

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO Court Address: 201 La Porte Avenue Fort Collins, CO 80521 Phone Number: (970) 494-3500</p>	<p>DATE FILED: May 13, 2019 5:25 PM FILING ID: BCAA6A3352C21 CASE NUMBER: 2018CV149</p>
<p><b>Plaintiff:</b> ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p><b>Defendants:</b> 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 in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; and</p> <p><b>Indispensable Parties:</b> THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Defendant City of Fort Collins:</i> John W. Mill (#22348) Rosemary A. Loehr (#52559) Sherman &amp; Howard L.L.C. 633 17th Street, Suite 3000 Denver, CO 80202 Phone Number: (303) 297-2900 Email: <a href="mailto:jmill@shermanhoward.com">jmill@shermanhoward.com</a> <a href="mailto:rloehr@shermanhoward.com">rloehr@shermanhoward.com</a></p> <p>Carrie M. Daggett, #23316 John R. Duval, #10185 Fort Collins City Attorney's Office 300 LaPorte Avenue Fort Collins, CO 80522-0580 970-221-6520 <a href="mailto:cddaggett@fcgov.com">cddaggett@fcgov.com</a>, <a href="mailto:jduval@fcgov.com">jduval@fcgov.com</a></p>	<p>Case No.: 2018CV149</p> <p>Courtroom/Division: 5B</p>
<p align="center"><b>CITY OF FORT COLLINS'S RESPONSE TO PLAINTIFF'S MOTION TO STAY THE EXECUTION OF THE JUDGMENT</b></p>	

The Defendant City of Fort Collins (the “City”), by and through its counsel, respectfully submits the following Response to Plaintiff’s Motion to Stay the Execution of the Judgment.

### **ARGUMENT**

This Court awarded the City \$40,243.27 for attorneys’ fees and costs to compensate the City for Mr. Sutherland’s frivolous complaint. *See* 04/02/19 Order Granting Fort Collins’s Motion for Attorneys’ Fees and Bill of Costs. Mr. Sutherland now requests this Court to stay the execution of that judgment pending appeal. However, Mr. Sutherland has not met the requirements for a stay of the City’s judgment for two reasons.

**1. No basis for a discretionary stay.** First, Mr. Sutherland is not entitled to a discretionary stay of enforcement of the judgment under C.R.C.P. 62(b) nor has he made any showing that a discretionary stay is appropriate. *See* C.R.C.P. 62(b) (outlining the requirements for a discretionary stay).

**2. No supersedeas bond has been posted or approved.** Second, Mr. Sutherland has not obtained or submitted to the Court for approval a supersedeas bond as required under C.R.C.P. 62(d). To obtain a stay of execution of the City’s judgment, the rules are clear that Mr. Sutherland must post a supersedeas bond. *See* C.R.C.P. 62(d); *Colo. Korean Ass'n v. Korean Senior Ass'n*, 151 P.3d 626, 628 (Colo. App. 2006) (“The posting of a supersedeas bond is required to stay the execution of a trial court's judgment.”). Instead of posting the required bond, Mr. Sutherland asks the Court to “presume” that he will post a supersedeas bond (or presume the Colorado Supreme Court will take up his case in an original proceeding). The Court should not presume either will happen. Unless and until Mr. Sutherland actually obtains a supersedeas bond

complying with all requirements and files a motion asking the Court to approve it, there is no basis to stay enforcement of the judgment for the City based on speculation or presumption.

3. **Any supersedeas bond must be for 125% of the judgment.** The presumptive amount of the bond is 125% of the total amount of the judgment, including costs, attorneys' fees, and prejudgment interest. *See* C.R.C.P. 121 § 1-23(3)(a). Here, a supersedeas bond for 125% of the total judgment is necessary to protect the City's interests in its judgment against Mr. Sutherland. *See Muck v. Arapahoe Cnty. Dist. Court*, 814 P.2d 869, 872 (Colo. 1991) ("The requirement of a supersedeas bond serves an important role in protecting the appellee's interests in the judgment."); *see also Hart v. Schwab*, 990 P.2d 1131, 1133 (Colo. App. 1999) ("a full supersedeas bond should be the requirement in normal circumstances").

