IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case No. DA 24-0408

HEIDI A. GABERT

Plaintiff/Appellee,

and

DAWN FREEMAN

Intervenor/Appellee

v.

GARRY DOUGLAS SEAMAN

Defendant/Appellant.

On Appeal from the Montana Nineteenth Judicial District Court
Cause No. DV-22-95
Hon. Shane Vannatta, Presiding

APPELLEES' RESPONSE TO OPENING BRIEF

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STATEMENT OF ISSUE

1. Did the District Court err in determining that Heidi and Dawn, the victims of Seaman's crimes and beneficiaries of a $20,000,000 judgment, did not agree to reserve funds from their judgment to cover Seaman's personal capital gains taxes?

STATEMENT OF THE CASE

This case is about whether the victims of a murderous assault, who having accepted a stipulated, tax-free judgment of $20,000,000, would have agreed to satisfy Appellant Garry Seaman's personal tax obligations prior to receiving funds intended to help them begin rebuilding their lives. The facts, the law, and common-sense dictate that they would not. The victims would have gone to trial, won, and received a judgment which would have been excluded from taxable income as proceeds of a personal injury claim. They would not—and did not—negotiate away that right for Seaman's benefit. Nor could Seaman have gotten that concession from his victims; he had no leverage in the negotiation because he was facing a sentence of life imprisonment with no possibility of parole.

Seaman committed a murderous assault on James Freeman ("James") and Appellee Heidi Gabert ("Heidi"), leaving James dead and Heidi permanently disabled. In the resulting civil suit—facing no remote possibility of success and eager to enter into a plea agreement with the State in order to receive a sentence with

a possibility of parole—Seaman consented to two $10,000,000.00 judgments in favor of Heidi and James' wife, Appellee Dawn Freeman ("Dawn"). These judgments were later consolidated into a single judgment, and that Seaman's assets were to be liquidated to satisfy the judgment. In return, Heidi and Dawn agreed not to oppose the sentence recommended by the State, which included a parole opportunity, and Seaman was allowed to retain the amount of his homestead exemption. This agreement was set forth in a Memorandum of Understanding (the "MOU"). At the time Seaman stipulated to the $20,000,000 judgment, all parties were aware that he lacked sufficient assets to fully satisfy the judgment, and that Heidi and Dawn would never be made whole (in the sense they would receive the full amount of their judgment, as no amount of money could undo the harm they suffered).

Seaman's property had been placed into a receivership while he was incarcerated because of his attempts to improperly liquidate his assets to defraud creditors, particularly Heidi and Dawn. That receivership was put in place to safeguard Seaman's assets and to prevent them from waste, including paying the taxes relating to "the Property" (a defined term) to ensure that Seaman's assets would not be lost. Under the MOU, the parties agreed that a different receiver, the Liquidating Receiver, would be appointed to liquidate Seaman's assets to pay the judgment. The MOU expressly stated that apart from the homestead exemption, the

Liquidating Receiver owed no other duties to Seaman, and that its sole responsibility was to Heidi and Dawn.

After the MOU was signed, Heidi and Dawn moved the District Court to create a designated settlement fund ("DSF") to liquidate Seaman's assets and distribute the proceeds to them consistent with the MOU. The District Court approved the DSF but based on a mistaken impression that it was intended to circumvent the payment of capital gains taxes, also ordered that the Liquidating Receiver in charge of selling the assets was to reserve funds from those sales to cover Seaman's tax liability arising from the sale of each capital asset. This was a tremendous shock to Heidi and Dawn, whose judgment (which became a lien on the property when it was entered) was now going to be further diminished so that Seaman's personal taxes could be paid first.

Heidi and Dawn promptly moved the District Court to amend its order, arguing that it misunderstood the purpose of the DSF, and that there was never any intention that Seaman's personal capital gains taxes would be paid out of the funds intended to satisfy their judgment. A capital gains tax is an income tax, not a property tax. The fact that capital gains taxes do not even exist until the property is sold demonstrates that they were not meant to be considered as a part of the Liquidating Receiver's duties under the MOU. Moreover, the MOU was replete with terms expressing that the Liquidating Receiver had no duties to Seaman

personally, including filing his taxes. The fact that there was no information in the MOU regarding how the Liquidating Receiver was to determine and calculate the capital gains taxes was dipositive. After briefing and a hearing, at which Heidi presented unrebutted evidence of the parties' intent as to the payment of the capital gains taxes, the District Court determined it was necessary to correct the manifest errors of law or fact upon which its prior order was based and amended the order.

The question before the Court is whether the MOU requires that the Liquidating Receiver—before paying funds to Heidi and Dawn on their judgment (which were to be tax-exempt as damages for personal injury)—was to reserve funds to pay Seaman's capital gains taxes resulting from the sale of his property to pay the judgments. The facts, the law, and common sense all show that it does not. The District Court realized its manifest error in so ruling the first time and correctly amended its order to state that the Liquidating Receiver did not owe such a duty.

STATEMENT OF THE FACTS

Contrary to Seaman's assertion that Heidi will "recit[e] in detail Seaman's conduct" in order to prejudice Seaman, the full factual background information is necessary to inform the Court (1) why Seaman's property was put in a receivership in the first place, and (2) precisely how little leverage Seaman possessed in negotiating the MOU and his desperation to do whatever he needed to do for Heidi and Dawn to not object to his Plea Agreement in order to have a chance at parole.

The Civil Lawsuit

On May 21, 2022, Seaman violently murdered James Freeman and, but for a miracle, would have murdered Heidi as well. After murdering James, forever taking him away from his wife and five daughters, Seaman left Heidi to die in the woods after shooting her multiple times with a shotgun. As a result, Heidi is permanently disabled and forever lives in fear that Seaman will be released from prison. Seaman was subsequently arrested and charged with deliberate homicide, attempted deliberate homicide, and tampering with evidence. (*See* Compl. ¶¶ 7-19 (June 15, 2022), Doc. 1). On June 16, 2022, Heidi filed suit against Seaman to recover damages to compensate her for her gruesome injuries, financial devastation, and other loss. Dawn filed a wrongful death and survivorship claim on August 18, 2022. (*See* Doc. 39).

While incarcerated, it was discovered that Seaman was attempting to liquidate his assets so that the "vultures" (*i.e.* his victims) couldn't get at them. (*See* Findings of Fact & Conclusions of Law, ¶ 43(d) (Nov. 1, 2022), Doc. 67). Upon motion by Heidi, the District Court took the extraordinary step of placing all of Seaman's assets in a receivership as it was "necessary to manage the Property," which was defined as "all property and assets owned by Garry Seaman, individually or jointly with others." (Order Appointing Receiver (July 5, 2022), Doc. 6). The Receiver was to immediately "take possession and exclusive control of the Property" and to "keep,

manage, and preserve the same during the pendency of the receivership[.]" (*Id.* ¶ 4). The Receiver's "primary duties" were to "prevent waste, preserve the Property, take any action to maximize the value of the Property, and collect the Proceeds (as defined herein)." (*Id.* ¶ 5).

