

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 24-0531

HOMERIVER GROUP,

Plaintiff and Appellee,

v.

ANDERS BUSINESS SOLUTIONS, LLC,

Defendant and Appellant.

APPELLANT'S REPLY BRIEF

On Appeal from the Fourth Judicial District Court, Cause No. DV-32-2024-457,
the Honorable Robert L. Deschamps, III presiding.

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I. HomeRiver Group lacks standing to assert any claim against the LLC.

HomeRiver Group admits that Louis Gingerelli (“Louis”) (or his company LMG CRG Investments, LLC) is the only person with standing to bring this suit:

1. “...the premises leased by ABS are owned by LMG CRG Investments, LLC...Gingerelli is a member of [the] LLC.” *Answer Brief*, p. 6.
2. Gingerelli is “the property owner.” *Complaint*, ¶ 12).
3. Louis’ Agreement with his property manager Summit says he is the owner. *4/23/24 Affidavit, D. C. Doc. .*

As owner/lessor, Louis (or his LLC) is the only person who is entitled to the rent and possession of the premises.

HomeRiver Group states that “As the property management company that acquired Summit Property Management, HomeRiver Group is the real party in interest to prosecute this action.” *Answer Brief*, p. 27. The company that acquired Summit is “HRG Management, LLC,” (a Delaware LLC) not “HomeRiver Group.” There is no Montana company named “HomeRiver Group.”¹

Because HomeRiver Group admits that “HomeRiver Group” is merely the trade name of a Delaware property management company that does not own the premises and is not entitled to rent or possession, the *name* “HomeRiver Group” has not suffered a past, present or threatened injury to a property right. HomeRiver

¹Montana Secretary of State records. Montana law prohibits a non-registered company from bringing suit. See, e. g. § 35-14-1502, MCA. (“A foreign corporation doing business in this state may not maintain a proceeding in any court of this state until it is registered to do business in this state.”)

Group has no standing because it has no personal stake in the outcome of this case. The court thus lacks power to resolve the case brought by HomeRiver Group and dismissal is required. Where the plaintiff is neither the owner nor the lessor of the property, the plaintiff has no standing to bring a summary process action to evict a tenant. *Rental Property Management Services v. Hatcher*, 479 Mass. 542, 97 N. E. 3d 319 (2018). HomeRiver Group is not involved in this dispute at all. It has no standing and the court thus has no jurisdiction.²

II. HomeRiver Group is equitably estopped from disputing the 2018 Lease.

HomeRiver Group bases its cause of action on the 1996 Lease between Louis and Don Davenport (“Don”), neither of whom are parties to this suit. *Complaint*, ¶ 2. HomeRiver Group claims attorney fees pursuant to the 1996 Lease. *Complaint*, ¶ 18. That 1996 Lease indisputably did not involve the Defendant LLC. The LLC was never a party to the 1996 Lease. Don always leased the premises in his own name. “Anders Business Solutions” is not even mentioned in the 1996 Lease.³

HomeRiver Group admits that Louis never assigned his interest as Lessor in the 1996 Lease to HomeRiver Group or any other person.

²HomeRiver Group admits that it is only a property manager, not a landlord: “The landlord’s responsibilities generally revolve around maintaining ownership obligations and ensuring that the property manager has the necessary resources and authority to manage the property effectively.” <https://www.homeriver.com/blog/property-management-agreement>.

³HomeRiver Group’s statement that “Anders Business Solutions” was registered as an LLC is incorrect. “Anders Business Solutions, LLC” is the only entity that Jim Davenport (“Jim”) registered as an LLC. Anders Business Solutions (non-LLC) continues to exist independently of the LLC.