A supersedeas bond for 125% of the judgment is particularly necessary given Mr. Sutherland's post-judgment litigation conduct. Since this Court's order granting the City its attorneys' fees and costs, Mr. Sutherland has filed three motions in an attempt to avoid the judgment against him and revive his frivolous complaint. First, Mr. Sutherland filed a Rule 60(b) motion to vacate the Court's Order granting the award of attorneys' fees and costs. *See* 03/06/19 Motion to Vacate Order Granting Defendant's Motions to Dismiss as to City of Fort Collins, Steve Miller and Irene Josey Pursuant to Rule 60(b). Before the Court denied Mr. Sutherland's first Rule 60 motion, he filed a second motion seeking to amend the judgment against him under Rule 59. *See* 04/16/19 Motion for Amendment of Judgment Granting City of Fort Collins' Motion for Attorneys' Fees and Bill of Costs Pursuant to C.R.C.P. 59. After the Court denied Mr. Sutherland's first Rule 60 motion (*See* 04/16/19 Order Denying Motion to Vacate Order Granting Attorney Fees) Mr. Sutherland withdrew his motion under Rule 59 and

admitted that it was “likely prepared and filed with an incorrect understanding of the law” (*see* Unopposed Motion to Withdraw Motion for Amendment of Judgment Granting City of Fort Collins' Motion for Attorney's Fees and Bill of Costs Pursuant to C.R.C.P 59, at 1). Finally, Mr. Sutherland then filed another motion this time arguing that Judge Lammons lacked authority over this case. *See* 05/02/19 Motion to Deem this Proceeding Coram Non Judice Since June 23, 2018 Pursuant to Rule 60(b)(5). This motion, while referencing Rule 60(b)(5), is not the type of post-trial motion that Rule 62(b) contemplates could be the basis for a court granting a discretionary stay of judgment enforcement proceedings because Mr. Sutherland’s motion does not request relief from an order or judgment.

Mr. Sutherland is clearly papering this Court with frivolous motions to attempt to avoid this Court’s judgment for the City. Each of Mr. Sutherland’s motions have necessitated a response from the City, which further increases the attorneys’ fees and costs associated with Mr. Sutherland’s frivolous claims. Mr. Sutherland’s never-ending frivolous litigation tactics create a meaningful (and wholly unnecessary) financial burden on the City and its taxpayers. Thus, the City will not be adequately protected from Mr. Sutherland’s frivolous litigation unless Mr. Sutherland to post a bond for 125% of the judgment as required by law. Unless and until Mr. Sutherland posts a supersedeas bond for 125% of the judgment, the City is entitled to continue with its execution of its judgment against Mr. Sutherland.<sup>1</sup>

### **CONCLUSION**

Pursuant to C.R.C.P. 121 § 1-23(3)(a) and C.R.C.P. 62, the Court should not stay

---

<sup>1</sup> The City may file a second motion for attorneys’ fees against Mr. Sutherland seeking the additional fees that his frivolous litigation conduct has imposed on the City.

enforcement of the City's judgment unless Mr. Sutherland posts a supersedeas bond for 125% of the judgment. If Mr. Sutherland fails to post such bond, the Court should deny Mr. Sutherland's motion to stay the execution of the City's judgment.

Dated this 13th day of May, 2019.

SHERMAN & HOWARD L.L.C.

s/ Rosemary A. Loehr

Rosemary A. Loehr (#52559)

John W. Mill (#22348)

Sherman & Howard L.L.C.

633 Seventeenth Street, Suite 3000

Denver, Colorado 80202

(303) 297-2900

[rloehr@shermanhoward.com](mailto:rloehr@shermanhoward.com)

[jmill@shermanhoward.com](mailto:jmill@shermanhoward.com)

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of May, 2019, a true and correct copy of the foregoing **CITY OF FORT COLLINS'S RESPONSE TO PLAINTIFF'S MOTION TO STAY THE EXECUTION OF THE JUDGMENT** was filed via Colorado Court's E-Filing system, and was served on the following:

Eric Sutherland, *pro se*  
3520 Golden Currant Boulevard  
Fort Collins, CO 80521  
(*By email and US Mail*)

Eric R. Burris, Esq.  
Cole J. Woodward, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202  
(*By Colorado Court's E-Filing*)

*/s/ Nancy Hedges*  
Nancy Hedges, Legal Secretary