In order to preserve the Property and prevent it from being lost, the Order Appointing Receiver also recognized it would be necessary to pay the real property taxes to maintain the vast majority of Seaman's assets and stated that the Receiver was to "[p]ay all required taxes relating to the Property." (*Id.* at ¶ 5(p)). The Order also gave the Receiver authority to "place a lis pendens on all real property owned by Seaman," which the Receiver did on July 8, 2022. However, the Order expressly stated that the Receiver had no obligation "to prepare or file federal or state income tax returns" for Seaman or his businesses. (*Id.* ¶ 11).

In November of 2022, after a hearing, the District Court made the receivership permanent and ordered that it remain in full force and effect. It concluded that there was "a material risk that, despite his incarceration, Mr. Seaman's property is in danger of being lost, removed, or transferred out of his name" and "no assurance obligations associated with the property will be paid, risking a material loss (or injury) to the property." (Doc. 67 at ¶ J).

Seaman's Plea Agreement

The civil matter was stayed pending Seaman's criminal trial. Given the mountain of evidence against him, and no remote chance of success at his pending criminal trial, Seaman sought a plea deal with the Lincoln County Attorney. Ultimately, the offer made by the State was that it would recommend sixty years imprisonment with the possibility of parole after eighteen years if Seaman pled guilty. (*See* Plea Agreement, Cause No, DC-22-44, Mont. 19th Jud. Dist. Ct. (Aug. 21, 2023), attached as **Appendix 1**). To have any chance of seeing life outside of prison, Seaman needed Heidi and Dawn to not object to the plea bargain at his sentencing. Seaman knew that their objection could scuttle his plea deal.

Heidi, however, vehemently opposed giving Seaman any opportunity for parole. When the County Attorney's office informed Heidi they intended to make their offer, Heidi rejected it. (*See* Hr'g Tr. 49:5-18; 50:4-12 (June 3, 2024), attached as **Appendix 2** (hereinafter "Hr'g Tr."). On August 9, 2023, the State sent Heidi's counsel a letter informing Heidi that they were going through with offering the deal to Seaman despite her objection. (Boris Letter to Cotner (Aug. 9, 2023), attached as **Appendix 3**; *see also* Hr'g Tr. 49:19-50:20). Seaman signed the Plea Agreement on August 21, 2023.

Heidi intended to show up at sentencing and object to Seaman's Plea Agreement. Heidi prepared a Victim Impact Statement, which she provided to the

Lincoln County Attorneys on or about September 29, 2023—days before sentencing on October 5, 2023. (Hr'g Tr. 51:13-24). At this point, Heidi will object to Seaman receiving anything less than a life sentence with no parole, and Seaman's chances of ever seeing life outside of a cell are going to be dashed.

However, shortly before the sentencing hearing, as described in more detail below, Heidi begrudgingly agreed that if everything could be resolved to her satisfaction, and without losing any benefit she would obtain from pursuing her claims in court, she would not object to Seaman's plea deal. (Decl. Heidi Gabert ¶¶ 13-14 (Mar. 19, 2024), Doc. 127). Dawn was conflicted about whether she should object to the Plea Agreement. (*See* Decl. Dawn Freeman ¶¶ 12-16 (Mar. 19, 2023), Doc. 126). Seaman's attorneys were also contacting Dawn's lawyer in order to obtain Dawn's cooperation and non-objection, which led to what later became the terms of the MOU. Ultimately, the MOU was agreed upon and in order to achieve finality, Dawn agreed not to object to the Plea Agreement. (*Id.* ¶¶ 17-19). Seaman was sentenced on October 5, 2024, consistent with the terms of the Plea Agreement.

Negotiations and the MOU

In June of 2023, Seaman's attorneys first approached Heidi and Dawn's attorneys about a possible settlement that gave Seaman an opportunity for parole. The District Court had ruled that Seaman's assets were to be kept confidential by the

Receiver. As a result, Heidi and Dawn were unaware of the extent of Seaman's assets to even begin having settlement discussions. (Hr'g Tr. 52:15-53:2).

On June 14, 2023, Seaman's attorneys sent a draft proposed settlement offer to Heidi and Dawn. (*See* Proposed Settlement Draft (June 14, 2024), attached as **Appendix 4**). In this draft, Seaman proposed to settle Heidi and Dawn's civil suit "in exchange for all of his assets, minus any liabilities owed by Garry, except the following:

a. The amount of the 2023 homestead exemption . . .

b. $200,000, **after taxes**, to be used by Garry for any purpose for the remainder of his life; and

c. a reasonable amount to compensate Garry's attorneys[.]"

(*Id.* at ¶ 2 (emphasis added)). The proposed agreement also provided that Seaman would plead guilty to the maximum sentence of 40 years, with no restriction on parole. (*Id.* ¶ 3). If the plea agreement was accepted, the Receiver would liquidate all of Seaman's assets as follows:

> Out of the funds obtained from liquidating the assets, the Receiver shall first pay all costs of sale, then the balance owed on any loans against the properties, then all administrative costs, then Garry's attorneys' fees, then any other amounts owed for which Garry could be held liable, **including taxes**.

(*Id.* at ¶ 7(a) (emphasis added)). The Receiver would then place the homestead exemption amount in an investment account for Seaman's children, place $200,000 in an account that Seaman could use, and would retain some amount to pay Seaman's

attorney's fees. (*Id.*) This is the only possible mention of the payment of capital gains taxes anywhere in the course of negotiation.

Seaman's offer was flatly rejected. As shown above, Heidi had no intention of entering into any agreement which would allow Seaman the opportunity of parole, let alone all of the other unacceptable terms in Seaman's proposal. Heidi was prepared to go to sentencing, read her Victim Impact Statement, and object to the Plea Agreement.

