

HON. JAMES A. MANLEY
20th Judicial District Court
Lake County Courthouse
106 Fourth Avenue East
Polson, MT 59860
(406) 883-7250

FILED Aug. 21 2018
Candace Fisher
SANDERS COUNTY CLERK OF DISTRICT COURT
BY [Signature]
DEPUTY

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, SANDERS COUNTY

Cause No. DV-16-84

ALEX NUNEZ and HOLLY McGOWAN,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YOUR, INC.;
WATCHTOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA, INC.;
CHRISTIAN CONGREGATION OF
JEHOVAH'S WITNESSES and THOMPSON
FALLS CONGREGATION OF JEHOVAH'S
WITNESSES,

Defendants.

**ORDER GRANTING MOTION FOR
PARTIAL SUMMARY JUDGMENT AS TO
DEFENDANTS' THIRD-PARTY CLAIMS
AGAINST MAX REYES AND MARCO
NUNEZ AND DEFENDANTS' THIRD
AFFIRMATIVE DEFENSE**

WATCHTOWER BIBLE AND TRACT
SOCIETY OF NEW YORK, INC.; CHRISTIAN
CONGREGATION OF JEHOVAH'S
WITNESSES and THOMPSON FALLS
CONGREGATION OF JEHOVAH'S
WITNESSES,

Third-Party Plaintiffs,

vs.

MAXIMO NAVA REYES, MARCO NUNEZ,
IVY MCGOWAN-CASTLEBERRY,

Third-Party Defendant.

ORDER

Plaintiff's *Motion for Partial Summary Judgment as to Defendants' Third-Party Claims against Max Reyes and Marco Nunez and Defendants' Third Affirmative Defense* is **GRANTED**.

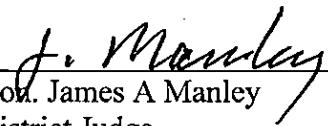
RATIONALE

The controlling statute is Mont. Code Ann. § 27-1-703(4), which states, "On Motion of a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence resulting in death or injury to a person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action." Simply, Defendant's negligence must be comparable to the third party's negligence. In this case, there is no alleged negligence of the third party, instead there is an alleged intentional act of the third party. The correct interpretation of the statute is found in *Groves v. Greyhound Lines, Inc.*, 79 F. Appx. 255, 256-7 (9th Cir. 2003) (District court erred when it allowed the jury to compare intentional acts with negligent acts when determining liability of plaintiff's injuries).

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Defendants are given sixty days to file a separate action against Marco Nunez and Max Reyes. Determination of statute of limitation as to the delay these proceedings caused in allowing Defendant's to file such a claim will be determined at such a hearing after Defendant's complaints are filed. Defendants remain jointly and severally liable to Plaintiffs in this case. Defendant's inclusion of third party defendants do not allow apportionment for negligent acts when compared to intentional acts where that was their basis for joining third parties to this suit through Mont. Code. Ann. § 27-1-703.

DATED this 21st day of August, 2018.



Hon. James A Manley
District Judge

cc: **James P. Molloy**, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
D. Neil Smith, Co-Counsel for Plaintiffs Alexis Nunez and Holly McGowen
Kathleen L. DeSotto / Tessa A. Keller, Co-Counsel for Defendant and Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses
Joel M. Taylor, Co-Counsel for Defendant and Third-Party Plaintiffs Watchtower Bible and Tract Society of New York, Inc., Christian Congregation of Jehovah's Witnesses, and Thompson Falls Congregation of Jehovah's Witnesses
Mathew M. Stevenson / David M. Maldonado, Attorneys for Third-Party Defendant Maximo Nava Reyes
Matthew McKeon, Attorney for Third-Party Defendant Ivy McGowan-Castleberry
08/20/18 SCB