FILED
05/28/2025
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 25-0052

SUPREME COURT OF THE STATE OF MONTANA

CASE NO. DA-25-0052

HERU SPENCER,

Plaintiff and Appellant

vs.

CHASE SKOGEN PROPERTY MANAGEMENT, INC.,

Defendant and Appellee.

On Appeal from the Montana 18th Judicial District, Gallatin County
Cause No. DV-16-2023-796B
Before Hon. Peter B. Ohman

APPELLEE'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES: 4

ISSUES PRESENTED FOR REVIEW: 5

STATEMENT OF THE CASE: 6

STATEMENT OF THE FACTS: 8

SUMMARY OF THE ARGUMENT: 14

STANDARD OF REVIEW: 15

ARGUMENT & AUTHORITIES: 20

I. All Disputes Pertaining to Spencer's Eviction Have Reached Final Judgment. 21

II. Spencer's Claims Against Chase-Skogen are Part of the Common Nucleus as Compulsory Counterclaims and are thus Barred. 27

III. Spencer Has No Basis to Justify Untimely Amendment of the Complaint 29

IV. There Are No Appealable Issues Pertaining to Procedural or Filing Prejudice, and if Any Prejudice Exists, it Does Not Amount to Reversible Error.

CONCLUSION: 31

CERTIFICATE OF COMPLIANCE: 32

CERTIFICATE OF SERVICE: 33

TABLE OF AUTHORITIES

Cases:

Brilz v. Metropolitan Gen Ins. Co., 2010 MT 184

Cowan v. Cowan, 2004 MT 97, ¶ 10, 321 Mont. 13, 89 P.3d 6

Diana's Great Idea, LLC v. Jarrett, 2020 MT 199, ¶ 25, 401 Mont. 1, 471 P.3d 38

Gibbs v. Altenhofen, 2014 MT 200, ¶ 10, 376 Mont. 61, 330 P.3d 458. 12

Lane v. Farmers Union Ins., 1999 MT 252, ¶21, 296 Mont. 267, 989 P.2d 309 (citing Maulding v. Hardman (1993), 257 Mont. 18, 23, 847 P.2d 292, 296.) 19, 23

21

Mountain West Bank, N.A. v. Glacier Kitchens, Inc., 2012 MT 132, 365 Mont. 276, 281 P.3d 600 24, 25

Peters v. State, 285 Mont. 345, 349, 948 P.2d 250, 253

Reservation Operations Center LLC v. Scottsdale Insurance Company, 2018 MT 121, ¶ 8, 391 Mont. 383, 419 P.3d 121 20

Stevenson v. Felco Indus. 2009 MT 299, ¶ 32, 352 Mont. 303, 216 P.3d 763 21

18

Weiner v. St. Peter's Health, 2024 MT 155, ¶¶ 15-16, 417 Mont. 265, 553 P.3d 284

Western Sec. Bank v. Eide Bailly LLP, 2010 MT 291, ¶ 18, 359 Mont. 34, 249 P.3d 35 21

15

Rules:

Rule 12(b)(6), M.R.Civ.P.,

22

Rule 13(a)(1)(A M. R. Civ. P.

Rule 55 M.R.Civ.P

Rule 15, M.R.Civ.P

ISSUE PRESENTED FOR REVIEW

Appellee states the issue presented for review as follows:

1. Whether the district court erred in dismissing Mr. Spencer's August 2023 Complaint on the grounds of res judicata in reference to prior litigation between parties occurring from January 2022 to April 2023.
2. Whether the District Court abused its discretion in denying Mr. Spencer leave to amend his August 2023 Complaint when requested in May 2024, seven months after the Answer was filed.
3. Whether court procedures and requirements prejudiced Mr. Spencer amounting to reversible error.

STATEMENT OF THE CASE

Plaintiff-Appellant Heru Spencer (hereafter "Plaintiff" or "Mr. Spencer") and Defendant-Appellee Chase-Skogen Property Management, Inc (hereafter "Defendant" or "Chase-Skogen") were previously engaged in a landlord-tenant relationship which resulted in eviction proceedings in Justice Court beginning in January 2022. Mr. Spencer filed an Answer to Chase-Skogen's Complaint. Following the commencement of litigation, both parties entered into a settlement agreement which included a stipulated termination of vacancy by Mr. Spencer, a provision of certain documents related to funding assistance and service animals, and a payment of funds to satisfy rent debts. Chase-Skogen later asserted that Mr. Spencer had failed to abide by the settlement agreement, prompting a Hearing on Action for Possession which took place on February 8, 2025. Mr. Spencer did not attend the hearing on Action for Possession and Chase-Skogen prevailed by default. Mr. Spencer did not appeal the judgment or file to or set aside the default, nor did he counterclaim for unlawful eviction or any other cause of action. During this time, Mr. Spencer has generally claimed he lost his job due to stalking and harassment perpetrated by Chase-Skogen. No facts have never been asserted to substantiate this claim.