However, in late September, Heidi ultimately determined that if everything could be resolved to her satisfaction, she would agree to not object. Heidi's attorney drafted a settlement proposal on September 22, 2023, and forwarded it to Seaman's attorneys a few days later. (Hr'g Tr. 54:2-18; *see also* Hawkaluk email to Smith (Sept. 27, 2023), attached as **Appendix 5**). Heidi's proposal removed any reference to the payment of any taxes, and importantly, set out that Seaman's assets would be forfeited and sold under the execution of judgment provisions under Title 25, Chapter 13, Part 7 of the Montana Code. It also stated that any of Seaman's tax refunds would be paid to the victims and that any restitution order "shall be treated as a civil judgment," and that Heidi and Dawn could designate a person to liquidate his assets. (*Id.* at ¶¶ 7-8, 10). Finally, Heidi's proposal stated that Seaman would waive his homestead exemption. (*Id.* ¶ 11). The purpose of structuring the

settlement in this fashion was to treat Heidi and Dawn as judgment debtors of a tort, meaning their eventual judgment would have no tax. (Hr'g Tr. ¶ 54:11-19).

The parties continued to exchange multiple drafts of what would become the MOU. Notably, there was no further mention of the payment of Seaman's taxes, particularly his capital gains taxes upon the liquidation of his assets, anywhere in the negotiation or subsequent drafts. (*Id.* 54:20-56:12). As noted by the District Court, the language was actually strengthened to further limit any duties owed to Seaman by the Liquidating Receiver. Importantly, in a draft from Seaman's attorney, there is a key redline where his attorney inserted "Except for providing the Homestead Exemption amount to Seaman" to the term stating that "the Liquidation Receiver's sole responsibility is to Gabert and Freemen and he/she shall owe no other duty to Seaman." (MOU Draft at ¶ 6(c)(iii) (Oct. 2, 2024), attached as **Appendix 6**). Seaman's attorney proposed that

> All proceeds generated from the sale of Seaman's assets shall be transferred to a Control Account established by Gabert and Freeman to be distributed pursuant to Paragraphs 1 and 2 above to satisfy such judgment and the homestead exemption.

(*Id.* ¶ 6(c)(vi)). There is no mention of the payment of taxes: only Seaman's homestead exemption and Heidi and Dawn's judgment. (*See also* Hr'g Tr. 56:13-57:9).

The parties were very close to a final resolution. The final drafts discussed what would happen if the sentencing judge did not accept the Plea Agreement,

protections for Seaman's son, Heidi and Dawn obtaining ownership of Seaman's life insurance policies and setting an end date by which Heidi and Dawn would cease searching for any fraudulent transfers by Seaman. (Hr'g Tr. 57:10-59:4).

Finally, the morning of sentencing, one last communication came in from Seaman's attorney regarding a tax lien, asking for "assurances that when your new receiver sells the property they will pay off mortgages and liens on those properties, including the IRS lien." (Perkins email to Cotner (Oct. 5, 2023), attached as **Appendix 7**). Importantly, in this eleventh-hour email, there was no reference to the capital gains tax; Seaman's attorney asks whether existing tax liens will be paid, not whether the Liquidating Receiver will set aside funds to pay future capital gains taxes. (Hr'g Tr. 59:12-60:6).

The final MOU, in general terms, provided that a Liquidating Receiver would liquidate Seaman's assets to pay the judgment and Seaman's homestead exemption (the only carve-out for him), and Heidi and Dawn would not object at his sentencing. Seaman signed the agreement on October 5, 2023, just before sentencing. (Hr'g Tr. ¶ 59:5-11). At this time, Heidi and Dawn's attorneys, with over 70 years of combined experience, were aware of the fact that the judgment, being for personal injury damages, was exempt from taxable income under the IRS Code. *See* 26 U.S.C. 104(a)(2); *see also* Aff. Cotner ¶¶ 1-2 (Mar. 19, 2024), Doc. 128. Judgment was entered against Seaman on October 24, 2023. (Doc. 99).

The Designated Settlement Fund

On December 22, 2023, Heidi and Dawn moved the Court to create a DSF under Section 468B of the IRS Code to liquidate Seaman's assets and distribute the proceeds to them consistent with the MOU. (Doc. 100). The stated purpose of the DSF was to aid the efficient resolution of the claims by creating an independent entity to facilitate the liquidation of Seaman's assets in accordance with the MOU in an orderly manner and to facilitate the coordinated efforts of Gabert and Freeman, as judgment creditors, in collecting their judgments. (*Id.* at 1-2). The District Court approved the establishment of the DSF, and consolidated Heidi and Dawn's two judgments into one $20,000,000 judgment with the same priority as the original judgments. (Doc. 101 at 1-2).

Seaman filed a response to the Motion for approval of the DSF on January 16, 2024, arguing that the purpose was to avoid paying Seaman's capital gains taxes out of the sale of assets, and that because the Liquidating Receiver was to "[p]ay all required taxes relating to the Property," that included his future capital gains taxes. (*See* Doc. 107 at 1-2). Heidi and Dawn filed their Reply on February 9, 2024, pointing to the litany of provisions in the MOU demonstrating that the Liquidating Receiver had no such duty to Seaman and that Seaman was attempting to have the District Court insert into the MOU what was not there. (Doc. 118 at 14-17). Heidi and Dawn also pointed out that their judgment had a higher priority than the future

capital gains taxes, and that a judgment creditor's judgment should be paid before capital gains taxes that arise from the sale of properties to satisfy such judgment. (*Id.* at 18-20).

The DSF Order

On February 20, 2024, the Court entered an Order approving the DSF but also requiring that the Liquidating Receiver was to reserve funds from the sales of the capital assets to pay Seaman's tax liability for the sale of each capital asset. (Order re Approval of DSF, 2 (Feb. 20, 2024), Doc. 120) (the "DSF Order"). The District Court ruled that the "Liquidating Receiver shall RESERVE FUNDS from the sale of Mr. Seaman's capital assets to pay any capital gains liability . . . [a]ny unused portion of the reserved funds shall inure to the benefit of the judgment creditors – Plaintiff Gabert and Intervenor Freeman." (*Id.*) Importantly, the District Court made this determination based on an understanding it later acknowledged was in error: that it appeared to the Court that "the proposed DSF Trust was specifically designed to pay no capital gains arising from the liquidation of assets." (*Id.* at 3). Based on that misunderstanding, it ruled that the term "[p]ay all required taxes relating to the Property" applied to all taxes for the Property—not just property and sales taxes. (*Id.* at 7).

Heidi and Dawn did not and never would have agreed to settle their civil claim against Seaman knowing his personal capital gain taxes would be paid out of the

settlement funds necessary for them to start to rebuild the lives he destroyed. (Decl. Freeman ¶ 19; Decl. Gabert ¶¶ 15-16). It begs the question, why would Heidi and Dawn give up their slam-dunk case and ability to receive a judgment that would be tax-free and instead agree to a deal where they first had to pay Seaman's capital gains taxes before their judgment and also agree to allow Seaman the opportunity to be released on parole? The simple answer is that they would not and did not.