HomeRiver Group states that the 1996 Lease is still in force and the 2018 Lease is fraudulent because Louis did not own the premises in 2018 and therefore, he would not have signed the 2018 Lease. That representation is completely false. County records prove that Louis was the owner in 2018. *Ex. 1. D. C. Doc.*

HomeRiver Group relies on *Exhibit D* to its *Complaint* as the sole basis for suing the LLC.⁴ In 2018, Louis made an offer (*Exhibit D*) to Jim (not to the LLC) to renew the lease of the property. He said that if Jim wanted to continue the tenancy with Louis, Jim needed to acknowledge his desire by returning a signed copy of the proposal. The Offer stated that, upon return of the signed proposal, “we will draw up a new lease.” When Anderson Trust Trustee Kris Hawkins asked Louis where the *Exhibit D* 2018 Lease was located, HomeRiver told Kris that that lease was never prepared because a person named “Dan” representing Anders “chose the option to continue renting on a month-to-month basis and not to sign a new lease renewal with an extended term.” *Ex. 2, D. C. Doc.* . HomeRiver’s representation was completely false because no one named “Dan” ever represented Anders.⁵

Additionally, the *Exhibit D* Offer says a “new lease” will be drawn up even for a month-to-month renewal.

⁴Contradictorily, however, as noted, HomeRiver Group relies on the 1996 Louis Gingerelli-Don Davenport Lease to claim attorney fees. *Complaint*, ¶ 18.

⁵At that point, Kris realized that HomeRiver’s representation that Louis and Jim had cancelled the 2018 Lease was false. Eventually, an employee found the 2018 Lease. Kris had nothing to do with his locating of the missing Lease.

HomeRiver Group completely ignores these crucial facts in its Answer Brief and fails to give any explanation for them. Its abject failure to tell the Court where the 2018 “new lease” is that Gingerelli promised to “draw up” upon return of the signed Offer is inexcusable.

Because HomeRiver Group now wants to disavow that actual 2018 promised “new lease,” it resorts to saying that the 2018 new Lease is “fraudulent.” HomeRiver Group relies on irrelevant affidavits, none of which were in the record before the Justice Court, to inaccurately describe the circumstances surrounding the execution of the 2018 Lease and following Jim Davenport’s 2021 death⁶

⁶Chira Gingerelli (“Chira”) filed this lawsuit for HomeRiver Group. Chira’s false statements to the Court are exactly what Anderson Trust’s Trustee Kris Hawkins (“Kris”) encountered after Jim unexpectedly died. Kris did not know where the 2018 Lease was, etc. Taking advantage of Kris’s ignorance, HomeRiver Group *et al* hid the Lease from Kris, told her that Louis Gingerelli and Jim had cancelled the 2018 Lease, told her that the 1996 Lease was still in force, and filed this suit to oust the Anderson Trust tenant from the leasehold by falsely claiming that the LLC is the tenant.

HomeRiver Group’s claim that the 2018 Lease must not have been executed—because it called for a reduction in the rent in the event of Jim’s death and his death actually occurred—is illogical. Under its reasoning, no one would ever put key man/*force majeure* provisions into any contract, obtain key man life insurance, etc. Obviously, those types of provisions are regularly put into contracts or key man life insurance is obtained. Rather than insuring Jim’s life, the Trust negotiated a key man provision in the Lease itself. Under HomeRiver Group’s reasoning, if a company purchased key man life insurance, and the key man died, the Court should assume the insurance policy was fraudulent. That claim would be absurd. HomeRiver Group is seeking to avoid the Lease that Louis made with the Trust because Jim in fact later died, triggering a reduction in the rent. HomeRiver Group therefore attempts to avoid the 2018 Lease by asserting it is fraudulent. HomeRiver Group never alleged fraud in its Complaint. HomeRiver Group’s totally unsupported allegations about the 2018 Lease are not relevant to this Court’s review.

Notably, HomeRiver Group relies on the 2018 Lease to claim that the Lessee agreed to pay the “certificate of mailing” fees provided for in the 2018 Lease. *Ex. 3*.

HomeRiver Group's disavowal of the 2018 Lease begs the question of where the alleged "genuine" 2018 lease is that Louis promised to "draw up." HomeRiver Group cannot produce the alleged "genuine" 2018 Lease because it does not exist.