Following additional filings, a Damages Hearing took place on May 26, 2022. Mr. Spencer has claimed generally that stalking and harassment was occurring

during this period and he had moved to Wisconsin. A final judgment granting damages to Chase-Skogen was issued, which Mr. Spencer appealed to District Court. Mr. Spencer attempted to bring up his claims of harassment during his appeal, but was notified by the court that the appeal of damages was not the appropriate mechanism to newly assert a counterclaim. In April 2023, the District Court reversed the grant of damages due to perceived issues with the timing of funds disbursement as well as issues with the moveout procedure, effectively blaming both sides for the accrual of the monetary damages, and asserted there were significant issues with Mr. Spencer's filings.

In August 2023, months after the District Court order reversing damages, Mr. Spencer filed a new complaint airing grievances about his eviction, alleging the eviction was unlawful and that he was being generally stalked, harassed, and defamed by Chase-Skogen during the eviction, and the defamation was purportedly continuing. No times, dates, or any other facts were alleged to support any claim of harassment, stalking, or defamation. Chase Skogen filed an Answer in September 2023, and the court asserted a deadline in November 2023 for amending pleadings or adding parties without leave or consent.

After the parties failed to settle in mediation, Chase-Skogen sought leave to file a Motion to Dismiss pursuant to Rule 12(b)(6) in May 2024. Mr. Spencer then, without leave, filed an Amended Complaint re-asserting the same allegations as his

August 2023 Complaint, but adding Seth Chase as an individual. Chase-Skogen filed a Motion to Strike Amended Complaint as untimely, and filed a Motion to Dismiss largely on res judicata grounds as the defamation claims and unlawful eviction were all part of the same acts addressed in litigation from January 2022 through April 2023. In December 2024, the court granted the Motion to Strike and the Motion to Dismiss, largely in part to the eviction proceedings having been well-tread over, and the alleged stalking and defamation occurred during the course of the prior litigation and constituted a common nucleus of operative fact.

STATEMENT OF THE FACTS

1. On January 4, 2022, Defendant-Appellee Chase-Skogen Property Management, Inc (hereafter “Defendant” or “Chase-Skogen”) filed for the eviction (the “First Case”) of Plaintiff-Appellant Heru Spencer (hereafter “Plaintiff” or “Mr. Spencer”) under Gallatin County Justice Court Case No. CV-100-2022-15-LT. (Appellant’s Brief, pg 8). [Chase-Skogen requests judicial notice of the record of Gallatin County Justice Court Case No. CV-100-2022-15-LT].

2. On February 8, 2022, the parties to the First Case entered into a Stipulated Settlement Agreement which Mr. Spencer violated, resulting in a default judgment. (Id., pg 12). Mr. Spencer did not file to set aside the default judgment.

3. Following a dispute among damages owed, Chase-Skogen requested a Damages Hearing, which was held on May 26, 2022, with monetary damages awarded to Chase-Skogen. (Id., pg 13.).

4. Mr. Spencer appealed the outcome of the Damages Hearing to the Gallatin County District Court in Case No. DV-22-703D, which held a trial de novo on March 2, 2023. (Id., pg 14). [Chase-Skogen requests judicial notice of the record of Gallatin County District Court in Case No. DV-22-703D].

5. On April 24, 2023, the District Court issued its Findings of Fact and Conclusions of Law pertaining to the Damages Hearing. (“DV-22-703D Findings of Fact and Conclusions of Law”, pg 2).

6. The District Court indicated that the damages award was the sole appealable issue. ("DV-22-703D Findings of Fact and Conclusions of Law" ¶5).[1]

7. The District Court reversed the grant of damages due in part to mutual fault by parties in the timing of Mr. Spencer vacating the premises and the timing of a Montana Rental Assistance Fund disbursement intended to accommodate the past-due rent owed by Mr. Spencer to Chase-Skogen, as well as increasing the costs of litigation due to meritless and frivolous filings and arguments pursued by Mr. Spencer. ("DV-22-703D Findings of Fact and Conclusions of Law", ¶8, 10-15).[2]

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[1] "5. This Court, following a number of hearings and extensive filings, determined that a de novo review of the Justice Court's damages award would be the extent of its review on appeal as this was the only appealable final judgment."

