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LARIMER COUNTY COLORADO

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<p>COUNTY COURT , LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970)494 3500</p> <hr/> <p>City of Ft Collins and Poudre Fire Authority vs. Defendant(s): KEITH GILMARTIN</p>	<p>DATE FILED: May 31, 2017 CASE NUMBER: 2016CV31096</p> <p>COURT USE ONLY</p>
<p>Attorney or Party Without Attorney Name and Address: DEFENDANT- KEITH GILMARTIN-PRO SE 3316 W VINE DR. FORT COLLINS, CO 80521</p> <p>Phone Number: (970) 412 6906 E-mail:keithgil2@gmail.com</p>	<p>Case Number: 16CV31096</p> <p>Courtroom 3c</p>
<p style="text-align: center;">DEFENDANTS OBJECTION TO PLAINTIFFS' TO MOTION FOR PARTIAL SUMMARY JUDGEMENT</p>	

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Pursuant to C.R.C.P 56] Defendant, _appearing *pro se*, submits this opposition to the pending Motion for Partial Summary Judgment,(MPSJ), to demonstrate to the Court that there is a genuine issue of material fact in this case that precludes the entry of a judgment as a matter of law.

The Supreme Court holds that trial courts may “declare rights, status, and other legal relations,” section 13-51-105,C.R.S. (2005), when relief would “terminate the controversy or remove an uncertainty,” section 13-51-109, C.R.S. (2005).

This opposition is based upon and supported by the following Memorandum of Points and Authorities, the pleadings and papers on file, the affidavits and exhibits attached hereto, and any argument that the Court may allow at the time of a hearing.

MEMORANDUM OF POINTS AND AUTHORITIES,

INTRODUCTION

1. In this action, there is a written agreement; A Deed of Easement explicitly expressing 'limits and extents' in discription by words, the "communicative content" of the agreement, between parties of a conveyance for a strip of land described; With an exhibit of metes and bounds and drawing.

(Lawrence B. Solum, Communicative Content and Legal Content, 89 Notre Dame Law Review, 479 (2013)) The communicative content of a sentence is the proposition that is communicated by the sentence.
2. The "plain language" agreed to by the 'original agreement parties' comes into question, now this 2nd time since 1991. There are now issues of dispute with the 'plain language' of the Deed of Easement (Deed) that from the beginning that Plaintiff seems not content to live with for a 1/4 century.[Exhibit- Plaintiff MOTION FOR PARTIAL SUMMARY JUDGEMENT (MPSJ) 'C']
3. The consumation and recording of the Deed, is under attack for reinterpetion by 'minds' not present at its inception; Except an original grantor,-Defendant and for, the whole truth, on Plaintiffs witness list the mention Helen Matson; One of the original signature verification Notary
4. A representation of interpetaion of the Deed of Easement (Deed)was request by Defendant from Plaintiff-City of Ft Collins prior to initation of this action. Request , was answered that the Deed was worded "broadly (Exhibit MPSJ 1). That discription lasting till presentation by Plaintiffs' creative counsel extolls a new interpetation of "plain language". Plaintiffs' now seeks a decleration that its interpetation in the MPSJ of the "plain language " of a Deed of Easement is to be construted equal to its presentation to the court implisit within this MPRJ; Thus usuping Defendant's right and that of the courts, by not providing time, quality or quantity to a proper discovery.

DEFENDANTS DISPUTED ISSUES TO PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

AFFIDAVIT OF TOM DEMINT

1. Affidavit Points 4&5- "The easement extends West Vine Drive

Defendants dispute of" material fact":

- a. " West Vine Drive ends at the bridge/box culvert of the irrigation ditch
- b. Category for the MPSJ Exhibit E –property is labeled by Plaintiff as a "easement" contrary to Plaintiff's assertion

2. Affidavit Point 6

Repeated claim- Vine Drive was extended by installing a paved street

Dispute of" material fact":

- a. Vine Drive was not extended by virtue of the "paving".
- b. Documentation of the extent of County Rd 48/W. Vine Dr. is an issue of discovery interrupted. There is NO 'street dedication' for the easement.

