

GALLATIN COUNTY CLERK
OF DISTRICT COURT
JENNIFER BRANDON

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FILED
BY _____ *JB*
DEPUTY

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

EAST GALLATIN, LLC, a Montana Limited
Liability Company,

Plaintiff,

v.

THE MONTANA DEPARTMENT OF FISH,
WILDLIFE AND PARKS, a all Other
Persons, Unknown, Claiming or Who Might
Claim any Right, Title, Estate or Interest in or
Lien or Encumbrance Upon the Real Property
Described in the Complaint Adverse to
Plaintiff's Ownership or any Cloud Upon
Plaintiff's title Thereto, Whether Such Claim
or Possible Claim be Present or Contingent,

Defendants.

Cause No. DV-09-502C

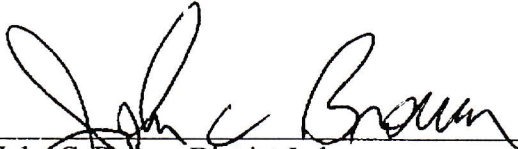
**ORDER OF DISMISSAL
WITHOUT PREJUDICE**

On May 21, 2009, Plaintiff East Gallatin, Inc., a Montana Limited Liability Company, filed its Complaint against Defendant THE DEPARTMENT OF FISH, WILDLIFE AND PARKS, et al. Pursuant to Rule 4(t)(1), M.R.Civ.P., a plaintiff must accomplish service within three (3) years after filing a complaint. Plaintiff East Gallatin, Inc., a Montana Limited Liability Company, failed to accomplish service on THE DEPARTMENT OF FISH, WILDLIFE AND PARKS, or any other possible Defendant in this case within three years from May 21, 2009, and

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the no Defendants have appeared in this matter. Therefore, pursuant to Rule 4(t)(1), M.R.Civ.P., and upon this Court's own motion, IT IS HEREBY ORDERED that this case is DISMISSED WITHOUT PREJUDICE and the Clerk of Court shall close this case file.

Dated this 1st day of February, 2013.



John C. Brown, District Judge

cc: Arthur V. Wittich, Esq./Frederick P. Landers, Jr., Esq.

*mailed
02/01/13*

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2009 MAY 21 PM 4 52

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Attorneys for Plaintiff

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

EAST GALLATIN, LLC, a Montana)
 Limited Liability Company,)

Plaintiff,)

vs.)

THE MONTANA DEPARTMENT OF)
 FISH, WILDLIFE AND PARKS, and)
 all Other Persons, Unknown, Claiming or)
 Who Might Claim any Right, Title, Estate)
 or Interest in or Lien or Encumbrance)
 Upon the Real Property Described in the)
 Complaint Adverse to Plaintiff's Ownership)
 or any Cloud Upon Plaintiff's Title)
 Thereto, Whether Such Claim or Possible)
 Claim be Present or Contingent,)

Defendants.)

Cause No.: DV-09-502C

COMPLAINT FOR QUIET TITLE

*(2 summons issued)
 (1 to unknown party)*

COMES NOW Plaintiff by and through counsel and alleges as follows:

Parties, Jurisdiction and Venue

1. Plaintiff East Gallatin, LLC is a Montana limited liability company (hereinafter "LLC").
2. Plaintiff owns real property located in Gallatin County, generally described as:

All of Certificate of Survey No. 1988, located in the NE $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 36, Township 1 South, Range 5 East, P.M.M., Gallatin County, Montana.

(hereinafter the "Parcel").

3. The Montana Department of Fish, Wildlife and Parks is an agency of the state of the State of Montana (hereafter "FWP").

4. The "Other Persons" are named pursuant to M.C.A. § 70-28-104 and consist of those persons, currently unknown, claiming or who might claim any right, title, estate, or interest in or lien or encumbrance (including but not limited to an easement or public fishing access site) upon the Parcel adverse to the LLC's ownership or any cloud upon the LLC's title thereto, whether such claim or possible claim be present or contingent.

5. Venue is proper in Gallatin County pursuant to M.C.A. § 70-28-103.

General Allegations

6. In 2008, one of the members of the LLC was informed that FWP claims an easement across the NW corner of the Parcel that allows for public access across the Parcel for recreational purposes.

7. FWP's claim of an easement is based upon a Recreation Site Easement and Grant of Custody of Land dated November 12, 1993 executed by The Golf Course Partners of Bozeman as "Grantor" and David H. Manley as "Landowner" in favor of FWP and recorded in Film 138, Page 2222, records of Gallatin County Montana (hereinafter "Easement").

8. However, the actual owners of the Easement property at the time the Easement was conveyed were Helen M. Manley (deceased), David H. Manley and Thelma Jean Manley by virtue of a Warranty Deed dated May 11, 1979 and recorded in Film 50, Page 177, records of Gallatin County, Montana.

9. David H. Manley and The Golf Course Partners of Bozeman could not lawfully grant an easement across the Parcel since they were not the sole owners.

10. Moreover, the Easement does not appear in the indexed chain of title of the Parcel, and in subsequent conveyances of the Parcel the instruments of title fail to disclose the existence of the Easement.

11. The public has access to fish along the East Gallatin River, both to the west and to the east of the Parcel, making the easement across the Parcel unnecessary.

12. FWP refuses upon demand to voluntarily extinguish the easement.

Count I
Quiet Title

13. All of the paragraphs above are incorporated herein.

14. The LLC is entitled to extinguish all improperly conveyed property rights and to achieve clean title to the property without burdensome encumbrances, such as this alleged Easement.

15. The LLC desires a complete adjudication and has served all known parties with interest, and provided public notice for all unknown interest in accordance with M.C.A. § 70-28-101, *et. seq.*

16. The LLC seeks a decree from this Court quieting the LLC's title to the Parcel and extinguishing the improperly conveyed Easement and any other such easement rights claimed by FWP and/or the public.

WHEREFORE, Plaintiff prays as follows:

1. To quiet title and to extinguish all alleged easement interests claimed by FWP or any other parties across the Parcel;
2. For attorney's fees and costs; and

3. For all other relief deemed proper and just.

DATED this 21 day of May, 2009.

WITTICH LAW FIRM, P.C.

By: 
Frederick P. Landers, Jr.