The Amended Order

Recognizing the District Court's misunderstanding—that the DSF Fund was not meant to avoid something that was never obligated in the first place, but was simply an extension of the Receiver's obligations under the MOU, with no expectation that the Receiver would pay Seaman's capital gains taxes—Heidi and Dawn swiftly moved the District Court to amend the DSF Order under Mont. R. Civ. P. 59(e) on March 19, 2024. (Doc. 124). Heidi and Dawn argued that the District Court was operating under a manifest error of law, as capital gains taxes are personal to the owner of the property, and that the term "taxes relating to the Property" did not refer to the payment of Seaman's income taxes because the taxable event only occurred after the Property was sold. (Brief in Support at 9-10 (Mar. 19, 2024) Doc. 125). Heidi and Dawn also asserted the District Court was mistaken factually, as there was never any attempt to avoid paying the capital gains taxes because the Liquidating Receiver never had any obligation to pay those taxes in the first place. (*Id.* at 14-18). Finally, they argued that

relief was necessary to prevent a manifest injustice in the tort victims subsidizing his wrongdoing by paying his tax obligations out of their judgment proceeds. (*Id.* at 18-20). In the alternative, Heidi and Dawn argued that there was at least an ambiguity in the term "[p]ay all required taxes relating to the Property," and that an inquiry into the parties' intent was necessary. (*Id.* at 20-22). Heidi and Dawn's position was supported by affidavits and declarations of Heidi, Dawn, and Heidi's attorney. (*See* Docs. 126-128).

Seaman filed his Response under seal on May 5, 2024, and Heidi and Dawn filed their Reply on May 29, 2024. (*See* Docs. 147, 153). The issue was fully briefed, and a hearing was held with additional unopposed evidence being submitted by Heidi and Dawn. (*See* Minute Entry, Doc. 154). Seaman provided no affidavit and admitted no other evidence to support his position at hearing. After carefully reviewing and analyzing the briefing and the evidence, the District Court entered a thorough Order & Opinion Re Motion to Amend Judgment (Doc. 155, hereinafter the "Amended Order") carefully explaining that the DSF Order was in error.

In the Amended Order, the District Court held that there was a threshold issue of ambiguity, and determined that the parties' reasonable interpretation of the term "[p]ay all required taxes relating to the Property" was ambiguous, and as such, it looked to extrinsic evidence to determine the parties' intent as to whether they intended that Heidi and Dawn agreed to pay his capital gains taxes. The District Court noted that

while both parties steadfastly agreed that there was no ambiguity (for the opposite reasons), their reasonable disagreement "illustrates the ambiguity." (*Id.* at 3-6).

Thus, looking to the language of the MOU as a whole, and based on the "ample extrinsic evidence of the negotiations, draft agreements, and bargaining positions that led to the execution of the MOU," it determined that contrary to its prior interpretation, it was persuaded that "the parties had no intent to include the reservation and payment of capital gains taxes incurred through the liquidation of Mr. Seaman's assets." (*Id.* at 6). The District Court noted the "numerous clauses limiting the liquidating receiver's acts on behalf of Mr. Seaman" to show that there was never any intention that the Liquidating Receiver was to reserve funds for the payment of Seaman's capital gains taxes, including the provisions stating that the Liquidating Receiver:

- Would "promptly proceed with the liquidation of Seaman's assets"
- Had "full authority to sell all assets and receive all cash generated from the sales,"
- That except for providing the Homestead Amount to Seaman, "the Liquidation Receiver's sole responsibility is to [Heidi and Dawn] and he/she shall owe no other duty to Seaman."
- Would transfer all proceeds generated from the sale of Seaman's assets to a Control account to be distributed to satisfy Heidi and Dawn's judgments and the homestead exemption [with no mention of taxes]
- Had "no obligation to prepare or file federal or state income tax returns for Garry Seaman or any of his businesses."

(*Id.* at 7 (citing to the MOU)).

The District Court also pointed out that if the Liquidating Receiver was in fact obligated to reserve funds for anticipated capital gains taxes as Seaman claims, "the MOU is disturbingly deficient in providing guidance on how that process would occur," noting that there was no information regarding how to calculate Seaman's adjusted basis in any of his capital assets, how the Liquidating Receiver would know or receive this information, how those reserved funds (once calculated) would be segregated and retained for Seaman's benefit, and no information on the filing of a tax return by Seaman in order for him to make a claim on the reserved funds. (*Id.* at 8-9). This is confirmed by the MOU, which states that "[a]ll proceeds generated from the sale of Seaman's assets" were to satisfy 1) Heidi and Dawn's judgments, and 2) Seaman's homestead exemption—it made no provision for the withholding of funds for future capital gains taxes. (MOU ¶ 6(c)(vi)). "In short, if the parties contemplated the calculation, reservation, and payment of Mr. Seaman's capital gains taxes, the MOU would need substantially more language outlining such duties and processes." (Amended Order at 9). Because neither it nor any of the negotiations leading up to the MOU discussed any of this, the reasonable interpretation was that the MOU did not require a reservation of funds to pay his capital gains taxes. (*Id.*)

The District Court also ruled more broadly that based on the negotiations and drafts of the MOU sent back and forth, it was clear that the parties did not intend for the Liquidating Receiver to reserve funds to pay capital gains taxes. It noted how

quickly the negotiations took place—made necessary by Seaman's desperation to get Heidi and Dawn not to object to his sentence. (*Id.* at 9). It also specifically noted that Seaman had earlier attempted to insert favorable language into the MOU, which was rejected:

> Second, although Mr. Seaman had originally proposed for the payment of "any other amounts owed for which Garry [Seaman] could be held liable, including taxes", *(Exhibit 8 at 2, June 3, 2024, Hearing),* the proposal was rejected by the rewriting of the proposed agreement *(Exhibit 9, June 3, 2024, Hearing).* The subsequent rewrite of the basic terms excluded any mention of Mr. Seaman's tax liability.

(*Id.* at 10). Heidi and Dawn's rejection of Seaman's attempt to include the payment of all taxes showed that Heidi and Dawn did not and would not agree to pay his personal taxes. From then on, the subsequent drafts of the MOU excluded any reference to Seaman's tax liability, and "[i]ndeed, language was added to strengthen the Liquidating Receiver's obligations to Gabert and Freeman, and limiting Mr. Seaman's rights solely to the agreed value of his Homestead Election," and there was thereafter no express intention by Seaman to include his tax liability as a term of the MOU. (*Id.*) Finally, the District Court agreed that capital gains taxes are not "property taxes," but rather are Seaman's "income taxes" which are outside the scope of the Receiver's duties, given the context of the original Order Appointing Receiver. (*Id.* at 10-11).