3. Affidavit Point 7

It is unclear as to the weight and implication expected by Plaintiffs extolled "good neighbor"/not burdening gestures with respect to easement as what is to be expected with use/behavior coincident with non-possessory responsibility "care" for the mutually shared "easement" and with apparent extolling virtue of 'claim of achievement for having a posted 25mph sign.

While posting of sign is indicative of a yet unclear motive, it is certainly not effectively adhered to enough to 'NOT cause neighbor complaint'. Until a basis is presented appropriate to concept being defended -claim is "Defendants noting is of no consequence direct towards "material fact".

4. Affidavit Point 7 –

Plaintiff claims interference with use of the easement

Defendant claims dispute of "material fact":

Given :

- Plaintiffs' issue with Defendant, per AMENDED COMPLAINT and
- supported by claims listed in Plaintiffs Amended Complaint towards Plaintiff,

Plaintiffs' contention that the "easement is a "public street" in conjunction with a close examination of Plaintiffs' submissions listed in the AMENDED COMPLAINT provide 'prima fascia' evidence that Defendant's action are congruous with behavior for "on a public street" within the context of the specific event.

STATEMENTS OF UNDISPUTED FACTS (SUF)

1. An affidavit presented by the Plaintiff, authored by Tom Demint has atested to several matters of dispute "genuine issue(s) of material fact " without further support. The significance of which are therefore just apostatized as fact; As such must be considered as opinion
2. Under Plaintiffs' AMENDED COMPLAINT/THIRD CLAIM FOR RELIED(F) Item #26 is perceived a significant falsehood.

Colorado State University (CSU) acquired a portion of Defendant's property in 13CV31044 Larimer District Court.; Within a portion of the Deed of Easement conveyance was a part within the boundaries of the Easement conveyed to the City of Fort Collins. Any adjudication must therefore included the additional party. (Exhibit-Plaintiff-Bates 103/S.E. corner of Plaintiffs easement.

Defendant objects to MPSJ's lack of " inclusion for all necessary parties."

3. Plaintiffs' MPSJ/ INTRODUCTION (Line 3) claims "The *plain language* of the deed...."
Defendant questions- if the Deed of Easement was 'in fact' "plain language" why are there two special counsels and the cadre for the Plaintiff-City and potential expenditure of over \$40, 000 dollar (estimated using) attempting to resolve the disparity of the plain meaning of the plain language?; Exhibit MPSJ 2

Why? (rhetorical) Because plaintiff has chosen to apply creative grammatical modifications' on to the wordings, in the MPSJ and then add more growth/ expanding further interpretation of rights.

Justification then given to expanded interpretation with case law and requests court to rule same as sufficient for adjudication . In all, usurping the place of the court to “examine the instrument.

To ascertain the extent of an expressly created easement, *courts examine the instrument* conveying that right to determine the parties' intent. *Allen v. Nickerson*, 155 P.3d 595, 600 (Colo. App. 2006) (citing *Lazy Dog Ranch v. Telluray Ranch Corp.*, 965 P.2d 1229 (Colo. 1998)).

The extent of an expressly created easement (i.e., the limits of the privileges of use authorized by the easement) is determined by interpreting the conveyance instrument. See, e.g., *Bijou Irrig. Dist.*, 804 P.2d at 183 (examining the statute creating the easement); Restatement (Third) of Property § 4.1(1)(a).

Where the instrument is a deed, we construe the instrument as we would any deed. Our paramount concern in construing a deed is to ascertain the intentions of the parties. See *Notch Mountain Corp. v. Elliott*, 898 P.2d 550, 557 (Colo.1995); *Percifield v. Rosa*, 122 Colo. 167, 177, 220 P.2d 546, 551 (1950).

