COUNTY COURT , LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970)494 3720	FILED IN COMBINED COURTS LARIMER COUNTY COLORADO 2017 FEB -7 AM 11:57 DATE FILED: February 8, 2017 CASE NUMBER: 2016CV31096
POUDRE FIRE AUTHORITY vs. Defendant(s): **KEITH GILMARTIN**	C OURT USE ONLY
Attorney or Party Without Attorney: **DEFENDANT- KEITH GILMARTIN-PRO SE** 3316 W VINE DR. FORT COLLINS, CO 80521 Phone Number: (970) 412 6906 E-mail:keithgil2@gmail.com	case Number: **16cv31096** Courtroom **3C**

MOTION TO DISMISS FOR FAILURE TO NAME INDESPESIBLE PARTY

Defendants Keith Gilmartin, Pro Se. respectfully submit this motion seeking an Order dismissing Plaintiff's claims for relief asserted against him in the above-entitled action pursuant to C.R.C.P. Rule 12(b)(7) .

The basis for this motion is set forth in the accompanying MEMORANDUM OF FACTS

Respectfully submitted,

Keith Gilmartin

Keith Gilmartin

This day:
February 6, 2017

MEMORANDUM OF FACTS

IN SUPPORT OF

MOTION TO DISMISS FOR FAILURE TO NAME INDESPESIBLE PARTY

Defendant respectfully submits this MEMORANDUM of FACTS in support of their MOTION TO DISMISS-Poudre Fire Authority claim in the captioned action, case number **16**CV31096-pursuant to C.R.C.P.12

Defendant encapsulates the case with following:

DEFINITIONS

PFA: POUDRE FIRE AUTHORITY

CITY: CITY OF FORT COLLINS

IGA2014: COMPLIANT EXHIBIT A

IGA2016: COMPLIANT EXHIBIT D

DEED: The document conveying rights to CITY OF FORT COLLINS in 1991 per COMPLAINT EXHIBIT B

EASEMENT: property, grounds, conveyances as described in COMPLAINT EXHIBIT B

EASEMENT

1. All COMPLAINT issues are claimed in actions having taken place with basis in on and about EASEMENT(COMLAINT EXHIBIT B)
2. EASEMENT was conveyed to CITY OF FORT COLLINS from Defendant and now deceased parents as evidence in in 1991(COMPLAINT Item 7).
3. EASEMENT was conveyed to CITY of FORT COLLINS with no further modifications to convents and agreements. Modification was mutually made for correction of "Section/Township and Range.
4. CITY maintained continuous ownership as 'dominant owner'. Defendant maintained continuous ownership as 'subservient owner' since conveyance. Defendant intimate presence

and participation in the in about the easement and contiguous property was continuous since 1995

5. Historically and as a matter of records, the acquisition of the EASEMENT by the CITY is directly related to CITY OF FORT COLLINS acquisition of a lease from COLOARADO STATE UNIVERSITY (CSU) for the present 28 acre(+/-) 'land lock' parcel, site of the PFA facility. Further, a concurrent conveyance of an access over contiguous CSU land to a public street (Laporte Avenue) was not part of the agreement with the CITY, aAcquisition of the Defendant's EASEMENT was a contingent precursor for the lease.

PLAINTIFF

6. The Plaintiff was only a permitee, for use of EASEMENT, for the duration of time frame of events listed in COMPLAINT; And prior.
7. Plaintiff's COMPLAINT, report Plaintiff's interpretation of events of the various encounters from a perspective and initiative acquired while permitee, from the IGA20**16** and. Evidenced de facto by the close interim between agreement creation and COMPLAINT SERVICE.
8. It is evidenced in the COMPLAINT that all claimed transgressions elaborated have occurring 'dates in time' PRIOR to the 'Effective' date of the IGA/20**16**. (IE: while ownership quartered only with the CITY.)
9. Plaintiff's use of EASEMENT and associated ancillary vehicular traffic was proportion to the expanding category of uses and subsequent buildings added to accommodate or allow for such , over the life of the facility since inception . Additionally efforts at restriction of non-facility related traffic (IE: lost and sight seeing)were thwarted by perspectives and actions maintained, conveyed to Defendant and PFA – by the CITY.
10. Plaintiff's COMPLAINT, filed against Defendant, are based in Plaintiff's belief, and right to do' so as expressed in COMPLAINT-Item 9.

PFA AND CITY- RELATIONSHIP

11. Plaintiff's COMPLAINT Item 9 references "INTERGOVENMENTAL AGREEMENT BETWEEN CITY OF FORT COLLINS AND PLANTIFF POUDRE FIRE AUTHORITY"

12. Plaintiff's COMPLAINT seeks relief based under proposed authority of recently entered into IGA/20**14,** of rights to do so, is elaborated therein to proceed from IGA20**16**. Both being an INTERGOVERNMANTAGREEMENT between common governmental entities; PFA and the CITY.