Seaman timely filed an appeal of the Amended Order on July 8, 2024. As set forth below, the District Court did not abuse its discretion in amending the DSF Order,

and its interpretation of the MOU set forth in the Amended Order is correct. As such, the Court should affirm the District Court's Amended Order.

STANDARD OF REVIEW

A court's decision to grant or deny a post-judgment motion under Rule 59 is reviewed for abuse of discretion. *See Folsom v. Mont. Pub. Employees Ass'n*, 2017 MT 204, ¶ 18, 388 Mont. 307, 400 P.3d 706. This Court reviews a district court's interpretation of a contract, including whether an ambiguity exists in a contract, as a question of law reviewed for correctness. *In re Marriage of Mease*, 2004 MT 59, ¶ 30, 320 Mont. 229, 92 P.3d 1148 (citing *SAS Partnership v. Schafer*, 200 Mont. 478, 482, 653 P.2d 834, 836 (1982).

"An ambiguity exists when the contract wording is reasonably subject to two different interpretations." *Id.* (citing *Wray v. State Compensation Ins. Fund*, 266 Mont. 219, 223, 879 P.2d 725, 727 (1994). "When a contract term is ambiguous, its interpretation requires a determination of a question of fact: the real intention of the parties at the time of contracting." *Id.* (listing cases). This Court will uphold the District Court's interpretation of the parties' intent unless it is clearly erroneous. *Id.* (citing *In re Marriage of Stufft*, 276 Mont. 454, 459, 916 P.2d 767 770 (1996)).

Finally, this Court may affirm a district court's ruling on any ground supported by the record. *Advocates for Sch. Trust Lands v. State*, 2022 MT 46, ¶ 31, 408 Mont. 39, 505 P.3d 825.

SUMMARY OF THE ARGUMENT

Seaman argues simply that the District Court got it right the first time without ever identifying why the District Court's Amended Order is in error. He devotes virtually none of his argument to discussing the Amended Order and its specific findings. He does not address the District Court's findings that that the MOU contained a multitude of provisions limiting the Liquidating Receiver's duties to Seaman and expanding his duties in favor of Heidi and Dawn, or that there was critically no discussion in the MOU as to how the process of how the Liquidating Receiver would reserve funds to pay the capital gains taxes (if indeed that was the parties' intent). Seaman does not address the fact that all of the extrinsic evidence showed that Heidi and Dawn rejected any suggestion of paying Seaman's capital gains tax liability, or the District Court's conclusion that Seaman did not manifest any intention in the negotiation of his apparent intention to include his tax liability. Finally, he does not address the District Court's conclusion that capital gains taxes are properly characterized as income taxes, not property taxes, and therefore the proper interpretation is that they were not meant to be included.

Seaman phrases the issue simply: "does the "[p]ay all required taxes relating to the Property' provision require the Liquidating Receiver to pay, or withhold funds to pay, the capital gains taxes from the sale of the property?" In doing so, Seaman attempts to limit the Court's analysis to only that single paragraph in the MOU and

to ignore all of the other provisions. But the District Court looked again at the entire MOU, including the multiple provisions which conflict with Seaman's interpretation of that single paragraph, and determined there was an ambiguity.

The District Court thoroughly and thoughtfully considered the facts and law and came to the correct conclusion in entering its Amended Judgment. Seaman does not appeal that the District Court did not have the authority to amend its judgment. The District Court correctly determined that there was an ambiguity, and based on the unrebutted evidence presented by Heidi at hearing and in her briefing, the parol evidence regarding the parties' intent in negotiating the MOU, the relative position of the parties in negotiation, and the utter lack of any information as to how the Liquidating Receiver was supposed to determine and pay the capital gains taxes, and determined that there was no intent that Seaman's capital gains taxes would be paid prior to Heidi and Dawn receiving their judgment. The Court should affirm the District Court's Amended Order.

ARGUMENT

I. Seaman does not address the District Court's Amended Order to explain how the District Court abused its discretion.

First, it is necessary to point out that Seaman's Opening Brief spends little to no time ever explaining how the District Court abused its discretion in granting Heidi and Dawn's Rule 59(e) Motion. Effectively, Seaman's argument is that the District Court got it right the first time and should not have looked at the issue again. But

the District Court's decision to grant a motion filed under Rule 59(e) is reviewed for abuse of discretion. *Folsom*, ¶ 18. Seaman fails to explain how the District Court abused its discretion in amending the DSF Order, or why it was wrong for the District Court to revisit the issue.

There is no rule preventing the District Court from reviewing its own ruling. In fact, it is the opposite. Rule 59 and Rule 60 expressly provide the authority for a court to review itself, so long as the movant can articulate a proper basis for seeking such relief. These types of motions are subject to the District Court's discretion, and this Court has repeatedly stated that relief under Rule 59(e) is to be granted "only in extraordinary circumstances[.]" *Dodds v. Tierney*, 2024 MT 48, ¶ 13, 415 Mont. 384, 544 P.3d 857 (citing *Folsom*, ¶ 59). The District Court, when asked to look again at the issue, clearly believed that this was one of those extraordinary circumstances where amendment was "necessary to correct manifest errors of law or fact upon which its prior Order was based." (Amended Order at 3).

Other than apparently suggesting that the District Court was wrong to change its mind, Seaman offers no explanation as to why it was wrong for a District Court to revisit an issue. He argues, "[c]ontrary to what it stated in the DSF Order, the District Court concluded that the 'all required taxes relating to the Property' provision was ambiguous after all and examined extrinsic evidence regarding the formation and drafting of the [MOU]." (Appellant's Opening Brief, 8 (Jan. 20,

2025) (hereinafter "Seaman Brief")). The District Court took another look at the MOU and determined it was ambiguous after all, which is not improper. It specifically commented that the differing interpretation of the parties was a strong indication of ambiguity. An amended ruling under Rule 59(e) is necessarily "contrary" to its prior ruling, and Seaman does not identify any basis to show that the District Court was wrong to revisit its order and amend it if there was a manifest error in fact or law.

II. In reading the MOU as a whole, the District Court's determination that an ambiguity exists in the contract was correct.

The District Court, after taking another look at the MOU and the unrefuted evidence provided by Heidi and Dawn, concluded that they had satisfied the requirements of Rule 59(e) and that an amendment was necessary to correct the manifest errors of law or fact upon which the DSF Order was based. (Amended Order at 3). The District Court addressed the issue of whether there was an ambiguity as the "threshold question," and found that the parties' disagreement of the phrase "pay all required taxes relating to the Property" illustrated an ambiguity in the MOU. It held that Heidi and Dawn's interpretation was reasonable that the capital gains tax (an income tax) was not necessary for the preservation and protection of the property and was therefore not a duty under the MOU. It also held that Seaman's position was reasonable, that the language "relating to the Property"

was expansive and included capital gains taxes. (*Id.* at 4-6).[1] Ultimately, it resolved that ambiguity by looking at the MOU as a whole and interpreting its provisions to give effect to the entirety of the contract. The District Court determined that the MOU was not intended to require the Liquidating Receiver to pay Seaman's capital gains taxes.