4. MPSM/SUF –Item6

- a) City and been joined to this action in conjunction with an Intergovernmental Agreement created between the two entities. There is no objection , by Defendant to a creation of a Governmental Agreement between the entities, per se. Procedures creating validly for the 2016.(Plaintiff Exhibit MPSJ D)are still in dispute. The court has standing to construe the validity of that agreement.

Defendant objection - Plaintiffs plead validity of Poudre Fire Authority IGA of 2016. Matter is of “material fact” Matters necessary for refuting claimed standing would not be given air without availability for discovery.

- b) Land Lease between Poudre Fire Authority(Authority) and CSU for the land on which the Authority has constructed it facility, was inconjunction with created a “cooperative program” between parties an enumaerated conditions relative to the Easement. [Exhibit MPSJ 11] It is Defendant assertion Lease as has standing for extrinsic interpretation towards Deed.

5. MPSJ/ARUGMENT/Paragraph 2 sentence 1

with reference to the specific words in the Deed of Easement

"Here, it cannot be disputed that the Deed of Easement expressly grants an Easement to the City and its assigns across the Gilmartin Property. Ex. C, Deed of Easement (titled, "Deed of Easement")"

Defendant here states, with authority as grantor , *it is disputed*; For Plaintiffs' transubstantiation of "plain language"

It is prima fascia -Not -"the Deed of Easement ... grants"; Rather "Grantor hereby grants, sells and conveys

It is prima fascia -Not - "and its assigns across the (property); Rather "and assigns a perpetual easement and..."

Plaintiffs' self contradictions:

Refer to MPSJ/ARUGMENT/Paragraph 2 sentence 5

Here Mr. Gilmartin and his parents conveyed...."

Refer to MPSJ SUF5

Mr. Gilmartin and his parents, ... granted, sold and conveyed to the City

6. MPSJ/ARUGMENT/Paragraph 2 sentence 2

Mr. Gilmartin admits the Deed of Easement granted the city a perpetual easement. Answer ¶ 7.

Defendant here states, with authority as grantor , *it is disputed*; for Plaintiffs' transubstantiation of "plain language"

Not "Deed of Easement granted the city a perpetual easement'; Rather "Gilmartin (family) assigns a perpetual easement with ..." MPSJ Exhibit C

7. MPSJ/ARUGMENT/Paragraph 2 sentence 7

"The Deed of Easement contains no limitations on the public improvements the City can install or how those public improvements can be used. See SUF ¶ 7. Consequently, construing the plain language of the Deed of Easement, Mr. Gilmartin unambiguously conveyed to the City an easement for a public street across the Gilmartin Property."

Defendant here states, with authority as grantor , *it is disputed*; for Plaintiffs' transubstantiation and self interpretation of " of "plain language". Specifically :

Not –"contains no limitations on the public improvements; Rather specifically, and just"(including without limitation, street utilities, sidewalk and drainage)"

Nothing in the Deed conveys Plaintiffs' creative addition of the "use" concept and interpretation of the Deed's "plain language"- .."or how those public improvements can be used "

Alternatively" the issue of 'use' with regard to the easement is reserved beyond access.

Our (the courts) paramount concern in construing a deed is to ascertain *the intentions of the parties*.(not party-singular) See Notch Mountain Corp. v. Elliott, 898 P.2d 550, 557 (Colo.1995); Percifield v. Rosa, 122 Colo. 167, 177, 220 P.2d 546, 551 (1950).(Defendant emphasis added)

8. MPSJ/ARUGMENT/Paragraph 3 sentence 1

"While the Court need not look at extrinsic evidence to grant the relief requested, such evidence unequivocally supports the conclusion that the Deed of Easement conveyed an easement and right of way for a public street across the Gilmartin Property."