[2] "8. Spencer attempted to arrange a final walk-through of his apartment on the March 31, 2022, move-out date. The evidence was conflicted about the circumstances that lead to the move-out not being completed on March 31, 2022. The Court did not find Spencer's video evidence to be determinative. It appears that both parties contributed to the delay. However, a final walk-through was completed the following day and revealed that the apartment was in good shape.

10. Montana Rental Assistance Fund monies to pay Spencer's rent had been on deposit with the Justice Court since January 4, 2022. Funds were released by Justice Court Order dated February 10, 2022, and additional funds to fully pay off rent owed by Spencer were paid after the March 15, 2022, due date but prior to the Justice Court damages hearing on May 26, 2022.
11. Chase was aware that Spencer was dependent on Montana Rental Assistance to meet his rent obligations and that delays with payments from Montana Rental Assistance were not uncommon.
12. Chase did not offer evidence addressed to attorney fees and costs at the March 3, 2023, hearing.

8. The Court's Order did not opine on the default judgment or eviction, as it had already established the sole appealable issue for review was the damages grant, and only asserted that Mr. Spencer's one day of holdover did not appear purposeful or significant for the purpose of increased damages. ("DV-22-703D Findings of Fact and Conclusions of Law", ¶18-20).[3]

9. On August 22, 2023, Mr. Spencer filed a hand-written Complaint against Chase-Skogen in District Court (the "Second Case"), alleging Chase-Skogen had evicted him on false pretenses, had improperly charged him for a service animal, and that he had been stalked and discriminated against by Chase-Skogen. ("August 2023 Complaint").

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13. Spencer has filed a number of meritless and irrelevant motions on appeal. He has requested damages and other relief in procedurally improper ways. He has needlessly expended the Court's time as well as Chase's.
14. Spencer's demeanor in and conduct of these proceedings, the evidence admitted at the hearing as well as Spencer's conduct at the March 3, 2023, hearing leads this Court to conclude that he was a high maintenance, demanding and entitled tenant. In short, Spencer was a nuisance to Chase and has been a nuisance to the Court----which has gone to considerable lengths to accommodate him.
15. The Court further finds that Chase's pursuit of damages in the Justice Court was both gratuitous and unrealistic and likely based on Spencer's meritless, post-settlement filing of his "civil motion" in the Justice Court which necessarily required a response by Chase.

[3] "18. Spencer's hold-over, if any, was neither significant, purposeful or in bad faith within the meaning of MCA § 70-24-429(1) and that statue's damages provision is not applicable here.

19. There is no outstanding past due rent or interest attributable thereto.
20. Chase did not present evidence of damages attributed to reasonable attorney fees and costs in the action below and the Court is without a basis to award them here.

10. The Complaint in the Second Case offered no factual basis for any stalking or harassment claims and did not provide any times, incidents, or instances outside of the period between January 2022 and April 2023, which only indicated issues with the eviction litigation. ("August 2023 Complaint", ¶3-5).

11. On September 7, 2023 Chase-Skogen filed its Answer asserting as affirmative defenses, among other things, res judicata and failure to state a claim. ("September 2023 Answer").

12. On March 28, 2023, the parties attempted and failed to mediate the matter.

13. On May 13, 2024, Chase-Skogen filed for and was granted leave to file a Motion to Dismiss pursuant to Rule 12(b)(6). ("Order Re: Defendant's Motion to Dismiss Plaintiff's Complaint," pg 1).

14. On May 23, 2024, without leave or consent, Mr. Spencer filed an Amended Complaint. ("Order Re: Defendant's Motion to Dismiss Plaintiff's Complaint,", pg 2).

15. The Amended Complaint sought, in part, to add previously known members of the Defendant-Appellant business as individually named parties, despite referring to them in the body of the August 2023 Complaint, but did not add additional facts for the time period outside the prior litigation. ("May 2024 Amended Complaint," [adding Seth Chase of Chase-Skogen Property

Management, Inc. as a party]).

16. On May 24, 2024, Chase-Skogen filed its Motion to Dismiss Complaint Pursuant to Rule 12(b), and a Motion to Strike Amended Complaint. ("Motion to Dismiss," and "Motion to Strike").

