

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: March 14, 2019 CASE NUMBER: 2018CV149 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Eric Sutherland</p> <p>v.</p> <p>Defendants: The City of Fort Collins, et al.</p>	
ORDER GRANTING MOTION TO STRIKE	

Plaintiff filed a Motion for Determination of Questions of Law on October 3, 2018. The City of Fort Collins filed a motion to strike Plaintiff’s motion on October 24, 2018. Having reviewed the motions, responses, and applicable law, the Court finds and orders as follows.

I. Background

On April 26, 2018, Eric Sutherland filed a Complaint for Declaratory Judgment and Equitable Relief. Plaintiff sought a declaratory judgment from the Court finding that any repayment of debt would be an unlawful violation of the Urban Renewal Authority Act. C.R.S. § 13-25-101, et seq.

On July 11, 2018, the Court dismissed all of Plaintiff’s claims against Timnath Development Authority and Compass Mortgage Corporation. On September 5, 2018, the Court dismissed all of Plaintiff’s claims against the City of Fort Collins and the other remaining defendants, Steve Miller, and Irene Josey.

Plaintiff filed a notice of appeal on October 23, 2018. Plaintiff stated that he was appealing the Court’s orders dismissing all of Plaintiff’s claims against all of the Defendants. The appeal divested the Court of jurisdiction to hear the present motions. *See Status Order Regarding Notice of Appeal.* This appeal was dismissed without prejudice on March 12, 2019.

II. Analysis

Plaintiff asks the Court to resolve three questions of law: (1) is the EUEB an “issuing authority” under part 2 of Article 57 of Title 11; (2) is any part of the SPSA applicable to the issuance of debt by Fort Collins; (3) should the EUEB have known that it was not an “issuing authority”. Pl.’s mot. at 2.

Fort Collins asks the Court to strike the motion because (1) the Court does not have jurisdiction because of the appeal; (2) the motion is procedurally improper; and (3) Plaintiff could have raised these issues before his claims were dismissed, but he failed to do so.

Plaintiff argues that his motion is procedurally proper because it is relevant to the Court’s resolution of Fort Collins’s motion for attorney fees.

A. Plaintiff’s Motion is Procedurally Improper

The Court grants Fort Collins’s motion to strike because Plaintiff’s motion is procedurally improper.

Plaintiff named five parties as defendants and “indispensable parties” in his Complaint. The Court dismissed all of Plaintiff’s claims against Timnath Development Authority and Compass Mortgage Corporation on July 11, 2018. On September 5, 2018, the Court dismissed all of Plaintiff’s claims against the remaining defendants, including the City of Fort Collins. Therefore, as of September 5, 2018, all issues as to the merits of Plaintiff’s complaint had been resolved by a final order of the Court.

If Plaintiff disagreed with the Court’s conclusions, Plaintiff could have filed a motion for post-trial relief, a motion for relief from judgment, or Plaintiff could have appealed the Court’s decisions. In the course of this proceeding, Plaintiff has pursued an appeal and is currently seeking relief under Rule 60(b). These motions and Plaintiff’s appeal are the proper way to seek review of the Court’s orders of dismissal.

The questions Plaintiff asks the Court to resolve in his present motion go directly to the merits of his claims for relief. Part of Plaintiff’s complaint alleged that Fort Collins improperly authorized the creation of debt through the EUEB. Compl. at 2-3. Plaintiff’s current motion asks the Court to determine that the actions of the EUEB were unlawful, though Plaintiff justifies his position with new legal theories that have not previously been presented to the Court. As noted above, at the time Plaintiff asked the Court to resolve these questions, the Court had already made final judgments

dismissing all of Plaintiff's claims for relief. Thus, the proper avenue for Plaintiff to seek to have these questions resolved is through Rule 59 or 60 motions or by filing an appeal, not through a Rule 56(h) motion.

Additionally, even if the Court considered Plaintiff's motion to be a motion for post-trial relief pursuant to C.R.C.P. 59, Plaintiff's motion was filed outside the allowable time and is therefore improper. Plaintiff's motion could be construed as a motion for the Court to amend its judgment due to an error of law. *See* C.R.C.P. 59(d)(6). This type of motion must be brought within 14 days of the entry of judgment. C.R.C.P. 59(a). Plaintiff's motion was filed more than 14 days after all of his claims were dismissed by the Court. Therefore, even if the Court considered the motion to be a motion for post-trial relief, it was filed outside the time allowable for such a motion and the motion would be improper.

B. Plaintiff's Motion is not Relevant to Attorney Fees

Plaintiff argues that the questions in his motion are relevant to the Court's ruling on Fort Collins's motion for attorney fees. Specifically, Plaintiff argues that if the Court agreed with Plaintiff's position in his motion, it would affect the Court's finding that Plaintiff's action was frivolous. The Court does not agree with Plaintiff's position.

As noted above, Plaintiff's motion is procedurally improper. Plaintiff's avenues for relief are appeal and relief pursuant to Rules 59 and 60. The Court will not resolve the questions of law that Plaintiff proposes outside of the proper avenues to seek relief.

Further, even if the Court agreed with Plaintiff's positions in his motion, the Court would find the entire case to be moot. Pl.'s Mot. at ¶12. Plaintiff did not raise these issues until nearly six months after he brought this action and after all of his claims had been dismissed with prejudice. It is frivolous for a plaintiff to file an action, cause defendants to incur attorney fees, and move for the Court to declare the entire action to be moot after all of the plaintiff's claims are dismissed. Thus, even if the Court agreed with Plaintiff's position on the relevant laws, it would not affect the frivolous nature with which Plaintiff originally filed his Complaint.

Fort Collins seeks attorney fees because, it alleges, Plaintiff reasonably should have known that this action was substantially frivolous. The Court's resolution of Fort Collins's motion will hinge on the pleadings and filings presented to the Court before Fort Collins's motion for attorney fees was filed, not on newly discovered theories of law presented to the Court after the attorney fee request. Therefore, Plaintiff's motion

will not have any bearing on the Court's resolution of Fort Collins's motion for attorney fees.

Order

The Court grants the City of Fort Collins's motion. Plaintiff's Motion for Determination of Questions of Law is stricken.

Dated: March 14, 2019.

BY THE COURT:



Gregory M. Lammons
District Court Judge