HomeRiver's position is totally inconsistent with Louis' 2018 *Exhibit D* statement that the 1996 Lease was not in force in 2018, and that, for that reason, "we will draw up a new lease." Louis's representation that he did not consider that the 1996 Lease was still in force in 2018, caused the Trust to sign *Exhibit D* acknowledging the Trust's intention to keep renting the premises for extremely high rent; not seek alternate rental premises; pay rent to Louis for the last 6 years; enter into a new lease in 2018; put considerable improvements on the premises in reliance on its 2018 20-year lease, etc. For a third-party entity non-lessor—HomeRiver Group—to now assert that the 2018 Lease did not exist and that the 1996 Lease is still in force in 2025 and can form the basis for that third-party HomeRiver Group to oust Lessee Anderson Trust and demand money from a totally innocent third-party LLC is inequitable. This conduct violates the duty of good faith and fair dealing Gingerelli owes to the Trust. Louis's current position is demonstrably contrary to the Trustees' reasonable expectations that a new lease was necessary and would be entered into if they wanted to continue leasing the premises. Louis's inconsistent conduct caused this entire situation. The Trustees relied on his representations. The Trust would suffer a loss and detriment if Louis were allowed to deny that a new lease

was necessary in 2018 and would be “drawn up.” It would be unconscionable to allow Louis to now return to a prior inconsistent position by attempting to rely on the 1996 Lease and denying the existence of the 2018 Lease. Louis’s 2018 statements of fact, which set out the reason for making the new lease and his promise to “draw up a new lease” if the Trust would sign *Exhibit D*, are conclusive evidence against HomeRiver Group. HomeRiver Group is equitably estopped from denying the existence of the 2018 Lease. Equitable estoppel prevents a party from inducing another party to alter their position for the worse and then denying them the just, legal consequences of those acts. *MC, Inc. v. Cascade*, 2015 MT 52, 343 P.3d 1208. The LLC has established all required equitable estoppel elements. *Billings v. DOR* (1997), 284 Mont. 84, 943 P.2d 517. “[R]elief will be granted when...to deny it would permit one of the parties to suffer a gross wrong at the hands of the other party who brought about the condition.” *Thisted v. Tower* (1966), 147 Mont. 1, 409 P.2d 813. The equities clearly favor the LLC. Where the plaintiff has unclean hands, and would take advantage of his own wrong, the court will deny relief. *Hall v. Hall* (1924), 70 Mont. 460, 226 P. 469. HomeRiver Group is barred from disavowing the 2018 Lease that the Trust has with Gingerelli. HomeRiver Group is prohibited from ousting the Trust from the leased premises via suing a non-lessee LLC.⁷

⁷The Secretary of State has given public notice that Anderson Trust is the manager of the LLC since 4/15/18.⁷ If HomeRiver Group wanted to bind the LLC to a lease contract, it was required by law

III. HomeRiver Group concedes that it does not have a cognizable legal claim against the LLC, which warrants dismissal of the Complaint.

The Complaint fails to state a cognizable legal claim against the LLC since nowhere in the Complaint does HomeRiver Group ever state a claim against the LLC “Anders Business Solutions, LLC.” The name “Anders Business Solutions, LLC” appears nowhere in the Complaint. The only reference in the Complaint is to “Anders Business Solutions.” “Anders Business Solutions” is a non-entity and just an individual’s assumed business name. HomeRiver Group admits that it never entered into a lease with “Anders Business Solutions, LLC” or its manager Anderson Trust and no such a lease ever existed. Without such a lease, HomeRiver Group’s entire case against the LLC fails.

HomeRiver Group attempts to prove that the LLC is the Lessee by relying on the fact that the non-LLC Anders Business Solutions wrote rent checks to HomeRiver Group. However, those checks are not written by the LLC. They are written on behalf of an individual doing business as “Anders Business Solutions” (not an LLC) on behalf of the Lessee Anderson Trust. The law requires that the name of a LLC contain the words “limited liability company” or LLC abbreviations. § 35-8-103, MCA. Because the name on those checks does not contain those required LLC words/abbreviations, obviously those checks are not from the LLC.

to obtain the consent of the manager of the LLC—i.e. Anderson Trust.