A. The District Court was correct not to insert an additional term into the MOU requiring the Liquidating Receiver to withhold funds.

The District Court was required to look at the MOU as a whole, giving effect to every provision of the contract as reasonably practicable and resolving any repugnancies in a manner that gives effect to the whole contract, not just some of the terms. (Amended Order at 6 (citing Mont. Code Ann. §§ 28-3-201, -202, -204)). Seaman argues that the District Court must enforce the terms of a contract as written and "cannot insert what has been omitted or omit what has been inserted." (Seaman Brief at 11). While Seaman correctly cites the rule, he is in fact attempting to do just that. The District Court acknowledged this rule of construction and cited it as a basis for its decision: "Requiring the Liquidating Receiver to reserve funds for the

[1] Heidi and Dawn argued in their Motion that the term was not ambiguous, and that it was clear from the context of the MOU, and the plain language throughout the MOU, that there was no ambiguity and the payment of taxes relating to the property clearly excluded future, unknown and uncalculated, second-priority capital gains taxes. (*See generally* Doc. 125). The Court can affirm the District Court on any basis found in the record. However, Heidi and Dawn do not challenge the Court's ruling of an ambiguity here.

payment of Mr. Seaman's capital gains taxes would impose a duty on the Liquidating Receiver that the parties specifically excluded." (Amended Order ¶ 8).

Seaman's argument boils down to this: the term "[p]ay all required taxes relating to the Property" is unambiguous and "clearly" includes the payment of capital gains taxes. (*Id.* at 12). The problem with Seaman's argument, as the District Court noted, is that Seaman seeks to read this term in isolation and to the exclusion of all other paragraphs in the MOU. However, "[t]he whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other." Mont. Code Ann. § 28-3-202.

On its own, the single term requiring payment of "all required taxes relating to the Property" may provide some support to Seaman's position (though clearly not unambiguous, as the District Court held in its Amended Order). However, Seaman ignores the wealth of terms in the MOU which are inconsistent with any obligation the Liquidating Receiver could have to pay the capital gains taxes, including those terms which it directly conflicts with. In reviewing the MOU as a whole, the District Court was "persuaded by the numerous clauses limiting the Liquidating Receiver's acts on behalf of Mr. Seaman" that there was no intent to reserve funds for the payment of capital gains taxes. (Amended Order at 6-7).

In framing the issue, Seaman reveals the fundamental flaw in his argument that the MOU intended for the Liquidating Receiver to pay Seaman's capital gains

taxes: he has to insert a term that does not exist in order for his argument to succeed. The MOU, by its terms, stated that "[a]ll proceeds generated from the sale of Seaman's assets" were to be transferred to a control account "to be distributed pursuant to Paragraphs 1 and 2 above to satisfy such judgments, the judgment arising from Cause No. DR-22-511, and the homestead exemption." (MOU ¶ 6(c)(vi). Thus, by its explicit terms, the MOU intended that the proceeds resulting from the sale were to be used for just two explicit purposes: (1) paying Heidi and Dawn's judgment, and (2) paying Seaman's homestead exemption.

Seaman asks this Court: "does the '[p]ay all required taxes relating to the Property' provision require the Liquidating Receiver to pay, **or withhold funds to pay**, the capital gains taxes from the sale of the property?" (Seaman Brief at 10 (emphasis added)). Conceding that the MOU says nothing about how the Liquidating Receiver was to pay the capital gains taxes, Seaman switches tactics by attempting to have the Court insert language into the MOU that is not there: that the Liquidating Receiver shall "withhold funds to pay" the capital gains taxes. But the MOU does not obligate the Liquidating Receiver to withhold funds, and doing so would directly contradict the provision that "all proceeds" are to be distributed "to satisfy such judgments, the judgment arising from Cause No. DR-22-511, and the homestead exemption." (MOU at ¶ 6(c)(vi)). Seaman's interpretation conflicts with and eliminates other provisions in the MOU which state that the Liquidating

Receiver's sole duty is to Heidi and Dawn, with the only exception being his homestead exemption.

B. The District Court correctly interpreted the term "pay all required taxes relating to the Property" in the context of the MOU as a whole.

Seaman spends the majority of his argument explaining how the term "relating to" should be interpreted broadly, apparently faulting the District Court for not doing so. (*See* Seaman Brief at 16-21). Seaman points out that the term "relating to" has been given broad application in other contexts, such as interpreting statutes, in analyzing actions taken under the color of federal office, in construing sentencing enhancements, and in arbitration clauses. (*Id.* at 17-18). The District Court acknowledged Seaman's position that "the language 'relating to the Property' is expansive and includes the capital gains taxes generated by the sale of the property," and acknowledged that it was a broad term: "'relating' means 'to show or establish logical or causal connection between." (Amended Order at 5). Seaman offers no new argument or explanation as to why the District Court's interpretation is in error; he merely adds examples of other cases where courts have applied the term "relating to" broadly in other contexts. With all due respect to those other courts, what matters here is the language of the MOU read as a whole and as it was intended by the parties, not some other court's definition of the term.

The Liquidating Receiver was required to do more than just "pay all required taxes relating to the Property" as Seaman would suggest. Reading the MOU in its entirety, there are a myriad of paragraphs which show that the capital gains taxes were not considered and were not obligated to be paid by the Liquidating Receiver:

- Paragraph 1 states: "All assets of Garry Seaman, of any nature, and however owned, shall be liquidated to satisfy the judgments referenced below, excepting the amount of $378,560.00, the agreed amount of Seaman's Homestead Exemption[.]" If capital gain taxes were to be paid, they would have been referenced as a separate exception. The clear thrust and intent was to sell the assets for Heidi and Dawn's benefit, not Seaman (except for the homestead exemption).
- Paragraph 6(c)(ii) references that the Liquidating Receiver was to sell all Seaman's assets "and to receive all cash generated from the sales." In fact, Seaman was to execute a Power of Attorney authorizing the Liquidating Receiver to sign all documents to facilitate the transfer, without which the real property could not be transferred. (*Id.*)
- Paragraph 6(c)(iii) again states that the homestead exemption is the sole exception in Seaman's favor, and that the Liquidating Receiver's "sole responsibility" is to Heidi and Dawn and "shall owe no duty to Seaman." It is impossible to square Seaman's position that the Liquidating Receiver had

"no duty to Seaman" other than the homestead exemption and also had a duty to pay his capital gains taxes.

