8th DISTRICT COURT **LARIMER COUNTY JUSTICE CENTER** Court Address: 201 Laporte Avenue Fort Collins, CO 80521 Phone (970) 494-3500	2018 JUL 25 PM 1:08 FILED IN DISTRICT COURT DATE FILED: July 25, 2018 CASE NUMBER: 2018CV149
Plaintiff: Eric Sutherland, *pro se* v. **Defendants :** THE CITY OF FORT COLLINS, a home rule municipality in the state of Colorado; STEVE MILLER, in his capacity as the Larimer County Assessor and all successors to this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; And Indispensable Parties: THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.	▲ COURT USE ONLY ▲
Party without attorney: Eric Sutherland, pro se 3520 Golden Currant Boulevard Fort Collins, CO 80521 Phone Number: (970) 224 4509 E-mail: sutherix@yahoo.com	Case #: 2018CV149 Division:

MOTION FOR RECONSIDERATION OF ORDER GRANTING INDISPENSABLE PARTIES MOTION TO DISMISS.

Plaintiff, Eric Sutherland (also referred to here with 1st person pronouns) requests reconsideration of this Court's Order granting Compass Mortgage Corporation and Timnath Development Authorities Motion to Dismiss.

CERTIFICATION OF CONFERENCE PURSUANT TO RULE 121

The attorneys for all parties were informed of my desire to present this Motion for Reconsideration to the Court by email on July 24, 2018. A detailed explanation of the basis for the Motion was offered in the email.

Legal representation for the City of Fort Collins stated no position on the Motion as it does not pertain to the Claims made against the City of Fort Collins.

Legal representation for Defendants Steve Miller and Irene Josey did not respond to the email by 3:00 on July 25, 2018.

Legal representation for the Indispensable Parties, Eric Burris, did respond by email but did not state a position on the Motion.

INTRODUCTION AND RATIONAL FOR MOTION

Motions for Reconsideration are disfavored. However, the present circumstances recommend for this Motion on the basis that 1) the facts and argument that I have presented to establish standing in this matter as the First Claim for Relief have never been addressed in any way, shape or form by any party or this Court, and 2) the Order of this Court denying standing in the matter of the First Claim for relief is a manifest error of law.

This Motion is filed with the intent of providing the Defendants and this Court an opportunity to actually acknowledge, if not respond to, the facts and argument I have presented to establish standing in this matter. To date no such acknowledgment or response had been forthcoming.

It does not seem appropriate to advance to an appeal of the jurisdictional issues in this matter without ensuring that all parties have been granted an opportunity to respond. Certainly, the opportunity to present new facts and

argument will not be available upon appeal. Furthermore, it is not appropriate for this Court to decide jurisdictional questions without the participation of all parties.

ARGUMENT

I. Requirements of standing were established by Plaintiff.

On July 11th, this court issued an Order granting the the Timnath Development Authority (the "TDA") and Compass Mortgage Corporation's ("Compass") Motion to Dismiss this civil case. Specifically, this court found that that I lack standing to bring the First Claim for Relief.

It is true and correct to hold that a number of Claims were insufficiently pled. Of course, the underlying reason for the insufficiency was a rushed, *Unamended* Complaint filed in advance of the lapse of time required by an applicable non-claim statute. However, the First and Second Claims for Relief were sufficiently pled, by design, with the expectation that even if the Complaint was not amended these Claims could be decided. Because the Indispensable Parties elected to waive service and Answer, I elected to allow the Complaint to stand as filed.

In regard to the dismissal of the First Claim, the Order is a manifest error of law. I averred injury-in-fact to a legally protected interest in the Complaint[1]. *See para. 8 sub 2), Unamended Complaint for Declaratory Judgment and Equitable Relief.* I also averred to have standing on the basis of the broad standing that

[1] Injury-in-fact arises from paying tax rates for voter approved mill levies that will be higher if property within the Timnath Development Authority does not contribute to the ***FIXED AMOUNT*** revenue expectations of the Poudre School District, all of which are derived from ***voter approved*** tax increases. This averment is not speculative. It is based upon mathematical and procedural realities that may not be and has not been disputed. It is obvious that the Indispensable Parties had no idea, (and still may have no idea), how the tax rates for the mill levies that supply the tax revenues that are ultimately paid unto them are calculated. My legally protected interest in this matter is the right to pay no more tax than is required as a consequence of ***voter approved*** tax increases that have been duly adopted by the electors of the Poudre School District in accordance with statutory and constitutional law.

taxpayers enjoy to enforce the Colorado constitution.[2] *See para. 9, Id.* All facts and legal argument necessary to establish the jurisdiction of this Court for these two averments were presented in my *Plaintiff's Amended Response to Joint Motion to Dismiss and Request for Expedited Briefing,* sections III. A) and B.) respectively.