Furthermore, the fact that an individual pays rent does not mean that the payor is the Lessee. There is no law that states that one making payments on behalf of another person means that the payor is obligated on that other party's contract. Whether the LLC is contractually obligated to pay rent to HomeRiver Group is entirely a matter of contract law, not a matter of who pays rent. Anders Business Solutions (non-LLC) paid the rent on behalf of Lessee Anderson Trust, not on behalf of the LLC. There is not one iota of evidence that those rent payments are made on behalf of the LLC.

Furthermore, HomeRiver Group's Complaint does not rely on those checks for its claim against the LLC. In determining whether HomeRiver Group's Complaint states a cause of action, the Court is confined to the four corners of the Complaint. It cannot glean facts from outside the Complaint. *Stufft v. Stufft*, 276 Mont. 310, 916 P.2d 104 (1996). Nowhere in its Complaint does HomeRiver Group ever assert that the LLC is liable because of those checks. Those checks are irrelevant.

Obviously, HomeRiver Group is required to produce the contract between itself and the LLC. Clearly, no such contract exists.

HomeRiver Group admits that it bases its claim on *Exhibit D* to the Complaint titled "Commercial Lease Renewal Offer." The "Offer" does not refer to Anders Business Solutions, LLC. It is signed by Jim in his individual capacity. It was not

signed by Jim on behalf of the LLC. The name “Anders Business Solutions, LLC” appears nowhere on that document nor on any other document upon which HomeRiver Group relies.

An LLC is not bound by any instrument unless the instrument is signed by a LLC’s manager in the name of the LLC. § 35-8-301(2)(b), MCA. The manager of the LLC is Anderson Trust. Plaintiff’s failure to produce any instrument in the name of the LLC executed by its manager, Anderson Trust, barred the court from entering judgment against the LLC.

The court can acquire jurisdiction of any particular civil case only if the statement of the cause of action discloses a case from the facts stated, upon which the court may grant redress. The Complaint fails to state a cause of action or claim against the LLC. Nowhere in the Complaint does HomeRiver Group ever allege that the LLC is the lessee. HomeRiver Group belatedly attempts to remedy this fatal defect by stating “All references to “Anders Business Solutions” and “ABS” in the pleadings have been to the LLC.” *Answer Brief*, p. 27. However, this critical statement is not made in the Complaint itself. Thus, the Complaint is facially insufficient to state a cognizable legal claim against the LLC entitling HomeRiver Group to relief on the facts pled. Without lease between the LLC and Louis, liability against the LLC for possession and rent does not lie. HomeRiver Group concedes that it does not have a cognizable legal claim against the LLC, which warrants dismissal of the Complaint.

IV. HomeRiver Group fails to refute the LLC's claim that the court erred in refusing to allow the Trustee of the Trust to file pleadings for its LLC.

In justice court “any person...may act as attorney for a party and “a member with a majority interest in a” LLC [i.e. Anderson Trust] “may act as attorney for the” LLC. § 25-31-601, MCA. Therefore, the Trust, through its Trustee, properly filed pleadings in Justice Court on behalf of the Trust's LLC. The court erred in striking the Trustee's filings on the grounds that the Trustee had to be a currently-licensed attorney in order to represent her own Trust. HomeRiver Group completely ignores these controlling statutes in its Answer Brief.

Instead, HomeRiver Group relies on a case pertaining to non-attorney representation of an LLC in *district court proceedings*—*Sagorin v. Sunrise Heating & Cooling, LLC*. *Sagorin* is completely irrelevant to justice court proceedings. *Sagorin* improperly attempted to represent an LLC in *district court*; in contrast, Anderson Trust Trustee Kris Hawkins represented the LLC in *justice court*. The Legislature carved out this specific exception to the general rule that only a licensed attorney can represent an LLC in court. In justice court “Any person...may act as attorney for a party and “a member with a majority interest in a” LLC [i.e. Anderson Trust] “may act as attorney for the” LLC. § 25-31-601, MCA. HomeRiver Group completely ignores this exception to the general rule upon which *Sagorin* was decided. HomeRiver Group's argument is totally without merit.

