

INTRODUCTION AND PROCEDURAL POSTURE

2. PFA filed its Complaint on November 18, 2016, alleging two claims for relief: (1) trespass and (2) private nuisance. PFA's Complaint alleges generally that Mr. Gilmartin has interfered, and continues to interfere, with an easement PFA uses for access to its training facility located at 3400 West Vine Drive, Fort Collins, Colorado. PFA seeks injunctive relief from the Court in the form of a permanent injunction enjoining Mr. Gilmartin from interfering with PFA's rights under the easement.

3. Mr. Gilmartin filed his "Answer and Counterclaim to Complaint" on December 13, 2016. Mr. Gilmartin filed his "Amended Answer and Counterclaim to Complaint" on December 22, 2016, which corrects a pagination issue with his original filing. In his Amended Answer and Counterclaim to Complaint, Mr. Gilmartin denies most of the allegations raised in the Complaint. For the purposes of this Motion, PFA accepts Mr. Gilmartin's Amended Answer as containing general denials as to all of the allegations raised in the Complaint.

4. Mr. Gilmartin's Counterclaims, however, are impossible to decipher and have not been stated sufficiently to enable PFA to properly prepare a responsive pleading.

LEGAL ARGUMENT

5. C.R.C.P. 8(a) requires that each "pleading which sets forth a claim for a relief whether an original claim, counterclaim, cross-claim, or a third-party claim, shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." The purpose of a Complaint filed under Rule 8 is to provide the receiving party with "reasonable notice" of the general nature of the matter presented. *Vance v. St. Charles Mesa Water Ass'n*, 460 P.2d 782, 783 (Colo. 1969); *DiChellis v. Peterson Chiropractic Clinic*, 630 P.2d 103, 105 (Colo. App.

1981). While *pro se* pleadings are generally construed liberally, this principle has its limits because "the Court cannot take on the responsibility of serving as the litigant's attorney in constructing arguments and searching the record." *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

6. Correspondingly, when a party has not sufficiently provided "reasonable notice" of its claims to another party, C.R.C.P. 12(e) permits a party, before filing a responsive pleading, to file a motion requiring a counterclaim plaintiff to make a more definite statement of his counterclaim(s). Specifically, the Rule provides that a party "may file a motion for a statement in separate counts or defenses or for a more definite statement of any matter that is not averred with sufficient definiteness or particularity to enable the party properly to prepare a responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just." C.R.C.P. 12(e).

7. Here, Mr. Gilmartin's Counterclaims consist of one separately enumerated paragraph, which is largely unintelligible and which does not satisfy the requirement of a "short and plain statement of the claim" showing that Mr. Gilmartin "is entitled to relief." *See* Amended Answer and Counterclaim to Complaint, at p. 6, ¶ 1.

8. Specifically, the Counterclaim alleges as follows:

Defendant Counterclaims match titled asserted allegations as Plaintiff's. Basis in denials, as elaborated for each in Defendant answers.

Here in, any unnamed violations of rights, including potential violation of Constitutional rights, not elaborated may exist as sufficient facts were not available upon filing of this Answer and Counterclaim. Related rights for redress are not waived.

Id.

9. PFA has not received "reasonable notice" of what specific "unnamed violations of rights" occurred, or what specific "Constitutional rights" have been violated, particularly since they are admittedly "not elaborated" in the Counterclaims.

10. By ordering a more definite statement, the Court will not only hold Mr. Gilmartin to the notice pleading requirements under Rule 8(a), but it will also avoid the more severe consequence of dismissal for failing to state a claim under Rule 12(b)(5).

11. A Proposed Order granting this Motion is submitted herewith.

WHEREFORE, Plaintiff/Counterclaim Defendant PFA respectfully requests that the Court order Defendant/Counterclaim Plaintiff Mr. Gilmartin to file an Amended Counterclaim containing a more definite statement of his counterclaims that comports with Rule 8(a) and contains a "short and plain statement" of each claim showing that Mr. Gilmartin "is entitled to relief."

Respectfully submitted this 29th day of December, 2016.

IRELAND STAPLETON PRYOR & PASCOE, PC

*SIGNED ORIGINAL ON FILE AT THE OFFICE OF
IRELAND STAPLETON PRYOR & PASCOE, PC*

/s/ Benjamin J. Larson

Kelley B. Duke, #35168

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Attorneys for Poudre Fire Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2016, a true and correct copy of the foregoing **UNOPPOSED MOTION FOR MORE DEFINITE STATEMENT PURSUANT TO C.R.C.P. 12(e)** was filed via CCEF and served via U.S. Postal Service, first class mail, postage prepaid and addressed as follows:

Keith J. Gilmartin
3316 West Vine Drive
Ft. Collins, CO 80521

And served via email to:

keithgil2@gmail.com

*SIGNED ORIGINAL ON FILE AT THE OFFICE OF
IRELAND STAPLETON PRYOR & PASCOE, PC*

/s/ Barbara Biondolillo

Barbara Biondolillo