

FORT COLLINS MUNICIPAL COURT

215 N. Mason
Fort Collins, CO 80521
Phone (970) 221 6800

Plaintiffs: Colleen Hoffman, Rick Hoffman, Ann Hunt

v.

Defendant: THE CITY COUNCIL OF THE CITY OF FORT COLLINS, the governing body of a Colorado municipal corporation; and THE ADMINISTRATION BRANCH OF THE CITY OF FORT COLLINS, by and through its City Manager, Darin Atteberry.

Parties without attorney

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Case Number:

2017 CIVIL 01

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS.

Plaintiffs, Colleen Hoffman, Rick Hoffman and Ann Hunt submit this responsive pleading to a Motion For Stay of Proceedings that has been filed with this court by one Kimberly Schutt who has represented herself to be legal Council for the Defendants.

As *pro se* litigants in this matter, the Plaintiffs herein use the plural pronouns (we, us, our) to refer to themselves. Unless otherwise noted, all references to the Plaintiffs in this pleading where a statement of position on any matter is made or inferred indicate a jointly adopted position agreed to by all 3 individual plaintiffs.

INTRODUCTION

On March 27, 2017, a pleading styled as a Motion For a Stay of Proceedings was filed by Kimberly Schutt. This Motion did request that this court ‘stay’ this litigation until April 28, 2017, when, by presumption of Ms. Schutt, rules for litigation for this court would become effective by action of Defendant City Council by virtue of adoption of Ordinance 52-2017, which was filed with Ms. Schutt’s Motion as Exhibit A.

Ms. Schutt’s Motion correctly noted that we took no position on this Motion as it was proposed in conference prior to its filing. The decision not to oppose or agree to the Motion in the short period of time in which Ms. Schutt offered conference was based upon several factors: 1) reasonable uncertainty that this Court may act upon such a Motion, and, further, if it did, what practical effect an Order, if made, would have upon this proceeding, 2) knowledge that City Council, which by Charter has the exclusive authority to establish court procedures would be considering adoption of rules at an adjourned meeting within days, and 3) ongoing work we were doing to define the parameters, if not the actual rules, that would be beneficial for the litigation of this matter with the hope that we might come to mutual agreement with the Defendants and, thereafter, secure Council approval for rules specific to this litigation. Such were and are the circumstances inherited by citizens of Fort Collins following a half Century of inattention to the requirements of our Charter. Against this backdrop, we were approaching the subject of binding procedures cautiously with great attention paid to the general welfare of our community as it would be impacted by our actions.

With this filing of the court, *we do oppose Ms. Schutt’s Motion* upon thorough reflection of the circumstances and preceding events. The reasons underlying our opposition are listed in a subsequent section. What immediately follows here are necessary corrections of misstatements that were made in the Motion.

CORRECTION OF MISSTATEMENTS MADE IN MOTION

Ms. Schutt’s Motion contained many misstatements of fact that must be properly refuted in the public record and, perhaps, for the benefit of this Court when considering any action to follow the Motion. Similarly, Ms. Schutt’s Motion is presumptive of future events that have not occurred and strays in substantive and unacceptable ways from the case that has been made in our Complaint.

To begin, it is noted here that Ms. Schutt submitted her motion in a document that was properly captioned with the names of the Defendants (plural) as we had named them in our petition to this court. However, Ms. Schutt collectively

refers to the Defendants as “the City” and infers that she is representing both Defendants as one entity. Although, we would gladly entertain other perspectives on how to treat the Defendants, the manner in which we have sought to join the parties in this matter appears to be the only reasonable way to do so. This follows from the fact that it is the City Council and only the City Council that we allege to have abused their discretion. We will not lump the Administrative Branch of the City into that entity that abused its discretion, because the Administrative Branch did not make a decision in the Appeal that is complained of here, only City Council did. Similarly, City Council lacks authority or capacity under the City Charter to provide the injunctive relief requested in this action. Only the Administrative Branch has that capacity. Thus, the parties as named in the petition must be dealt with as they have been named and described in the petition. That said, there is, of course, no difficulty present in both Defendants being represented by the same legal counsel.

The statement in the preceding paragraph must be given great weight on the basis of the unique nature of the form of Government the people of Fort Collins have adopted for themselves. By comparison, no one would ever consider lumping the administrative and legislative branches of the State of Colorado together as one defendant. We think that both the executive and legislative branches would take great umbrage to such a circumstance. It is true that, under state law, the City of Fort Collins is a single sub-division of state government, is blessed with astounding authority, and possesses the capacity to sue and be sued in the district courts. Yet, part and parcel of that astounding authority is the ability to arrange its own internal affairs as they pertain to matters exclusively of local control. In this regard, only an arrangement in which the Council may be joined separately from the Administrative Branch is reasonable in this or any other similar suit. Such arrangement and identity of the parties must be recognized by this Court.

Next, we take notice of and preserve in the public record the simple fact that we never did and never would have made our review or acceptance of rules of procedure in general or the adoption of the C.R.C.P. in particular dependent in any way on the outcome of the 2017 municipal election of the City of Fort Collins to be concluded on April 4, 2017. Ms. Schutt has misunderstood us on this point.

The only effect that the municipal election has on this matter is the simple fact that two Councils will be voting on the proposed Ordinance 52. Ms. Schutt clearly intended to imply that we were anticipating some decision-making factors to be dependent upon the results of the election. This is not true. We take exception to the inference.

