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Attorneys for Appellees

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 25-0215

ERIN PEPUS, AMANDA)
MALACHOWSKI and JOHN)
MALACHOWSKI,)
)
Plaintiffs, Counterclaim Defendants)
and Appellees,)
)
and)
)
GREGORY "GREG" ARTHUR POLE an)
individual and COTTONWOOD)
MEADOWS OF GALLATIN GATEWAY)
HOMEOWNER ASSOCIATION, INC. a)
Montana corporation,)
)
Counterclaim Defendants,)
and Appellees,)
vs.)
)
J. JOHN BOCKNESS,)
)
Defendant, Counterclaimant,)
Appellant)

**MOTION TO DISMISS APPEAL
AND BREIF IN SUPPORT**

I. INTRODUCTION

Erin Pepus, Gregory Pole, Amanda Malachowski and John Malachowski (collectively, the “Pepus Group”) hereby move to dismiss the appeal filed by J. John Bockness (“Bockness”) because the Order Bockness seeks to appeal is not appealable under M.R.App.P. 6. Bockness’ Notice of Appeal is premature.

Counsel for the Pepus Group has contacted counsel for Bockness about the relief requested herein and he objects.

II. DISCUSSION

Bockness filed his Notice of Appeal on March 21, 2025 (the “Notice”) and therein stated he was appealing the *Order Granting Plaintiffs’ Motion to Enforce Settlement Agreement* dated March 5, 2025 (the “Order”). The *Order* is attached to the Notice as Ex. A. The *Order*, however, is interlocutory and not yet the proper subject of an appeal based upon (a) its plain language and (b) the open issue of attorney’s fees.

A. The Plain Language of the District Court Order.

The *Order* enforces a settlement agreement reached between the Pepus Group and Bockness, but which Bockness thereafter refused to sign. *Notice*, Ex. A, *passim*. Using the approach articulated in *Perl v. Grant*, 2024 MT 13, ¶ 18, 451 Mont. 61, 542 P.3d 396, the District Court concluded:

The Court agrees with the approach the district court used in *Perl*. The parties should be given 90 days from the date of this decision to execute the Formal Agreement. If they mutually agree to modify part of the Formal Agreement, they may do so during that 90-day period. If no agreement is executed in that 90-day period, the Court will be prepared to order specific performance of the agreement. *See Perl*, ¶18.

Order, COL No. 23 at 19. Consequently, the *Order* states:

From the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED:

1. The Plaintiffs' Motion to Enforce Settlement Agreement is GRANTED.
2. The parties shall have 90 days from the date of this Order to notify the Court whether or not they have executed the Formal Agreement or an agreed upon modification; and
3. **In the event the parties fail to execute such an agreement, the Court will be prepared to order specific performance of the agreement.**

Order, at 19 (emphasis added). Prior to the 90-day time period, Bockness filed his *Notice* with this Court.

M.R.App.P. 6 describes what orders may be appealed to this Court. The only subpart of M.R.App.P. that Bockness might be relying upon is (3)(a), which permits a party to appeal from “an order made after final judgment...”. Yet, to be a final judgment the *Order* must “conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed. M.R.App.P. 4. Given that the District Court stated it was

waiting to conclusively determine the parties' rights for 90 days and those 90 days have not passed, there is no "final judgment" for Bockness to appeal yet.¹

B. The Pepus Group Has a Pending Motion for Attorney's Fees.

Two days after the District Court issued its *Order*, the Pepus Group filed its *Motion for Award of Attorney's Fees and Costs* dated March 7, 2025. (Doc. 62).

The District Court has not issued a decision on that motion which is not yet fully briefed. As noted above, an order is not a final judgment unless it:

conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, **including any necessary determination of the amount of costs and attorney fees awarded** or sanction imposed.

M. R. App. P. 4(1)(a). Since a determination of the amount of attorney's fees to be awarded has not been made, the *Order* is not yet the proper subject of appeal.

III. CONCLUSION

For the reasons set forth above, the Pepus Group requests the Court dismiss Bockness' appeal as premature.

¹ It may be that Bockness thought his time to appeal had begun to run because the Pepus Group served him with a Notice of Entry of Order required by M.R.Civ.P. 77(d). *See Notice* at 2, ¶2. If that is the case, he is simply mistaken as M.R.Civ.P. 77(d) does not speak to whether or not a particular order is appealable. Rather, the rule simply states, in relevant part, that within 14 days of the entry of an order, "notice of such entry, together with a copy of such ... order..., shall be served by the prevailing party upon all parties who have made an appearance...". *Id.*

DATED this 26th day of March, 2025.

KASTING, KAUFFMAN & MERSEN, P.C.



JOHN M. KAUFFMAN

CERTIFICATE OF COMPLIANCE

I certify that this Motion is proportionately spaced, together with Times New Roman, 14 point font with a word count of 749 calculated by Word, excluding the caption and certificates.

DATED this 26th day of March, 2025.

KASTING, KAUFFMAN & MERSEN, P.C.



JOHN M. KAUFFMAN

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2025, I caused a true and correct copy of the foregoing to be served upon the following counsel of record by e-File to:

Peter G. Scott
Peter G. Scott Law Offices
682 South Ferguson Ave. #4
Bozeman, MT 59718-6491



CERTIFICATE OF SERVICE

I, John M. Kauffman, hereby certify that I have served true and accurate copies of the foregoing Motion - Opposed to the following on 03-26-2025:

Peter Guillum Scott (Attorney)
682 Ferguson Avenue
Suite 4
Bozeman MT 59718
Representing: J. John Bockness
Service Method: eService

Electronically Signed By: John M. Kauffman
Dated: 03-26-2025