17. On May 25, 2025, Mr. Spencer filed a Request for Leave to Amend Complaint, asserting the leave should be allowed on procedural grounds under Rule 15 because a 12(b) Motion was filed, and also justice called for the amendment as Seth Chase was not previously listed as a defendant. ("Plaintiffs Motion for Leave to Amend").

18. On December 16, 2024, the court issued orders pertaining to Defendant-Appellee's Motion to Strike, Mr. Spencer's Petition for Leave to Amend, and Defendant-Appellee's Motion to Dismiss Complaint. ("Order Re: Plaintiff's Petition for Leave to Amend Complaint and Defendant's Motion to Strike Amended Complaint," and, "Order Re: Defendant's Motion to Dismiss Plaintiff's Complaint").

SUMMARY OF THE ARGUMENT

This Appeal arises from a pair of disputes between Plaintiff-Appellant Heru Spencer and Defendant-Appellee Chase-Skogen Property Management, Inc., related to the eviction of Heru Spencer during which parties had alternated between Plaintiff and Defendant. In both matters, Chase Skogen Property Management, Inc. prevailed. Now, Mr. Spencer is attempting to again re-open proceedings and re-litigate items that either were already addressed or he failed to properly address during prior proceedings, even to those in which he entered stipulated agreements and subsequently was ruled to have violated. Both matters incurred a substantial quantity of filings addressing myriad issues, and it is clear that Mr. Spencer is simply unwilling to accept the outcomes.

Firstly, Mr. Spencer desires to continue litigating the lawfulness of his past eviction in the First Case. However, it is plain that the nature of the eviction has been extensively and conclusively litigated; Mr. Spencer himself entered into a stipulated agreement to vacate the premises relevant to the eviction. Mr. Spencer did not then attempt to litigate what he now claims was an unlawful eviction during the actual eviction proceedings, but since the District Court later amended the damages award on appeal, he now believes the entire proceeding was unlawful. The default judgment was not appealed nor set aside, and any alleged claims pertaining to the past eviction were properly precluded in the instant matter by the District Court.

Next, Mr. Spencer asserts his harassment and stalking claims were not litigated. However, those alleged incidents all occurred as early as within a month of the First Case's filing between the same parties and were directly associated with the landlord-tenant relationship; clearly logically related to the existing litigation among the same parties. Any claims of stalking, harassment, or other baseless alleged torts logically associated with the eviction proceedings were rightfully precluded by the District Court.

Mr. Spencer believes he should have been granted leave to amend his Complaint in the Second Case. However, leave was properly denied as untimely and without good cause; at the time of his attempted Amended Complaint, Mr. Spencer had been involved with litigation among the same parties from January 2022 to May 2024. The alleged facts and connected parties were not a mystery to Mr. Spencer, and his reasoning simply did not justify granting Leave. Mr. Spencer requesting leave nine months after the onset of the Second Case to amend the complaint and add parties was nothing but a delay tactic meant to increase costs and prejudice the intended defendants, and the District Court was correct in using its discretion to deny leave.

Last, Mr. Spencer believes this matter should be reversed, remanded, and assigned to a new judge because he believes the process was rigged against him to such a degree the outcome was tainted. However, Mr. Spencer has not stated any

particular hearing, motion, or cause of action he was kept from pursuing beyond simply having difficulties filing and being properly unable to assert a lower court counterclaim during an appeal. The District Court made specific note in the First Case that there were extensive hearings and motions, and Mr. Spencer had repeatedly sought improper actions and needlessly expended the court's time as it attempted to accommodate him. (DV-22-703D Findings of Fact and Conclusions of Law ¶5, 13-15). Mr. Spencer actively participated in litigation for over two years with Chase-Skogen, and in the Second Case was still submitting rough, handwritten pleadings, even when lodging them of his own volition without the pressure of any deadline. If Mr. Spencer experienced some form of challenge with the process, it is very likely a challenge of his own making and does not amount to reversible error.

STANDARD OF REVIEW

“We review de novo a district court's ruling on a motion to dismiss pursuant to M. R. Civ. P. 12(b)(6).” (Western Sec. Bank v. Eide Bailly LLP, 2010 MT 291, ¶ 18, 359 Mont. 34, 249 P.3d 35 (citation omitted)). “We review de novo a district court's interpretation and application of a statute and a district court's conclusions of law.” *Brilz v. Metro Gen. Ins. Co*., 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494 (citations omitted). “This includes a district court's application of claim preclusion or issue preclusion, which is an issue of law that we review for correctness.” (Brilz, ¶ 13 (citations omitted)).

