

FILED IN COMBINED CASE NO. 5
LARIMER COUNTY COURT 10

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DATE FILED: September 11, 2018
CASE NUMBER: 2018CV125

<p>District Court, Larimer County, Colorado Court Address: 201 La Porte Ave Suite 100 Fort Collins, CO 80521</p>	
<p>Rory Heath as an individual plaintiff and on behalf of other concerned residents and parties</p> <p><i>Plaintiffs, Pro Se</i></p> <p>v.</p> <p>City of Fort Collins City Council, a municipal governing body; and the City of Fort Collins,</p> <p><i>Defendants</i></p> <p>Ripley Design, Applicant</p> <p><i>Defendants</i></p> <p>Elizabeth Street Co. Manager LLC, Owner</p> <p><i>Defendants</i></p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff Rory Heath 2831 Ridgelen Way Colorado Springs, CO 80918 Phone: 719-216-4319 Email: RoryHeath1@gmail.com</p>	<p>Case Number: 2018CV125 Division: Courtroom:</p>
<p style="text-align: center;">RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED</p>	

Comes now a Plaintiff, Rory Heath ("Mr. Heath"), in response to Defendant, Ripley Design's Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted ("Motion"), whom states as follows:

Question of Ripley's Possible Ownership Interest

Throughout Ripley's Motion, in-depth discussion and argument is made in support of the question as to what Ripley's involvement in the Union at Elizabeth Project ("Project") is, and what it could be classified and defined as. As is the case in most contractual relationships, the answer is complex.

Furthering confusion is the various, non-specific and often ambiguous, nomenclature found in the filings relating to the project. Further, these same ambiguous terms are found within the relevant case law, with the terms "applicant" and "applicant owner" being used to define a party's involvement with a particular application and it's relating project in general. Of note, these pieces of case law deal with "zoning decisions made by a government body", as stated by Ripley in their motion.

Even in the supporting exhibits provided, Ripley is still very clearly listed as an "applicant."

As such, and in the hopes of complying with the court's previous order, defendant Ripley was added by the Plaintiff to the action as an exhaustive measure.

Also, Plaintiff would like to point out that the elements of real estate ownership are not limited only to the outright and simplified possession of the property. There exists a "bundle of sticks", otherwise known as fee simple absolute ownership. An ownership that includes executive rights, rights to future rents/related profits, and rights to transfer ownership, among others (depending upon which state the land is located within).

In the second paragraph of page 4 of Ripley's Motion, it is stated that "Ripley is in the business of land planning, design and development..." The term "development" could be interpreted to mean a variety of things, especially when it comes to the eventual profit from a tract of land's resources.

For example, in mineral law, a mineral owner can lease the right to drill for and produce his minerals to an operating company, thereby creating and granting a working interest in the minerals and an interest in the lease itself. These created interests are then free to be conveyed out and otherwise negotiated for, and eventually profited from.

Of particular question here and in need of being defined, is the full nature of Ripley's involvement in this project/decision and it's resulting hoped outcomes. Does Ripley receive a portion of any future rents? Does Ripley have executive rights in the project? Does Ripley have interest or say in what contracts the resulting asset enters into? Does Ripley have first option for future contracts relating to the project and what value can be placed on that first option... and is that first option an interest in its own right? In this case and in general, what constitutes an "owner" and what constitutes an "applicant"? Further, what constitutes an "owner/applicant" and

what constitutes an “applicant owner”? What does an owner of an applicant own? Is this an interest in itself?

Put simply, what interest does Ripley have in the project?

Of the limited exhibits and documents provided in Ripley’s motion, it is not immediately apparent as to what interest Ripley possesses. In the plaintiff’s opinion, it is a question worth ferreting out and ascertaining, especially in applying relevant case law.

Unfortunately, Plaintiff Pro Se does not have the legal standing nor the legal basis to make that determination.

For the benefit of all parties involved, Plaintiff does ask that further documentation and supporting exhibits are provided, by the Defendant, that can clearly answer this question, beyond the exhibits already provided and the assertion of Ripley’s counsel.

Question of Relief of Against Ripley

Also discussed and strongly asserted within Ripley’s Motion is the belief that the “Plaintiff cannot establish a claim for relief against Ripley as a defendant” (as found in the second paragraph of page 5).

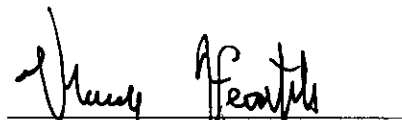
Plaintiff would make the case that as an inherent quality of actions undertaken and pursuant to C.R.C.P. 57, C.R.C.P. 106 (a) 2, C.R.C.P. 106 (a)4, and CRS 24-4-106, it is often the case that parties whom cannot provide relief are still included as a party to Judicial Review of a Government Decision. Succinctly put, as best as the Plaintiff understands it, cases where judicial review is asked for, are a special case; not necessarily under all of the same conditions and considerations as a normal civil action.

Plaintiff would also point out that if Ripley is found to have any ownership, or relating interest in the property/ project, their argument relating to relief and the necessity of their inclusion in the action, per available case law, becomes lessened, possibly even ineffective.

Conclusion

In regard to the questions posited above, Plaintiff does ask and would greatly appreciate the Court's help in answering, or at least better exploring the issues and facts of ownership as discussed within this Response. It is always the Plaintiff's hope and goal to better define and establish the elements of ownership, especially in regards to what is a complex process in the design, permitting, approval, purchase, and development of property amongst interest owners.

Thank you greatly for the Court's time today,



Rory Heath, *Plaintiff Pro Se*

CERTIFICATE OF SERVICE

I certify that on September 11, 2018 a true and accurate copy of the foregoing document was served in-person and/or emailed to:

City of Fort Collins
John Duval
Attorney for City of Fort Collins

Kimberly B. Schutt, of Wick and Trautwein, LLC
Outside Counsel for City of Fort Collins

Andrew S. Priebe, of Vahrenwalk, McMahill, Massey & Mitchell, LLC
Counsel for Ripley Design

Elizabeth Street Co. Manager LLC, Owner

A handwritten signature in black ink, appearing to read "Cheryl A. Kuntz". The signature is written in a cursive style with a large initial 'C' and 'K'.