Defendant duly notes and applauds Plaintiffs' generosity towards court's time- .with respect to "the Court need not look at extrinsic evidence"

Defendant here states, with authority as grantor , *it is disputed*;

Not "..easement and right of way for a public street; [Exhibit MPSJ 3->8]

Nothing in the Deed conveys Plaintiffs' creative addition of the nebulous adjective "public"

Nor conveys any rights under the category of "use".

Our (the courts) paramount concern in construing a deed is to ascertain *the intentions of the parties*.(not party-singular) See Notch Mountain Corp. v. Elliott, 898 P.2d 550, 557 (Colo.1995);

Percifield v. Rosa, 122 Colo. 167, 177, 220 P.2d 546, 551 (1950).(Defendant emphasis added)

9. MPSJ/ARUGMENT/Paragraph 3 sentence 2

First, the physical location of the Easement is such that it extends West Vine Drive, a public thoroughfare, to the Training Center.[SUF 8., MPSJ 3->8]

Reference, also above Affidavit Point 6

Another fine example or "plain language"-West Vine Dr. is a not thoroughfare public road, even a street, further defined as a "cul de sac" County Rd 48 assigned as Vine Dr. ends at the bridge at the irrigation canal; From which point the "right of way for access" provides "a driveway" for ingress and egress the Authority's leased property.

[Exhibit MPSJ ' C', MPSJ-3->8]

THOROUGHFARE?

The term means, according to its derivation, a street or passage through which one can fare, (travel;) that is, a street or highway affording an unobstructed exit at each end into another street or public passage. If the passage is closed at one end, admitting no exit there, it is called a "cul de sac."

See Cemetery Ass'n v. Meninger, 14 Kan. 315; Mankato v. Warren, 20 Minn. 150 (Gil. 128); Wiggins v. Tallmadge, 11 Barb. (N. Y.) 462.

Law Dictionary(Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed):
<http://thelawdictionary.org/thoroughfare/> title="THOROUGHFARE

#47. **Driveway** - An access or point of entry and/or exit that is not a public street, road, or highway. (Colorado Department of Transportation (CDOT) Access Managers in 2011.)
[MPSJ EXHIBIT 8&9]

CONCLUSION

For the foregoing reasons, Defendant requests the court:

deny Plaintiffs' MOTION FOR PARTIAL SUMMARY JUDGEMENT,
allow continuance of Discovery process.

And if necessary move Court date forward for appropriate adjudication of the matter.

The moving party has the burden of establishing the absence of a genuine dispute of material fact.

Celotex Corp. v. Catrett, 477 U.S.317, 323 (1986).

“Conversely, to avoid summary judgment, the nonmovant need only designate specific facts showing that there is a genuine issue for trial.” *Makaeff v. Trump Univ., LLC*, 736 F.3d 1180, 1189 (9th Cir.2013)

(citation and quotation marks omitted).

The court must view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in the nonmovant’s favor.

Clicks illiards Inc.v.Sixshooters Inc., 251 F.3d 1252, 1257 (9th Cir.2001).

“Where conflicting inferences may be drawn from the facts, the case must go to the jury.” *Pyramid Technologies, Inc.v.Hartford Cas.Ins.Co.*, 752 F.3d 807, 818 (9th Cir.2014) (citation and quotation marks omitted).

I declare under penalty of perjury that any statements and/or claims made in the foregoing is true and correct to the best of my knowledge and here submit the above.

Dated this May 30, 2017

Respectfully submitted by:

A handwritten signature in black ink that reads "Keith Gilmartin". The signature is written in a cursive style and is positioned above a horizontal line.

Keith Gilmartin

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing
OBJECTION TO PLAINTIFFS MOTION FOR PARTIAL SUMMARY JUDGEMENT
on the date and parties and addressed as below:

via:

1st class mail postage paid in full
~~Delivering in person~~
Email
CCES

Addressed:

Ireland Stapleton Pryor & Pascoe, PC
717 17 ST. Suite 2899
Denver, Colorado 80202

Att; Duke/Larson

this May31, 2019,



Keith Gilmartin