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FILED

10/22/2025

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 25-0719

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Bowen Greenwood
Clerk of Supreme Court
State of Montana

ATTORNEY FOR PLAINTIFF

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case No. DA-25-0719

<p>DAN PATRICK McCaul, Appellant, v. TOBIN CAPP, BEN CARTER, JENNIFER CARTER, VENTURE 1, LLC, CS CONSTRUCTION, BT CONSTRUCTION MT INC., CHRISTINE MACDONALD, JIM NESS, FIRST SECURITY BANK, ABC CORPORATION 1-5, and DOES 1-5, Appellees.</p>	<p>APPELLANT McCaul's REBUTTAL RESPONSE IN OPPOSITION TO TOBIN CAPP'S, BEN CARTER'S, JENNIFER CARTER'S, AND VENTURE 1, LLC'S MOTION TO DISMISS APPEAL.</p>
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INTRODUCTION

Appellant Dan Patrick McCaul respectfully submits this response in opposition to the Venture 1 Defendants' Motion to Dismiss Appeal. The motion mischaracterizes the nature and procedural posture of the underlying District Court order and

prematurely seeks to foreclose appellate review of substantial claims that have been dismissed in their entirety.

Appellant objects to the motion and requests that the Court deny it.

ARGUMENT

I. The District Court's Order Is Effectively Final as to the Venture 1 Defendants

While the Venture 1 Defendants argue that the Order is interlocutory, it in fact disposes of all tort and contract claims against them except for breach of written contract. The dismissal of multiple causes of action—including fraud, breach of fiduciary duty, and unjust enrichment—constitutes a conclusive determination of rights as to those claims. The Order is therefore final in substance, if not in form, and ripe for appellate review under M. R. App. P. 4(1)(a).

II. Certification Under Rule 54(b) Is Not a Prerequisite Where Substantial Rights Are Affected

Appellant acknowledges that the District Court has not certified the Order under M. R. Civ. P. 54(b). However, Montana precedent recognizes that appellate review may proceed where substantial rights have been affected and where delay would result in prejudice or procedural harm. See *Farmers Union Mut. Ins. Co. v. Bodell*, 2008 MT 363, and *Tedesco v. Home Savings Bancorp*, 2017 MT 304, cited by Appellees, both distinguishable on their facts.

III. Appellant's Claims Against Other Defendants Are Separately Dismissed and Do Not Preclude Review

The Venture 1 Defendants reference a separate dismissal order involving First Security Bank and Christine MacDonald. That order is not the subject of this appeal and does not affect the finality of the claims dismissed against Venture 1 Defendants. The procedural posture supports bifurcated review.

IV. Appellant Has Preserved His Objection and Is Entitled to Review

Appellant has timely filed his Notice of Appeal and preserved his objection to the dismissal of substantial claims. The motion to dismiss seeks to undermine that right without addressing the material harm caused by the District Court's ruling.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Court **deny** the Venture 1 Defendants' Motion to Dismiss Appeal and allow the appeal to proceed on its merits.

Dated this 19th day of October, 2025

Respectfully submitted,



Dan Patrick McCaul

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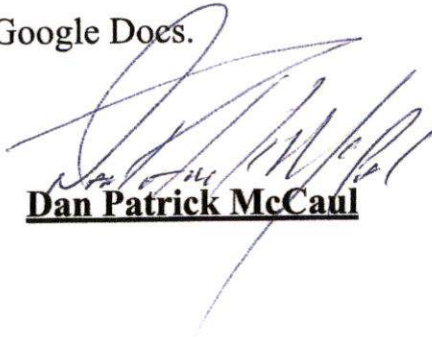
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CERTIFICATE OF COMPLIANCE

Pursuant to M.R. App. P. 16(3), I certify that the foregoing is typed in 14-point Times New Roman Font, a proportionally spaced typeface, and contains 614 words, as calculated by Google Docs.



Dan Patrick McCaul

CERTIFICATE OF SERVICE

This is to certify that the foregoing document was served on this 19th day of October 2025, upon the parties whose names and addresses by the following means.

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Courtesy Copy:

Bowen Greenwood (hardcopy will follow via US Mail Services)

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