

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521	DATE FILED: May 13, 2019 10:58 AM FILING ID: 64C63C9746FE5 CASE NUMBER: 2018CV149
Plaintiff: ERIC SUTHERLAND, <i>pro se</i> v. Defendants: THE CITY OF FORT COLLINS, <i>et al.</i>	▲ COURT USE ONLY ▲
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RESPONSE IN OPPOSITION TO PLAINTIFF’S MOTION TO STAY ENFORCEMENT OF JUDGMENTS PURSUANT TO C.R.C.P. RULE 62	

Defendants The Timnath Development Authority (“TDA”) and Compass Mortgage Corporation (“Compass”), by and through their counsel of record, White Bear Ankele Tanaka & Waldron Attorneys at Law and Brownstein Hyatt Farber Schreck, LLP, hereby submit the

following Response in Opposition to Plaintiff's Motion to Stay Enforcement of Judgments Pursuant to C.R.C.P. Rule 62 (the "Response").

INTRODUCTION

In his Motion to Stay Enforcement of Judgments Pursuant to C.R.C.P. Rule 62 (the "Motion"), Plaintiff requests a stay from enforcement of final judgments issued by this Court in September of 2018. But Plaintiff cannot state facts that could entitle him to relief under Rule 62 in this case. The fourteen-day automatic stay of execution imposed by Rule 62(a) expired over six months ago. Plaintiff's Motion includes no discussion of the standard for a discretionary stay of enforcement under Rule 62(b), probably because none of the conditions that would allow the Court to impose such a stay are present in this case. Nor does Plaintiff request approval of a supersedeas bond, which is the appropriate means of staying enforcement of judgment during the pendency of an appeal. As a result, the Motion fails to state any legal theory or facts that could entitle Plaintiff to relief, and is just as frivolous as Plaintiff's underlying claims in this case.

Rather than applying the appropriate legal standard to the facts material to the Motion, Plaintiff takes yet another opportunity to heap abuse on the Court and opposing parties. Plaintiff complains that the Court's handling of TDA's counterclaims in this matter has delayed his appeal. Mot. at 3. That allegation is entirely irrelevant to whether a stay of enforcement is appropriate here. Plaintiff also states that TDA's efforts to enforce its final judgment will irreparably harm Plaintiff, and that a stay of enforcement would not prejudice TDA. These statements are both misleading and immaterial. Undoubtedly, enforcement of TDA's judgment will harm Plaintiff. That harm will only partially offset the damages that Plaintiff has inflicted on TDA with his frivolous and vexatious litigation. Furthermore, it is likely that TDA would be prejudiced by any stay in enforcement of its judgement. Plaintiff has already attempted to

unlawfully frustrate TDA's efforts to collect sums owed to it pursuant to this Court's judgement once. It is probable that Plaintiff would use a stay in enforcement to engage in further subterfuge to stymie TDA's collection efforts. In sum, Plaintiff's Motion is similar to his other requests for relief in this case in that it is both frivolous, and riddled with falsehoods.

STANDARD OF LAW

Rule 62 stays enforcement of a final judgment under limited, well-defined circumstances. First, Rule 62(a) imposes fourteen day automatic stay of enforcement on all final judgments. Colo. R. Civ. P. 62(a).

Second, Rule 62(b) allows the Court, in its discretion, to impose a stay of enforcement: (1) when a motion for post-trial relief under C.R.C.P. 59 is pending; (2) when a motion for relief from a judgment or order made pursuant to C.R.C.P. 60 is pending; (3) during the time permitted for filing a notice of appeal; or (4) during the pendency of a motion for approval of a supersedeas bond.

Third, the Court may also impose a discretionary stay of enforcement "until the entering of a subsequent judgment or judgments" under Rule 62(h). Colo. R. Civ. P. 62(h).

Finally, Rule 62(d) allows a party subject to judgment to obtain a stay of enforcement from the trial court during the pendency of an appeal. In order to obtain a stay under Rule 62(d), however, the party must post a supersedeas bond in an amount that Court deems sufficient to protect the interests of the judgment creditor. Colo. R. Civ. P. 62(d); Colo. Rev. Stat. § 13-16-125.

ARGUMENT

A. The Automatic Stay of Enforcement Imposed by Rule 62(a) Has Long Since Expired.

In this case, the fourteen-day automatic stay of enforcement imposed by Rule 62(a) has expired. The Court entered judgment in TDA's favor in this matter on September 10, 2018. The fourteen-day stay therefore ran on September 24, 2018. Plaintiff is not entitled to relief under Rule 62(a).

B. None of the Conditions that Could Allow the Court to Impose a Discretionary Stay of Enforcement under Rule 62(b) are Present in this Case.

There are no motions for post-trial relief currently pending in this matter, so Plaintiff cannot obtain discretionary relief under either Rule 62(b)(1) or (2). Plaintiff's time to file a notice of appeal in this matter lapsed on May 3, 2019. Plaintiff did in fact file an appeal on May 2, 2019. Plaintiff therefore cannot obtain relief under Rule 62(b)(3), which only permits a trial court to impose a discretionary stay on enforcement "during the time permitted for filing a notice of appeal." Colo. R. Civ. P. 62(b)(3). Finally, Plaintiff has not requested the Court's approval of a supersedeas bond, so relief under Rule 62(b)(4) is likewise unavailable.

C. There Are No Unresolved Claims in this Case, so a Stay Pending Entry of Subsequent Judgments under Rule 62(h) is Unavailable.

A trial court may also impose a discretionary stay on enforcement of final judgments "until the entering of a subsequent judgment or judgments . . ." under Rule 62(h). Colo. R. Civ. P. 62(h). Such relief is unavailable in this case, where all claims for damages have been fully and finally resolved.