Next, we take notice of and preserve in the public record the simple fact that we were interested in the results of the anticipated Council votes on 1st and 2nd

reading of the proposed Ordinance 52. The reasons for this should be self evident to this Court, which is presumed to also be interested in the same votes, the results of which will affect the operation of this Court.

The wisdom of our approach in this matter has been born out by the actions that transpired upon 1st reading of the Ordinance on March 28, 2017. These same actions have rendered Ms. Schutt's presumptions as ill-advised. Ordinance 52 was adopted upon first reading in a substantially different form and effect than it was proposed. This happened by virtue of Councilman Ross Cunniff exercising his authority under our City Charter to introduce legislation at his own discretion. The effectivity date of Ordinance 52 was changed upon introductory motion by Councilmember Cunniff by eliminating the impermissibly retrospective application of the Ordinance. We and others had a hand in this outcome, as is our right as citizens to petition our elected representatives.

We state herein that Ms. Schutt's failure to recognize the unconstitutionality of the proposed version of Ordinance 52 as it was attached as an exhibit to her Motion justifiably creates great concern on our part. Her citation of *Abromeit v. Denver Career Service Board*, 140 P. 3d 44 (COA 2005) is precisely the sort of attempt to misplace and misstate our law that we would prefer to avoid in all future installments of this or any other proceeding.

Finally, we state here and make clear for the public record that we have never ceased consideration of what necessary and sufficient rules and procedures might be agreed to by stipulation of the parties for the purposes of hearing this matter in this Court on its merits. Our decision not to stipulate to the wholesale adoption of the C.R.C.P. was a very simple one. Transplantation of the C.R.C.P. would not be good policy in this situation, just as it would not be good public policy for this Court on a more general level. It was presumptuous and dismissive of Ms. Schutt not to co-entertain with us a sub-set of rules that might allow a decision on the merits of our complaint, whether summarily adjudicated or otherwise.

Prior to Ms. Schmitt filing her Motion, we were actively engaged amongst ourselves and with others in an attempt to define rules. We also contemplated a means of ensuring that whatever might be adopted be duly approved by Council upon recommendation by this court in a manner consistent with Article VII of the City Charter. That process was undercut by the filing of Ms. Schutt's motion and the conclusions that can reasonably be drawn from Council's legislative activities on 1st reading of Ordinance 52. All of this transpired without a reasonable meeting of the minds on the subject at hand. This situation was made more perplexing and unfortunate upon learning on the Monday morning following the Friday that Ms. Schutt had filed her Motion and one day before the adjourned

meeting of Council in which Ordinance 52 was intended to be considered that Ms. Schutt was unavailable for the entire week and would not even be checking emails.

REASONS FOR OPPOSITION TO MOTION

With the back-ground we have presented in the previous sections of this pleading, we now enumerate those reasons why the ‘stay’ that has been requested by Ms. Schutt should not be granted.

First, this court has no procedure or stated authority to execute a stay in this matter. This need not be fatal to Ms. Schutt’s proposed Motion; however, pursuant to our Charter, approval by Council would be necessary to give effect to an Order granting a stay. Such approval could have been sought on March 28, 2017 in conjunction with the consideration of Ordinance 52, but it was not. There could be no argument that Council could have acted by Resolution to grant the Court temporary authority. Such a Resolution would have required a single vote and been immediately binding.

Second, better solutions to the undisciplined and *ad hoc* nature of the special circumstances created by our Complaint to this court are to be found.

Third, the grant of a ‘stay’ would deprive us of options to preserve our rights and improve our position in this litigation during the pendency of the stay. We could not, for example, have representation enter an appearance in this matter, file Motions for determination of matters of law or request leave to amend our petition if that should prove necessary in the extremely ill-defined environment we have necessarily entered into in order to protect our rights.

Fourth, it has become extremely clear that the operation of this court is virtually monopolized by the Office of the City Attorney. We have seen, as a practical matter, that only the Office of the City Attorney may enter legislative action for consideration by City Council; that the Municipal Court Judge, by her own admission, relies upon the Office of the City Attorney for the formation and application of procedures for her Court; and that City Council is unflinchingly trusting of anything it is told by the City Attorney and deputy City Attorney. This situation is generally unacceptable as seen from the perspective of the public interest of a democratic society, but it also bodes ill for our ability to pursue a just and reasonable outcome on the merits of our claims. Indeed, the situation lies in series with and consistent with the circumstances that controlled earlier hearings from which this matter arises.

Fifth, we would find disagreement with any Order of this Court issued in response to a Motion that is laden with misinformation as has previously been explained.

CONCLUSION

In conclusion, we wish to impress upon this Court and the greater community that we are bound by the ethics of good citizenship in this matter. We have already been characterized as disagreeable by Ms. Schutt and our actions have been deemed 'unfortunate' simply because we were not accepting of the efficacy and wisdom of wholesale transplantation of the C.R.C.P. into this Court. We resent this characterization and the underlying assumptions that citizens are always wrong if they disagree with the actions of their government. To the contrary, we feel we have already done our community some service by instigating actual action by the municipal corporation in the area of Municipal Court rule making and resisting unconstitutional legislation. We are acting here with what we believe to be the best interests of our community placed at the highest level on our list of priorities and we will not suffer any insinuation to the contrary.

Respectfully submitted this 3rd day of April, 2017

Colleen Hoffmann

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Address of Lead Plaintiff

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