Cook v. Soo Line R. Co., 2008 MT 421, ¶ 12, 347 Mont. 372, 376, 198 P.3d 310,
313**3**

Klock v. Town of Cascade, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997).....**4**

COMES NOW Plaintiff /Appellant 360 RECLAIM, LLC (“360 Reclaim”) and submits its Reply Brief in response to William Russell’s Response Brief.

I. INTRODUCTION

Russell’s brief is both procedurally deficient and substantively meritless. Russell was afforded ten (10) days to cure a previously identified deficiency in his initial filing. He failed to comply within the prescribed timeframe as his filing was accepted March 6, 2025, nearly one week late. Accordingly, his response should be disregarded in its entirety. Even if considered, the response fails to rebut any of the substantive arguments presented by 360 Reclaim and instead relies on mischaracterizations of both the record and this Court’s prior Opinion.

II. ARGUMENT

A. Russell’s Response Brief is Deficient and Untimely and Should be Stricken.

As a threshold matter, Russell’s Response Brief is procedurally improper. Pursuant to the Montana Rules of Appellate Procedure and the specific directive of this Court, Russell was provided ten (10) days to remedy a deficiency in his earlier filing. He did not do so within the allotted time. The failure to correct the identified deficiency within the required period renders the brief noncompliant and subject to exclusion from the record.

Courts are under no obligation to consider untimely or nonconforming briefs, particularly when a party has had a fair opportunity to cure and has failed to act. Permitting a party to disregard procedural deadlines erodes the integrity of the judicial process and unfairly prejudices compliant litigants. This Court should therefore strike Russell’s Response Brief and proceed to adjudicate this appeal on the basis of the properly submitted briefs before it.

B. Russell’s Response Misrepresents this Court’s Remand Directive.

Even if this Court were to consider Russell’s deficient brief, the arguments contained therein are wholly unsupported. Russell incorrectly asserts that 360 Reclaim’s appeal is frivolous and grounded in a “fabricated” mandate. (Russell’s Resp. Br. p. 7, Mar. 6, 2025 (“Resp. Br.”)). To the contrary, 360 Reclaim’s opening brief carefully tracked this Court’s December 27, 2023 Opinion, which expressly identified unresolved matters requiring further analysis by the District Court including the distinction between real property and personal property-related costs, and the appropriate application of any credits to the redemption amount. (App. Br. pp. 2-4, 5-7, December 17, 2024 (“360 Br.”); R@153, p. 13).

Russell’s assertion that this Court’s remand was “narrowly construed” and excluded any further evaluation of cleanup or maintenance costs is an overstatement unsupported by the language of the Opinion. (Resp. Br. p. 2). Nothing in this Court’s remand precluded the parties from presenting relevant evidence regarding the

accurate calculation of redemption value and the allocation of claimed expenses. (R@153). Instead, this Court expressly noted: "Further, from our review of the record, we do not discern there were any objections made that specific items of the \$38,147.65 in cleanup costs were attributable only to real property or only to personal property. Rather, the parties argued generally that all cleanup costs related either to real or personal property." (R@153, p. 13). 360 Reclaim acted well within its rights to seek clarification of these issues, particularly in light of the lower court's prior misapplication of law.

C. Russell's Claim of Res Judicata is Misplaced.

Russell repeatedly invokes res judicata in an attempt to preclude further review of costs already ruled upon. (Resp. Br. p. 7). However, the doctrine of res judicata applies only to matters that have been fully adjudicated on the merits. *Cook v. Soo Line R. Co.*, 2008 MT 421, ¶ 12, 347 Mont. 372, 376, 198 P.3d 310, 313. Here, this Court's remand expressly directed further fact-finding. (R@153, p. 13). Russell's narrow interpretation requires the Court to look only to a portion of the remand and not the immediately following language. (Resp. Br. pp. 6-7). This Court's December 27, 2023, opinion directed the District Court to determine which of 360 Reclaim's maintenance expenses pertained to real property and noted:

Accordingly, we remand for the District Court to determine **what credits, if any, Russell and MVI are entitled to against the redemption price and whether Russell's offer of redemption was in**

substantial compliance with the redemption statutes. Further, from our review of the record, we do not discern **there were any objections made that specific items of the \$38,147.65 in cleanup costs were attributable only to real property or only to personal property.** Rather, the parties argued generally that all cleanup costs related *either* to real or personal property...

We conclude that “maintenance expenses,” as used in § 25-13-802(3), MCA, does not include cleanup costs for the **removal of a redemptioner’s personal property.**

(Emphasis added)(R@153, p. 13).

Additional evaluation was both appropriate and expected. Russell’s position would improperly foreclose a fair and complete analysis of the redemption value, including proper maintenance costs, contrary to the intent of this Court’s Opinion.

D. Russell’s Response Relies on Conclusory Allegations Rather than Legal Argument.

Russell’s response brief is full with conclusory language accusing 360 Reclaim of “fraud,” “bad faith,” and “collusion,” but fails to support these assertions with citations to the record or applicable legal authority. (Resp. Br. pp. 2, 5, 7). Such inflammatory rhetoric, while perhaps intended to distract from the substantive legal issues at hand, does not constitute an argument. Courts evaluate appeals based on summary judgment on the basis of facts, law, and procedure, not unfounded accusations. *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262, 1266 (1997). 360 Reclaim’s arguments rest on a proper interpretation of the record and

sound application of legal principles. Russell's brief offers neither factual nor legal basis to disturb the arguments raised by 360 Reclaim. *Id.*

CONCLUSION

The District Court failed to comply with the Supreme Court's remand directive by refusing to distinguish between real and personal property maintenance costs and to determine if Substantial Compliance existed. Each of Russell's arguments in support of the District Court's ruling misstates the record, contradicts established legal principles, or ignores the Supreme Court's clear instructions.

This Court should reverse the District Court's order and remand with explicit instructions to enforce the proper application of Montana law.

DATED this 14th day of March, 2025.

OMVIG HAMMER LAW, P.C.

By: /s/ Benjamin J. Hammer
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced (except that footnotes and quoted and indented material are single spaced); with left, right, top and bottom margins of one inch; and the word count calculated by Microsoft Word is 1,011 words, excluding the Certificate of Compliance and Certificate of Service.

DATED this 14th day of March, 2025.

OMVIG HAMMER LAW, P.C.

By: /s/ Benjamin J. Hammer
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CERTIFICATE OF SERVICE

I, Benjamin J. Hammer, one of the attorneys of the law firm of OMVIG HAMMER LAW, P.C., do hereby certify that on the 14th day of March, 2025, I served a true and correct copy of the foregoing document upon the person(s) named below, at the address set out below, either by mailing, hand delivery, or Federal Express, in a properly addressed envelope, postage prepaid, or by telecopying a true and correct copy of said document.

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I, Benjamin James Hammer, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 03-14-2025:

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