13. While "independent" is touted for and by each governmental entity, evidence reveals in the agreement pages a general interdependence between the CITY and the PFA via inextricably entangled by finance, service exchange and but most critical - leadership.

14. Leadership arrangement evidenced in the IGA/20**14** (COMPLAINT EXHIBIT A). More specifically by CITY representation on the PFA BOARD OF GOVERNORS (COMPLAINT EXHIBIT A-GENERAL PROVISION 1.4) . Presently the representation by the CITY is three of the five PFA BOARD members.(Defendant EXHIBITS 5(included)

IGA2016 Validity

The Whole Agreement

15. That document's validity and "rights" transfer, is questioned, in whole.

    a. Search for evidentiary support for implementation authority regarding the IGA20**16**, any further then consideration of the signatures on the IGA, fails 'due diligence'. Transfer of rights in EASEMENT to PFA was from CITY of FORT COLLINS.

16. Despite Defendant 'due diligence "search (awareness given not found does not equal non existence) There is an search result expectation for appropriate CITY Charter procedures taken, meeting record keeping and any considerations historically coincidental to the significance and standing of such an IGA

17. CITY LEADERS failed provide documentation having been duly informed and request of, by public announcement at ', televised 'public meeting' and correspondence on December 8, 2016 and efforts thereafter .

18. The total, joint effort, as governmental entities, on the part of The CITY and PFA, taken as a whole , deserves inspection. Add, actions taken in inception of the IGA 20**16** and COMPLAINT, so closely timed and the suit, as an egregious example of false claims litigation, is presented as bearing witness to a 'potential claim of conspiracy' of co-mingled governmental entities

Selected Parts

19. If IGA20**16** valid in creation, then, in the alternative validity is questioned for 'some'of the premises of 'authorities'/'rights' not 'explicitly or implicitly' conveyed in the original DEED of 1991.

20. Included in the IGA/20**16** transfer for 'care and concern' of the EASEMENT , was a clause/interpretation of an 'authority'/'right'- not given, specifically or implied, to the CITY in the original DEED of EASEMENT (PLAINTIFF COMPLAINT EXHIBIT B),.

    WHEREAS

    The 'right' seemly transferred, and specifically stated in EXHIBIT D Fifth paragraph:

    "WHEREAS, the Easement is for public use"

    Phrase is an interpretation, not a wording in the original EASEMENT (EXHIBIT B). Grounds and standing lie with original EASEMENT owner holder, CITY OF FORT COLLINS.

21. Enumerated actions ascribed to Defendant, in COMPLAINT, are based on expressed/voiced beliefs, brought forth from CITY OF FORT COLLINS, held and acted upon, by PFA, as permitee, in general and acted upon in the course of happenings of some COMPLAINT enumerated events; The beliefs being based in a broadening of the scope of 'right' from the phrase "right of way for access " and equally broadening from assumptions for the "right of way for utilities".

The belief -to be able to do so and act -is as evidenced in the details of various law enforcement encounters documented in the COMPLAINT. A necessary step therefore is determination of the source and validity of basis for standing.

22. In the process of actions taken described in the COMPLAINT, various where direct violations of Defendant's Constitutional rights. Most notable was mis-representation of facts, to the law enforcement of pertinent facts, thus interfering with my rights as property owner.

OTHER

23. COLORADO CONSTITUTION Amendment 41 Section 1(a)(b)(c). Where a decision of a court as to validity, in whole or part, of ordinance cannot result in further proceedings beyond court where his acquittal occurred. Garcia v. City of pueblo, 176Colo. 96 489 P.2d 200 (1971)

    By extension: ruling on validity necessary for full array of protection of Defendant's rights, Without CITY as party ruling cannot occur on validity, in full or part of IGA20**16**.

24. CRCP RULE 12 (a)(1) In his absence complete relief cannot be accorded among those already parties.

25. Absence original owner of DOMINT EASEMENT, the CITY, will affect the Defendant's ability to protect his property without potential exposure to subsequent litigation. (Potts v. Bordon , 34 Colo. App. 128 525 P.2d 500 (1974)

26. A judgement which adversely affects an indispensable party who is not joined is void (Hidden Lake Dev.Co. v District Court 183 Colo. **16**8 515 P.2d 632 91973)

27. Where both Mortgagor an mortgagee are parties in interest , both should join in suit. Reed Auto Sales , Inc. v Mason, 6**16** p.2d 994 (Colo. App. 1980) Due diligence search of pending suit in Larimer District Court would provide second indispensible party presently pending.