“We generally review a district court's decision denying leave to amend for an abuse of discretion.” (Griffin v. Moseley, 2010 MT 132, ¶ 22 (citing Deschamps v. Treasure State Trailer Court, Ltd., 2010 MT 74, ¶ 18, 356 Mont. 1, 230 P.3d 800)). “While amendments are not permitted in every circumstance, they may be allowed when they would not cause undue prejudice to the opposing party.” (Griffin, ¶ 22 (citing Upky v. Marshall Mntn., LLC., 2008 MT 90, ¶ 18)). "Although leave to amend is properly denied when the amendment is futile or legally insufficient to support the requested relief, it is an abuse of discretion to deny leave to amend where it cannot be said that the pleader can develop no set of facts under its proposed amendment that would entitle the pleader to the relief sought." Griffin, ¶ 22 (citing Deschamps, ¶ 18).

District courts have broad discretion over the admissibility of evidence and control of pretrial and trial proceedings. (*Stevenson v. Felco Indus.* 2009 MT 299, ¶ 32, 352 Mont. 303, 216 P.3d 763). We review a district court's decisions regarding management of litigation for an abuse of discretion. (See *Fink v. Williams*, 2012 MT 304, ¶¶ 18, 20, 367 Mont. 431, 291 P.3d 1140 (citation omitted) (noting that "[t]he District Court has broad discretion in determining issues relating to trial administration and finding "no abuse of the court's discretion in its management of the trial")). Discretionary trial court rulings include such things as trial administration issues, scope of cross-examination, post-trial motions and similar rulings. (*Fink,* ¶ 18 (citation and quotation marks omitted)).

ARGUMENT & AUTHORITIES

I. DID THE DISTRICT COURT ERR WHEN IT DISMISSED HERU SPENCER'S AUGUST 2023 COMPLAINT ON THE GROUNDS OF RES JUDICATA IN REFERENCE TO PRIOR LITIGATION BETWEEN THE PARTIES FROM JANUARY 2022 TO APRIL 2023?

In dismissing Mr. Spencer's Complaint, the court determined that "the five elements of claim preclusion, or res judicata, are met here." (Order re: Dismissal, pg 5). The doctrine of res judicata, or claim preclusion, bars subsequent litigation of a claim that a party has already had an opportunity to litigate or which could have been litigated in a prior action. (*Gibbs v. Altenhofen*, 2014 MT 200 ¶10, 376 Mont. 61, 330 P.3d 458). The elements of res judicata are set out in *Gibbs* as follows: (1) the parties or their privies are the same in the first and second actions; (2) the subject matter of the actions is the same; (3) the issues are the same in both actions, or are ones that could have been raised in the first action, and they relate to the same subject matter; (4) the capacities of the parties are the same in reference to the subject matter and the issues between them; and (5) a valid final judgment has been entered on the merits in the first action by a court of competent jurisdiction. (*Gibbs*, ¶10). All of Mr. Spencer's claims meet the *Gibbs* factors as having already been litigated or

should have been litigated under the "common nucleus" test, detailed below, and thus the Complaint was properly dismissed.

A. All Disputes Pertaining to Spencer's Eviction Have Reached Valid Final Judgment

Mr. Spencer asserts on appeal that his claims related to his eviction were not litigated because he now believes the proceedings in the First Case were unlawful, and the prior appeal addressed only damages. (Appellant's Brief, pg 5). This is not an accurate statement of the record: Mr. Spencer filed an Answer in the First Case and later entered into a stipulated settlement agreement with Chase-Skogen. Mr. Spencer did not file a counterclaim for unlawful ouster or any other counterclaim. Chase Skogen then asserted that Mr. Spencer violated the stipulated agreement. Then, Chase-Skogen prevailed by Mr. Spencer failing to appear or otherwise defend at trial, and the only issue that he properly sought on appeal was the outcome of the damages hearing which took place three months later. Mr. Spencer did not move to set aside or appeal the entry of default, and the judgment was final. Any later assertion as to the eviction's lawfulness, especially one made 18 months later, should thus be precluded.