Additionally, I argued that the requirements for standing in declaratory judgment actions are somewhat relaxed. *See Plaintiff's Amended Response,* section III. C). All though not specifically argued in the *Response*, it must be noted that I filed the *Complaint* in advance of a temporal limitation imposed by the non-claim statute found in C.R.S §11-57-212, which had been duly invoded in the Indispensable Parties proposed contract for the loan of $20 million. Whether it be considered a new theory of law or simply a matter common sense, a non-claim statute forces any claim of injury to be averred well in advance of such time as an injury may be seen to be more immediate or absolute. Consequently, it would be reasonable for a court of law to relax the requirements of standing to their fullest extent in any situation, such as the instant case, where a non-claim statute precludes relief at some date in the future. That said, I do not believe that a relaxed standard needs to be applied in the present case in order for this court have jurisdiction over the First and Second Claims. However, should this court find that any part of my argument presents a weakness or insufficiency, this court is still obliged to grant standing in this case at least for the purposes of adjudicating my request for declaratory judgment presented in the First Claim.

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[2] No trace of the constitutionally required showing of additionality is present in the loan agreement that was purported to be authorized by the TDA. That is to say, there can be no rational basis to conclude than any part of the property tax increment that is expected to be paid to the TDA would not have been otherwise available to the Poudre School District and other taxing entities in the absence of the TDA's investment of the loan proceeds in a manner that will likely result in increased property tax revenues.

Remarkably, not a single disagreement with the facts that I had presented nor a single legal argument to refute my position was stated by the Indispensable Parties. This failure was not due to a lack of opportunity. The Indispensable Parties had opportunity at a hearing held by this Court on June 27 and also had an opportunity to file a Reply after the hearing. Instead, the Indispensable Parties relied entirely upon the premise that the decision of the Court of Appeals in *Olson v. City of Golden*, 55, P,3d 747 (Colo App. 2002) held for an absolute, unquestionable bar to inquiry in any challenge of the URA statutes that a taxpayer might bring.

And yet .. this Court found that I lack jurisdiction to bring the First and Second Claims. This is a manifest error of law.

II. Actual defendants in this matter, Steve Miller and Irene Josey, had no opportunity to participate in the Motion to Dismiss.

As previously mentioned, the Indispensable Parties in this case essentially hi-jacked this proceeding by waiving service and filing a Motion to Dismiss prior to the Complaint being amended and served on the Defendants in this matter, Steve Miller, Irene Josey and City of Fort Collins[3]. The Indispensable Parties then proceeded as though they were the only defendants in this matter. Frequently, the Indispensable Parties cited a need for expediency based upon a desire to close a loan. However, no evidence was ever presented that a favorable outcome to the Motion to Dismiss would ensure the loan transaction was completed. This assertion must be viewed as doubtful at best.

[3] Steve Miller, Irene Josey and City of Fort Collins were all served within an hour of the conclusion of the hearing on the Motion to Dismiss on June 27, 2018. Service of the Unamended Complaint on these parties was made within the time requirements for service imposed by Order of another division of this Court prior to transfer of this case to this division.

The primary intent of this action as it pertained to tax increment financing was to assert the legal theory that the County Treasurer and County Assessor are subject to the jurisdiction of the court in matters were taxpayers are being injured by unlawful activities of Urban Renewal Authorities. As a practical matter, there are to many unlawful activities in Larimer County to enumerate in separate claims.[4] It goes without saying that this legal theory may not be reviewed unless the Treasurer and Assessor are joined in the action and participate. This is especially true given the fact that the nature of the Fist Claim for Relief is for declaratory judgment that repayment of a loan agreement made between the Indispensable Parties with property tax increment is unlawful.

CONCLUSION

This court should recognize that the Plaintiff and all other owners of real property within the Poudre School District are injured on any occasion where taxable property within a URA such as the TDA is excluded from contributing to the ***voter approved FIXED AMOUNT*** mill levies of the school district as a consequence of lawless behavior by URAs. This court should also recognize that taxpayers in Colorado enjoy broad standing to enforce the provisions of the Colorado Constitution. The failure to reform the governing board of a URA to include school district and county representatives prior to authorizing additional debt to be repaid with property tax increment is averred to be one such unlawful activity and adjudication of this claim on the merits is a proper function of this court.

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[4] It has since become apparent that the universal lawlessness exhibited by URAs may be reasonably attributed to the misunderstanding that they are bullet proof. Because the economic injury associated with the ***FIXED AMOUNT*** mill levies was not understood, URA officials and their attorneys have errantly believed themselves to be beyond the reach of the law.

WHEREFORE, Plaintiff requests that that this Court vacate its previous Order dated July 11th, 2018 and deny the Indispensable Parties Motion to Dismiss.

Eric Sutherland

Dated July 25th, 2018

Certifcate of Service.

I hereby certify that on this 25th Day of July, 2018, a true and correct copy of the foregoing **Motion for Reconsideration of Order Granting Indispensable Parties Motion to Dismiss**was filed with the Court and served via email to the following:

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By