HomeRiver Group also asserts that this Court's decision on the Trust's Petition for a Supervisory Writ constitutes collateral estoppel on the matter of Kris Hawkins' representation of her Trust in the justice court case. HomeRiver Group's claim is without merit. Kris Hawkins' Petition argued that "urgency and emergency factors make the normal appeal process inadequate" and that "this case involves issues of major statewide importance." This Court declined to grant the Petition because "We conclude that a writ of supervisory control is unwarranted. Hawkins's arguments lack merit. We find no urgent and emergency factors or issue of statewide importance."

Thus, collateral estoppel does not apply to this appeal. This Court made no determination on the issue of whether a trustee could appear for her own trust in justice court, which is the issue before this Court. This Court did not even discuss how the controlling statute (§ 25-31-601) applied to the justice court proceedings. It was not a matter that the Court adjudicated. "Unless it clearly appears that the precise question involved in the second case was raised and determined in the former, the judgment is no bar to the second action." *Fox v. Ranch* (1982), 198 Mont. 201, 645 P.2d 929. "That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged." § 26-3-102, MCA. Kris Hawkins was not given any opportunity to file a reply brief because the Court's decision solely rested on its opinion as to "urgency" and "importance."

In fact, the Court's decision intrinsically, *per se*, in and of itself, proves that Trustee Kris Hawkins could represent her Trust. The Court provably recognizes that trustees are merely the alter ego of their trusts and are not separate entities. In contrast to the Justice Court's act of striking Kris Hawkins' filings, this Court did not strike her filings. It allowed Kris Hawkins, as a non-attorney Trustee, to appear *pro se* of behalf of her Trust in the proceeding before the Court. Therefore, it would obviously allow a non-attorney trustee to appear on behalf of her trust in litigation in justice court. This Court clearly allows non-attorney trustees to represent their trusts in litigation. The fact that trustees are allowed to represent their trusts in litigation is indisputable when § 25-31-601 clearly allows non-attorneys to represent "any party" in Justice Court. This Court never even discussed the issue of whether a trustee has the right to represent her own trust in litigation, which is the issue on this appeal. It simply noted that the Justice Court had relied on the 2005 *Ioerger* case regarding LLC's. However, that 2005 case is irrelevant on the issue of trustee's powers to represent her own trust. The Legislature later granted litigation powers to trustees in 2013. Section 72-38-816(24), MCA. ("a trustee may...defend an action, claim, or judicial proceeding in any jurisdiction"). The Legislature then granted litigation representation powers to all persons in Justice Court in 2017. § 25-31-601, MCA. The law is conclusive that the trustee is not a separate entity from the trust. HomeRiver Group fails to refute the LLC's contention that the Justice Court erred in striking the Trustee's filings.

V. HomeRiver Group fails to refute the LLC's claim that the Justice Court erred in defaulting the LLC.

The Justice Court was prohibited from entering the LLC's default because the LLC was actively defending itself via its manager Trust's Trustees and was indisputably unable to retain an attorney by the Court's arbitrary extremely short, unrealistic deadline. HomeRiver Group fails to brief this issue and therefore concedes that the Court erred in defaulting the LLC simply because the LLC was unable to retain an attorney. *In re Estate of Snyder*, 2009 MT 291, ¶ 9, 217 P.3d 1027, ¶ 9. (“Neil...has effectively conceded that *Snyder II* is controlling by failing to respond, with argument and citations to authority, to Lois's argument in her opening brief....”)

HomeRiver Group simply says that “ABS does not cite any legal authority that obligates the Justice Court to stay the case indefinitely until a defendant finds legal representation.” The LLC never claimed that the Court had to stay the case indefinitely. It merely claims that a court should stay a case so long as a defendant is actively seeking legal representation. HomeRiver Group does not dispute that the LLC was diligently seeking legal representation at the time the Justice Court entered its default. HomeRiver Group does not cite any legal authority that allows a court to default a defendant who is actively seeking legal representation and who shows an interest in defending itself. HomeRiver Group does not dispute that it is a travesty of

justice for a court to punish a defendant simply because there are no attorneys available for it to hire.