- Paragraph 6(c)(v), which incorporated the paragraph requiring the payment of taxes "relating to the Property," also incorporated the Paragraph stating that the receiver "had no obligation to prepare or file federal or state income tax returns for Garry Seaman or any of his businesses."
- Paragraph 6(c)(vi) stated that the funds were to be put into a control account and were to be used for two purposes: to fund the judgments and Seaman's homestead exemption. There is no provision as to how the Liquidating Receiver is to withhold funds and no exception was carved out for capital gain taxes.

The District Court was persuaded by these "numerous clauses limiting the Liquidating Receiver's acts on behalf of Mr. Seaman" that the "clear intent of the MOU and incorporated provisions of the *Order Appointing Receiver* (Dkt #6) appear to be to liquidate the property and, except for the agreed amount of the homestead exemption, pay the collected amounts in satisfaction of the Gabert and Freeman judgments." (Amended Order at 7-8).

Tellingly, Seaman addresses none of these points in his Brief. Seaman's only argument that his interpretation of the term is consistent with the rest of the MOU is that without it, he would lose his bargained for homestead exemption. (*See* Seaman

Brief at 15-16). He argues that "[t]here would be no reason for Seaman to have negotiated for the homestead amount if he was also agreeing to accept the capital gains tax liability . . . and if all of the homestead exemption money would be spent paying off the capital gains taxes, there would be no point for the protection against execution to be included." (*Id.* at 15). He argues that such an interpretation is unreasonable. (*Id.* at 16).

This, of course, ignores the reality of the situation. Seaman was desperate for their consent not to object to his sentencing, and Heidi and Dawn held all of the cards. The idea that it is reasonable that Seaman would not give up his homestead exemption, but that Heidi and Dawn would sacrifice millions of dollars of their judgment in order to pay his capital gains tax liability defies logic and reality. We know this to be true because that is what Seaman originally proposed, and Heidi and Dawn rejected it. As noted by the District Court (and unmentioned by Seaman in his Brief), Seaman's attorney at the outset attempted to have the Receiver pay "then any other amounts owed for which Garry could be held liable, including taxes" before distributing any funds to Heidi and Dawn. (Proposed Draft, **Appendix 2** at ¶ 7(a)). This was rejected by Heidi and Dawn—who turned around and insisted on even stronger language which Seaman agreed to. Despite his term being rejected and Heidi and Dawn inserting an even stronger term disclaiming any duty owed to

him, Seaman consented and signed the MOU because he recognized Heidi and Dawn could scuttle his only chance at parole.

Seaman simply has no response to the question at the heart of the issue: why would Heidi and Dawn, who would receive a tax-free judgment if they went to trial, agree not only to allow Seaman the chance to receive less than life in prison, but also agree to pay Seaman's capital gains taxes prior to receiving their judgment? If Seaman did not agree to pay the taxes, that means that he convinced Heidi and Dawn to take on that obligation—despite the fact they rejected his proposal asking for precisely that. Such an idea is flatly preposterous.

Reading the MOU as a whole, giving effect to all of the provisions in it, the District Court was correct in its interpretation that, given the numerous terms demonstrating the Liquidating Receiver's sole duty was to Heidi and Dawn, with the single exception of the homestead exemption, the term requiring payment of "all required taxes relating to the Property" did not include requiring the Liquidating Receiver to set aside funds to pay Seaman's future capital gains taxes.

C. The MOU contains no information or instruction on how the Liquidating Receiver was to calculate Seaman's capital gains taxes or withhold funds in order to pay them.

Nowhere in his Brief does he address what is perhaps the District Court's most salient point. If in fact the Liquidating Receiver was supposed to withhold funds to pay capital gains taxes, "the MOU is disturbingly deficient in providing guidance on

how that process would occur." (Amended Order at 8). As explained at the hearing by Ross Keogh, the determination and calculation of capital gains is complicated, and required more information than the Liquidating Receiver could have had. Noting that the original receiver (Christy Brandon) was not required to file Seaman's tax returns, he noted there was no way to read the MOU to say that the Liquidating Receiver would or could pay his capital gains taxes:

> We struggled to read the MOU that there was somehow, especially given the levy or the firewall of the tr- of -- up against Brandon -- against Christy filing tax returns, and requiring her to reconcile Mr. Seaman's capital gains tax liability. And that is a complex reconciliation. There might have been losses previously. There might have been basis that he received on the step-up from his mother's estate that we didn't know about. We don't know where or if there was a federal tax return filed.
>
> Those are not matters for the plaintiffs to entangle themselves in. And, if they were, I would think that Mr. Seaman would have choreographed how that was to all occur inside the MOU framework. But he -- but it -- but it did not. It simply said transfer the assets, and that all cash proceeds would go to the DSF.

(Hrg. Tr. 41:2-17). The District Court correctly found that in order to reserve funds for capital gains taxes, the Liquidating Receiver would need an understanding of Seaman's adjusted basis in the capital asset, but the MOU is silent on how he would know or be provided this information. Also, the Liquidating Receiver would have to segregate and retain those funds separately, which is not a duty found in the MOU. In fact, it contradicts Paragraph 6(c)(vi) of the MOU, which states that <u>all</u> funds are to be put into a control account and then used to pay only the judgment and the

homestead exemption. Finally, the District Court found that the Liquidating Receiver would need to complete a tax return in order to determine the capital gains tax against those reserve funds, and the MOU is "devoid of any process or timeframe for that action to occur." (Amended Order at 8). This could not happen, because under Paragraph 6(c)(v) of the MOU (incorporating Paragraph 11 of the Order Appointing Receiver), it was explicitly stated that "[t]he Receiver shall have no obligation to prepare or file federal or state income tax returns" for Seaman. If Seaman had wanted or needed any of these instructions in the MOU, he would have offered them, instead of agreeing that all funds were to be used to pay only the judgment and the homestead exemption. He never did because he did not legitimately believe the capital gains taxes were going to be siphoned off the funds Heidi and Dawn were to use to try to put their lives back together.

The purpose of putting Seaman's assets into a receivership in the first place was to prevent him from committing fraud or losing the Property due to waste. Paying necessary **property** taxes serves that purpose, and was the reason that term was put into the Order Appointing Receiver. But requiring the Liquidating Receiver to reserve funds to pay the capital gains taxes does not serve that purpose, and in fact harms Heidi and Dawn, the victims for whose benefit the Liquidating Receiver is supposed to act. The District Court found that the only provision in the MOU that can be read to imply that the capital gains taxes were to be reserved and paid "is the

bald language" Seaman clings to. (Amended Order at 9). As set forth above, Seaman's argument that the term "relating to the Property" unambiguously includes the payment of capital gains taxes is incorrect, and the District Court was correct in its determination that the reasonable interpretation of the MOU excludes the reservation of funds to pay for Seaman's capital gains taxes.