"In order to have a preclusive effect, a final judgment must be a valid judgment because an invalid judgment is no judgment at all." (*Mountain West Bank, N.A. v. Glacier Kitchens, Inc*., 2012 MT 132, 365 Mont. 276, 281 P.3d 600.

at ¶ 14. “Accordingly, only a valid judgment may be the basis of the application of res judicata.” Id., [citing James Wm. Moore, Moore's Federal Practice, Vol. 18, § 131.30(1)(a) (3d ed., Matthew Bender 2012)]). Despite the fact that default judgments are not favored, default judgments are still a valid final judgment. “A default judgment is a final decision of a court of law.” *Reservation Operations Center LLC v. Scottsdale Insurance Company*, 2018 MT 121, ¶ 8, 391 Mont. 383, 419 P.3d 121 (citing Wittich Law Firm, P.C. v. O'Connell, 2013 MT 122, ¶ 25, 370 Mont. 103, 304 P.3d 375.)

Here, regardless of whether Chase-Skogen prevailed in default or following testimony subject to cross-examination, facts were subsequently admitted following the judgment, including the grounds for termination of the Lease and lawfulness of the proceedings. Default judgments under Rule 55 M.R.Civ.P. permit the non-defaulting party to assert that all factual allegations in the pleadings are deemed admitted in ascertaining liability. (*Lane v. Farmers Union Ins*., 1999 MT 252, ¶21, 296 Mont. 267, 989 P.2d 309 (citing Maulding v. Hardman (1993), 257 Mont. 18, 23, 847 P.2d 292, 296.) “A final judgment is one which constitutes a final determination of the rights of the parties; any judgment, order or decree leaving matters undetermined is interlocutory in nature and not a final judgment for purposes of appeal.” *Weiner v. St. Peter’s Health*, 2024 MT 155, ¶¶ 15-16, 417 Mont. 265, 553 P.3d 284 (citing In Re Estate of Boland, 2019 MT 236, ¶ 47, 397

Mont. 319, 450 P.3d 849. It is plain the judgment in the First Case on all aspects of Mr. Spencer's eviction was final, was valid, was not set aside, was not appealed, and were properly precluded in the instant matter.

B. All of Spencer's Claims Against Chase-Skogen are Part of the Common Nucleus as Compulsory Counterclaims and are Thus Barred.

Mr. Spencer argues that his case should be allowed to proceed because harassment, stalking, and defamation was generally committed against him by Chase-Skogen associated individuals during and after the First Case. (Appellant's Brief, pg 8, ¶3). However, these acts were allegedly occurring as early as January 2022, wherein Mr. Spencer claims he lost his job due to "emotional and psychological distress caused by the unlawful eviction, combined with continuous harassment and stalking by Seth Chase." (Id.). Mr. Spencer takes no time to indicate with any particularity where he was working, if he was terminated or quit, if the alleged employer knew of his housing situation, or if the employer had any contact with Chase-Skogen employees. Regardless, the alleged loss of employment related to alleged harassment occurred during the First Case, before judgment was ever issued, and could have been brought during prior litigation. During this period, Mr. Spencer also claims that he had made the decision to move to Madison, WI. (Appellant's Brief, pg 13 ¶8). It is clear that Mr. Spencer believes that his claims of stalking and harassment arose during and were directly related to the

termination of his lease and subsequent eviction. Therefore, his claims of harassment and stalking, as well as any other claim pertaining to or arising from his eviction, are compulsory counterclaims precluded in a subsequent action pursuant to Gibbs, and Mr. Spencer will not be able to prove any set of facts in support of his claim which would entitle him to relief.

A compulsory counterclaim is defined as "any claim that—at the time of its service—the pleader has against an opposing party if the claim arises out of the transaction or occurrence that is the subject matter of the opposing party's claim[.]" M. R. Civ. P. 13(a)(1)(A). The purpose of this rule is to avoid a multiplicity of suits by requiring the parties to bring logically related claims into a single litigation. See *Peters v. State*, 285 Mont. 345, 349, 948 P.2d 250, 253 (1997). To determine whether a counterclaim is compulsory under Rule 13(a), we analyze what comprised the "transaction or occurrence" and whether the counterclaims arose out of that transaction or occurrence. See Peters, 285 Mont. at 349, 948 P.2d at 253. In First Bank v. Fourth Judicial District Court, we adopted the United States Supreme Court's "logical relationship test" in interpreting "transaction":

> "Transaction" is a word of flexible meaning. It may comprehend a series of many occurrence[s], depending not so much upon the immediateness of their connection, as upon their logical relationship .... It is the one circumstance without which neither party would have found it necessary to seek relief. Essential facts alleged by appellant enter into and constitute in part the cause of action set forth in the

counterclaim. That they are not precisely identical, or that the counterclaim embraces additional allegations ... does not matter."

