

<p>Fort Collins Municipal Court, Larimer County, Colorado</p> <p>Court Address: 215 N. Mason St., 1st floor P.O. Box 580 Fort Collins, CO 80522</p> <p>Court Phone: 970-221-6800</p> <hr/> <p>PLAINTIFFS: Eric Sutherland; J&M Distributing, DBA Fort Collins Muffler and Automotive</p> <p>v.</p> <p>DEFENDANTS: 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</p> <p>Indispensable Party: Craig Russell</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Civil Case No.: 2018-CIVIL-01</p>
<p>ORDER ON PENDING ISSUES</p>	

This matter is before the Court on a number of issues, including Plaintiffs’ filing of an Amended Complaint without having filed a motion to amend their complaint, and Plaintiffs’ Motion for Expansion of Time to respond further to the City’s Motion to Dismiss. After having reviewed the file the Court now FINDS and ORDERS as follows:

I. Amendment of the Complaint

Plaintiffs filed their original Complaint on April 3, 2018. Defendants filed their Motion to Dismiss on April 25, 2018, to which Plaintiffs’ response was due May 16, 2018 (see C.R.C.P. 121, Section 1-15 (1)(b)). No such responsive pleading was filed on May 16, 2018; instead, on May 17, 2018, Plaintiffs filed a Combined Motion for Disqualification of Judge pursuant to C.R.C.P. 97 and Motion for Expansion of Time to respond to the Motion to Dismiss. On that same day, Plaintiffs also filed an Amended Complaint, but did not file a motion to amend the complaint.

Pursuant to C.R.C.P. 15(a), “[a] party may amend his pleading once as a matter of course at any time before a responsive pleading is filed . . . [o]therwise, a party may amend his pleading only by leave of court or by written consent of the adverse party.” This is not merely a “technical” or “make work” requirement – amending pleadings once a response to them has been filed has the potential to create a confusion of deadlines and pending issues and a duplication of work. However, Rule 15(a) also provides that leave to amend shall be “freely given,” and numerous cases stand for the proposition that the filing of a motion to dismiss does not waive a plaintiff’s right to amend his or her complaint as a matter of right. *See, e.g., Renner v. Chilton*, 351 P.2d 277 (Colo. 1960); *Grear v. Mulvahill*, 207 P.3d 918 (Colo. App. 2009). Plaintiffs created substantial confusion in this case by filing both an

amended complaint and a partial response to the Motion to Dismiss; nevertheless, given that Defendants filed a motion to dismiss and not an answer, Plaintiffs were entitled to amend their complaint as of right under the Rule. Given the holiday weekend, for purposes of counting time for the submission of their responsive pleading, the Court will deem service of the Amended Complaint on Defendants to have been accomplished as of Tuesday, May 29, 2018. Going forward, all parties are expected to comply with C.R.C.P. 15 and all other relevant Rules of Civil Procedure.

II. Plaintiffs' Motion for Expansion of Time

Given the Court's ruling on the amendment of the complaint, the Motion for Expansion of Time is effectively MOOT and is DENIED AS SUCH. The Motion to Dismiss is also MOOT with the filing of the Amended Complaint and is therefore also DENIED. Defendants point out that Plaintiffs missed the deadline for filing their response to the Motion to Dismiss. All parties are advised that the deadlines for filing set forth in the Rules of Civil Procedure are mandatory, not advisory, and that they are to comply with those filing deadlines going forward.

IT IS SO ORDERED, this 25th day of May, 2018.



Lisa D. Hamilton-Fieldman
Municipal Judge (Temporary)