III. After determining that the MOU was ambiguous, the District Court did not clearly err in looking to extrinsic evidence and determining that the parties did not intend the MOU to require the Liquidating Receiver to pay anything other than the judgment and Seaman's homestead exemption.

As cited by Seaman, when the District Court looks to the parties' intent after determining there is an ambiguity, its interpretation must be upheld except for clear error. (Seaman Brief at 9 (citing *Mease*, ¶ 30) ("when an ambiguity exists in a contract, the interpretation of the intent of the parties is a question of fact that is reviewed under the clearly erroneous standard")).

Here, the District Court, after analyzing the unrefuted evidence put forth by Heidi and Dawn, clearly concluded that there was no intent for the Liquidating Receiver to reserve funds to pay the capital gains taxes, and to the extent Seaman wanted to include that as a term, Heidi and Dawn rejected it. There are three reasons for this. First, as detailed above, the negotiation took place rapidly on the eve of his sentencing. Without Heidi and Dawn's non-objection, there was a chance the sentencing judge would "jump the plea deal," and Seaman would lose his

opportunity of parole. Second, as described above, Seaman attempted to have the Liquidating Receiver pay "any other amounts" for which Seaman could be liable, "including taxes," but Heidi and Dawn rejected it. Finally, there was no further mention of Seaman's tax liability in any of the revisions of the MOU, and therefore Seaman made no outward manifestation of any intent that they were meant to be included. (Amended Order 9-10).

Seaman does not address any of this in his Brief. He argues that the course of conduct showed that prior to the MOU, the Receiver was paying his capital gains taxes, and that an ambiguity should be interpreted against Heidi and Dawn. (Seaman Brief at 21-24). Seaman fails to show any evidence that the District Court misapprehended the evidence and committed clear error, let alone that there was any "clear error" by the District Court in determining the parties' intent to resolve the ambiguity.

A. Seaman had no objective expectation that the Liquidating Receiver would pay his capital gains taxes, regardless of what the prior Receiver had done.

Seaman argues that because of the work the Receiver was doing at the time the MOU was entered, it was clear that paying his tax obligations was a duty of the Receiver and therefore he reasonably assumed that it would continue as a term in the MOU. (Seaman Brief at 22). First, as shown above, this is directly contrary to the Order Appointing Receiver (and its later incorporation into the MOU) that the

Receiver "shall have no obligation to prepare or file federal or state income tax returns for Garry Seaman or any of his businesses." (Doc. 6 at ¶ 11).

Moreover, the District Court considered this and found that Seaman made no outward manifestation of this intent, which is necessary in considering the parties' intent. (*See* Amended Order at 10 ("The objective intent of the parties is evidence from the correspondence and successive drafts of the MOU. If Mr. Seaman had a differing intention, such intention is not manifest in the communications or drafts")). If it is in fact true that Seaman expected the payment as a matter of course, then why didn't he insist on it continuing as a term in the MOU in one of the many drafts? Why did he not raise it as an issue when Heidi and Dawn rejected his proposal that the receiver would pay "any other amounts owed for which Garry could be held liable, including taxes" before their judgment? (*See* Proposed Draft, **Appendix 2** at ¶ 7(a)). Seaman's argument does not hold water, and the District Court rightly rejected it.

B. The MOU should not be interpreted against any party because both parties participated in many rounds of drafting and revision.

Seaman's final argument is that after determining there was an ambiguity, the District Court should have interpreted the MOU against Heidi and Dawn as the parties who drafted the agreement. First, as the record shows, the MOU was the subject of multiple revisions, with the first settlement offer being sent by Seaman.

(*See* Hr'g Tr. 52:9-60:6). The MOU was drafted with considerable input by both parties, and therefore this rule of interpretation does not apply.

Additionally, the rule that an ambiguity is interpreted against the drafter is a rule of last resort for when a court is unable to resolve the ambiguity with other evidence. "If other tenets of interpretation cannot remove the uncertainty in a contract, 'the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.'" *Lewis & Clark County v. Wirth*, 2022 MT 105, ¶ 19, 409 Mont. 1, 510 P.3d 1206 (quoting Mont. Code Ann. § 28-3-206). Seaman conveniently ignores pages 9 through 11 of the Amended Order where the District Court gave ample reasoning for its determination that the extrinsic evidence showed there was no intent for the Liquidating Receiver to pay capital gains taxes. Resorting to interpreting the language against the drafter was unnecessary, as the District Court had ample evidence to determine the parties' intent and resolve the ambiguity based on the wealth of unrefuted evidence set forth by Heidi. The District Court committed no clear error in making its determination.

CONCLUSION

Seaman's obligations are the direct result of his own improper and unlawful conduct. He owes $20,000,000 to Heidi and Dawn to satisfy their judgment—a judgment that was meant to be tax-free like any tort judgment. He will also owe capital gains taxes on the property he has to sell to pay this judgment, as those taxes

are personal to him and not covered under the MOU, which required the Liquidating Receiver to reserve funds to pay only the judgment and the homestead exemption. The District Court was correct in its Amended Order interpreting the MOU and determining that the Liquidating Receiver was not required to set aside funds to pay Seaman's capital gains taxes.

There was no abuse of discretion in amending the DSF Order to correct its manifest errors of fact and law, and Seaman can point to no clear error in the District Court's interpretation of the parties' intent. Therefore, this Court should affirm the District Court's Amended Order.

Respectfully submitted this 23rd day of April, 2025.

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CERTIFICATE OF COMPLIANCE

Under Mont. R. App. P. 11, I certify that this Response Brief is proportionally spaced in 14-point Times New Roman font, double-spaced, and contains 9,831 words, excluding the table of contents, certificate of service and this compliance certificate.

By: */s/ David B. Cotner*
David B. Cotner

APPENDIX

APPENDIX 1 Plea Agreement, Cause No, DC-22-44, Mont. 19th Jud. Dist. Ct. (Aug. 21, 2023)

APPENDIX 2 Hearing Transcript (June 3, 2024)

APPENDIX 3 Boris Letter to Cotner (Aug. 9, 2023)

APPENDIX 4 Proposed Settlement Draft (June 14, 2024)

APPENDIX 5 Hawkaluk email to Smith (Sept. 27, 2023)

APPENDIX 6 MOU Draft (Oct. 2, 2024)

APPENDIX 7 Perkins email to Cotner (Oct. 5, 2023