HomeRiver Group claims that, because the LLC did not complain about the Justice Court's wrongful entry of default to the Justice Court, the LLC is prohibited from bringing the issue of that wrongful entry of default to this Court. That assertion is without merit. Once the Justice Court *sua sponte* struck all the LLC's filings, prohibited the LLC from filing any more documents, and defaulted the LLC, the Justice Court itself prohibited the LLC from filing a motion on the issue. HomeRiver Group cites no authority in support of its claim that the LLC is prohibited from appealing that wrongful default to this Court. Furthermore, HomeRiver Group never presented this argument in the district court appeal and therefore waived it.

VI. HomeRiver Group incorrectly claims that there is a judgment.

HomeRiver Group's claim that ABS had to pay an undertaking simultaneously upon its appeal to district court is without merit. HomeRiver Group premises that claim on its assertion that there was a *judgment* against the LLC. That assertion is false. There was no judgment. HomeRiver Group itself admits there was no judgment. It stated:

...the Justice Court has not issued a judgment...from which an appeal may be taken...No judgment has been entered by the Justice Court....

5/20/24 *Brief in Opposition to Defendant's Notice of Appeal.*

HomeRiver Group's contradictory representation to this Court that there was a judgment is made in bad faith. Furthermore, it is beyond cavil that the Justice Court never issued a judgment. All the Justice Court issued were interim orders, including an entry of default. Even the Justice Court recognized that there was no judgment when it said that the LLC's attorney could have asked it to set aside the entry of default.

Because there was no judgment, the LLC had no way of paying an undertaking, nor did it owe any undertaking. The undertaking statutes upon which HomeRiver Group relies in support of its arguments regarding the LLC's supposed duty to pay an undertaking upon its appeal to the District Court require a monetary judgment so that an undertaking amount can be calculated. Since there was no monetary judgment, the LLC could not calculate an undertaking. It had to await the Justice Court's determination of any undertaking amount. HomeRiver Group's 5/13/24 *Request for Entry of Default*, p. 3, expressly admits that there was no monetary judgment.

HomeRiver Group said that, after HomeRiver Group "secures possession of the premises, Plaintiff will request a hearing on its claim for [monetary] damages and fees." That hearing has never taken place. Thus, there indisputably is no monetary judgment upon which the LLC could have calculated and paid an undertaking upon its appeal. HomeRiver Group fails to explain how the LLC could have paid any undertaking prior to the Justice Court setting the \$8,800 undertaking amount.

VII. HomeRiver Group incorrectly claims that this Court cannot give the LLC any relief because the Sheriff is no longer in possession.

HomeRiver Group disingenuously claims that this Court cannot give the LLC any relief under U.M.C.R.App. 7(a)(3) because the Sheriff is no longer in possession of the premises, etc. *Answer Brief*, p. 24. The Court obviously has the power to order the Sheriff to give possession of the premises back to the Trust and LLC, just as the Justice Court ordered the Sheriff to take possession of the premises in the first place.

HomeRiver Group's claim that the LLC refuses to remove its personal property from the premises is incorrect. The LLC has repeatedly asked for its personal property and HomeRiver Group refuses. See *Declaration in Support of Petition for Writ of Mandamus*, Missoula Fourth Judicial District Court, DV-24-1088 (D. C. Dkt.).

The District Court denied the *Petition for Writ of Mandamus* solely on the grounds that this Court should decide whether to issue the requested emergency relief via this appeal. D. C. Dkt. The LLC incorporates its briefs in support of the *Petition* into this Brief by reference.

CONCLUSION

For the reasons stated in Appellant's Briefs, the Court should grant the relief requested.

Respectfully submitted this 24th day of March, 2025.

/s/ Charles H. Carpenter

Certificate of Compliance

I certify that the foregoing Brief is proportionally-spaced typeface of 14 points and does not exceed 5,000 words.

/s/ Charles H. Carpenter

Certificate of Service

I hereby certify that on March 24, 2025 I served a copy of the foregoing upon counsel of record using the court's electronic filing system.

/s/ Charles H. Carpenter

CERTIFICATE OF SERVICE

I, Charles H. Carpenter, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 03-24-2025:

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