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ST. JOHN'S UNIVERSITY

# Summary

The initial Motion for Partial Summary Judgment(MPSJ) involve a dispute over the interpretation of wording of rights conveyed in a Deed of Easement between the litigant parties.

Plaintiff's Motion for Partial Summary Judgment(MPSJ) continued by virtue of Plaintiff Reply in Support Motion for Partial Summary Judgment (REPLY). Defendant, here, responds in a summary opposition to the REPLY. Plaintiff's position maintained a series of arguments, for their position and wants and extolled the faults of Defendant's initial Opposition to Plaintiffs' MPSJ.

The Deed of Easement has apparently become unclear as to limits and extents of rights, to at least one of the two signatories- the 'officials in succession for The City of Ft Collins, after conservatively 20 years .(1991-> 2011- MPSJ -#11)

. Defendant believes it has raised 'a genuine issue of material fact by its manifested disagreements with the claims and burdening practices and the relationship to the interpretation of the words of the Easement conveyance. Justification for adjudication by the courts for ambiguity in the "plain language" has already been submitted

If an instrument is clear in its terms, complete, and free from ambiguity, extrinsic evidence will not be permitted to modify it. *American Mining Co. v. Himrod-Kimball Mines Co.*, 124 Colo. 186, 235 P.2d 804, 806 (1951).

Plaintiff continues to postulated their interpretation of the Deed of Easement. Their belief, demonstrated as recently as their initial points under Argument in their REPLY. Defendant as the only live signatory to the agreement continues to disagree. Disagreement point by point has been submitted .Defendant refuses to rehash the individual point of the submission of Plaintiff Amended Complaint and Defendant's responses via Motions and Affidavits( in case Plaintiff didn't notice) Points of refutation by Defendant are felt are 'prima facia' That " genuine issue of material fact exists" such "genuine issue" and should be sufficiently cover the requirement of "must by affidavit or otherwise.."

Further, a genuine issue of material fact cannot be raised simply by allegations of pleadings or argument of counsel. Rather, in response to a motion for summary judgment, an adverse party must by affidavit or otherwise set forth specific facts showing there is a genuine issue for trial. C.R.C.P. 56(e); *Reisig v. Resolution Trust Corp.*, 806 P.2d 397 (Colo.App. 1991). *Brown v. Teitelbaum*, 830 P.2d 1081, 1084-85 (Colo. App. 1991).

As the "instrument" (Deed of Easement)apparently "is.. (not)..clear ....".  
Extrinsic evidence has and will be provided by Defendant in his favor.

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Additionally, with emphasis for extrinsic evidence, it is requested that judicial notice be taken by the Court of verbal notation during the Temporary Restraining Order hearing in the Larimer County District Court on June 8, 2017. As part of the present litigation, that an exception was taken by the Court in regard to an aspect of 'use' of the easement by Plaintiffs'- parking on the easement. Appropriate documentation is forth coming within the schedule of Larimer County Court Judicial Administration.

## CONCLUSLION

Summary judgment is (*not*) appropriate where the record before the court—pleadings, depositions, answers to interrogatories, admissions on file, and any affidavits submitted with the motions—demonstrate that ~~(no)~~ (*a*) genuine issue of material fact exists and that the moving party(*not*) is entitled to judgment as a matter of law. C.R.C.P. 56(c); Franklin Bank, N.A. v. Bowling, 74 P.3d 308, 311 (Colo. 2003).

Where affidavits show conflict, there is genuine issue of material fact which should be determined by a fact-finding body after both parties have presented evidence in support of their respective position. Mc Kinley Constr. Co. v Dozier, 175 Colo. 397, 487 P.2d 13359(1971

Where for Defendant respectfully requests denial of an Order granting Partial Summary Judgment in this matter.

Respectfully submitted this June 16, 2017



KeithGilmartin

# CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing

OBJECTION TO PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGEMENT  
on the date and parties and addressed as below:

via:

~~1<sup>st</sup> 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

Emailed

Benjamin Larson [BLarson@irelandstapleton.com](mailto:BLarson@irelandstapleton.com)  
Kelley B. Duke <[KDuke@irelandstapleton.com](mailto:KDuke@irelandstapleton.com)>

this June 16, 2017,



Keith Gilmartin