-*Diana's Great Idea, LLC v. Jarrett*, 2020 MT 199, ¶ 25, 401 Mont. 1, 471 P.3d 38 (citing First Bank v. Fourth Judicial District Court, 226 Mont 515, 521, 737 P.2d 1132 (1987)).

Here, it is unquestionable that the alleged harassment and the eviction proceedings are logically connected, even if not precisely identical, and therefore would be compulsory counterclaims alongside claims the eviction itself was unlawful.

The logical connection of compulsory counterclaims has been explored multiple times. In Peters v. State, the Court found that the State's belated set-off claim arose out of the same transaction as Peters' FLSA claim against the State: the State's unlawful termination of Peters' employment and the damages therefrom. The Court also agreed with Peters that the unlawful termination "set in motion all the events resulting both in his FLSA claim and the State's set-off claim." *Peters v. State*, 285 Mont. 345, 351-352, 948 P.2d 250, 254 (1997). Here, like in Peters, even if not directly associated with the eviction, any claims of stalking or harassment were set in motion by the eviction proceedings and Mr. Spencer's tenancy relationship with Chase-Skogen; the basis of the First Case.

In *First Bank v. Fourth Judicial Dist. Ct*.,, the Court found that claims of creditor misconduct were barred as compulsory counterclaims because they arose

out of the transaction involving the bank's foreclosure suit and reasoned that "the factual history of the complaint is the same as the history alluded to in the [belated claims]" and that there was a logical relationship between the bank's foreclosure complaint and the claims of creditor misconduct. *First Bank, N.A.Western Montana, Missoula v. District Court for the Fourth Judicial District*, 226 Mont. 515, 522-523, 737 P.2d 1132, 1136 (1987). Like the claims of creditor misconduct above, the claims of harassment by Chase-Skogen or employees of Chase-Skogen arose out of the same transaction: the landlord-tenant relationship and subsequent eviction proceedings.

In Julian v. Mattson, the Court found that Julian's subsequent action against Mattson was barred as compulsory counterclaims because it arose from the same transaction as the claims in the prior matter: the construction of Julian's residence. Therefore, Julian's claims of alleged defects in the construction of the home should have been raised as a compulsory counterclaim previously. Julian v. Mattson, 219 Mont. 145,148, 710 P.2d 707, 710 (1985). Like Julians analysis of construction defect being related to the past construction of a residence, if Mr. Spencer believes his lease was broken, he must accept the basis for that belief: the past eviction in the First Case. That breach would clearly be a compulsory counterclaim.

In Turtainen v. Poulsen, the Court found that belated claims for fraud and enforcement of restrictive covenants arose out of the same aggregate of operative

facts, which was the creation and execution of the contract for sale of land. Turtainen v. Poulsen, 243 Mont. 335, 359 792 P.2d 1089, 1092 (1990). Like in Turtainen, none of Mr. Spencer's alleged claims would exist without the aggregate facts of his landlord-tenant relationship and subsequent eviction. There are simply no facts that Mr. Spencer could prove in support that would change the reality that his claims are part of the aggregate facts and "common nucleus" of the First Case as compulsory counterclaims, and thus were properly dismissed pursuant to Rule 12(b)(6) in the Second Case.

II. DID THE DISTRICT COURT ABUSE ITS DISCRETION IN DENYING HERU SPENCER LEAVE TO AMEND HIS AUGUST 2023 COMPLAINT WHEN REQUESTED IN MAY 2024, SEVEN MONTHS AFTER THE ANSWER WAS FILED?

A. Spencer Has No Basis to Justify Untimely Amendment of the Complaint

Mr. Spencer filed his Complaint in the Second Case in August 2023, 20 months after the onset of the First Case, naming only Chase Skogen but mentioning acts by "Jesse Chase" in the body of the Complaint. (Plaintiff's Complaint, ¶ 4). Those alleged acts included discrimination, harassment, and online stalking. (Id.). Almost nine months later, following Chase-Skogen requesting leave to file a motion to dismiss, Mr. Spencer first filed an Amended Complaint and then requested leave

to file the same. Mr. Spencer first relied on Rule 15 M.R. Civ. P as a justification, because he believed he was allowed to amend following the filing of a Rule 12(b)(6) motion, but now asserts he should have been given leave to amend because justice calls for it and he was hindered by the courts in pursuing filings. (Appellant's Brief, pg 6). Additionally, he alleges he needed to add Seth Chase, a member of Chase-Skogen and not Jesse Chase as noted in his original Complaint, because "harassment, stalking, and defamation… arose after the conclusion of the initial proceedings." (Id.). However, the court noticed issues with these assertions and addressed them when rightfully using its discretion denying leave to amend.

The court may deny a motion to amend for a variety of reasons, including undue delay and undue prejudice to the opposing party. (*Diana's Great Idea*, ¶16). Here, Mr. Spencer had no new facts, no new dates or incidents, and merely related back to the First Case and said Seth Chase "continues to defame and slander the plaintiff in Bozeman." ("Plaintiff's Response in Opposition to Defendants Motion to Dismiss", pg 8, ¶ 19). Mr. Spencer did not provide any facts or allegations separate from the foundation of the First Case, offered no basis for failing to name the individual members of Chase-Skogen in the past or previously unknown incidents, and offers no authority to support amending his Complaint outside a naked grasp at the concept of justice and "procedural irregularity." ("Appellant's Brief," pg 6).

Granting leave would have done nothing but prompt undue delay and cause undue prejudice to new parties.

"[Mr. Spencer] provides no explanation for why he did not, or could not have, included Seth Chase as a Defendant when he filed his original Complaint on August 22, 2023." ("Order Re: Plaintiff's Petition for Leave to Amend Complaint," pg 4). However, the court benefitted in its analysis from getting the opportunity to review the proposed Amended Complaint, as it was filed prior to the Request for Leave. "The allegations in the proposed Amended Complaint state that Plaintiff was suffering damages from Seth Chase's alleged conduct of harassment and stalking toward Plaintiff as far back as 2022." (Id.). "The Court concludes that Plaintiff has failed to establish that justice requires granting leave for him to amend his Complaint at this stage of the proceedings. ("Order Re: Plaintiff's Petition for Leave to Amend Complaint," pg 5). Mr. Spencer simply did not have good cause for leave to amend, and the court rightfully denied the leave.

III. DID COURT PROCESSES AND PROCEDURE PREJUDICE HERU SPENCER AMOUNTING TO REVERSIBLE ERROR?

A. There Are No Appealable Issues Pertaining to Procedural or Filing Prejudice, and if Any Prejudice Exists, it Does Not Amount to Reversible Error.

Mr. Spencer has no grounds to assert that the process is rigged against him, nor that the courts did not allow him to participate in the process or lodge his filings.

Mr. Spencer has filed responsive pleadings, filed motions for sanctions or damages, provided exhibits, participated in hearings, and participated in appeals. Perhaps Mr. Spencer believes that instances where he was ruled against or attempted to improperly file a document constitute a barrier of access to the courts, but Mr. Spencer does not point to a single filing or hearing he was not able to participate in where he was not also ruled against by the court.

The District Court in the first case noted in its Findings of Fact and Conclusions of Law that "Spencer has filed a number of meritless and irrelevant motions on appeal. He has requested damages and other relief in procedurally improper ways. He has needlessly expended the Court's time as well as Chase's." (DV-22-703D Findings of Fact and Conclusions of Law, ¶13). Also, "Spencer was a nuisance to Chase and has been a nuisance to the Court---- which has gone to considerable lengths to accommodate him." (Id., ¶14). Not only was Mr. Spencer not prohibited from access, but the Court made special note that it had attempted to accommodate him, despite his sometimes improper attempts. There is no basis to claim there was a reversible error on the grounds of judicial access.

CONCLUSION

As Montana statute, caselaw, and common sense clearly state, the Chase Skogen and Heru Spencer landlord-tenant relationship and its related claims, including harassment, were litigated to finality or should have been litigated during the first case. Claims arising from that same set of circumstances are rightfully precluded, and Mr. Spencer's attempt at amending his Complaint would not have changed that, nor was the amendment justified. Lastly, Mr. Spencer had well-established access to the courts and was not prohibited by anyone but his own improper attempts at filings. The dismissal of his matter should not be reversed.

Dated: May 27, 2025

Respectfully submitted,

THE RABB LAW FIRM, PLLC

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is not more than 10,000 words, excluding certificate of service and certificate of compliance.

Dated this 27th Day of May, 2025

/s/ Robert D. Reiley
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CERTIFICATE OF SERVICE

I, Robert D Reiley, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 05-28-2025:

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