

**8th DISTRICT COURT
LARIMER COUNTY JUSTICE CENTER**

Court Address: 201 Laporte Avenue
Fort Collins, CO 80521
Phone (970) 494-3500

2019 APR 22 PM 12: 29

DATE FILED: DATE FILED 2019 APR 22 PM 12: 29
FILING ID: D763283
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*
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Case #: 2018CV149
Division: 3C

**PLAINTIFF'S MOTION TO STAY ENFORCEMENT OF JUDGMENTS PURSUANT TO C.R.C.P
RULE 62**

Plaintiff, Eric Sutherland (also referred to hear with 1st person pronouns) hereby files this Motion for a stay of enforcement of the three judgements entered against Plaintiff in this matter pursuant to Rule 62 of the Colorado Rules of Civil Procedure.

Certification of conference: The undersigned hereby certifies he attempted conference on this motion with opposing counsel via email on April 22nd, 2019.

**EXHIBIT
F**

As of the time of filing this motion, no response from opposing counsel had been received. It is presumed that the relief requested is opposed.

I. BACKGROUND

On September 10th, 2019, this court issued its Order granting the Timnath Development Authority or “TDA” and Compass Mortgage Companies, “Compass Bank’s” motion for attorneys fees and costs. A judgment in the amount of \$45,613.55 was entered.

On April 2, 2019, this court issued its Order granting Defendant Steve Miller and Irene Josey’s request for attorneys fees and costs. A judgment in the amount of \$2860.00 was entered.

Also on April 2, 2019, this court issued its Order granting Defendant City of Fort Collins’, or “the City’s”, motion for attorneys fees and costs. A judgment in the amount of \$40,243.27 was entered.

II. A REVIEW OF THIS COURT’S DECISIONS INDICATES THAT JUDGMENTS WILL BE REVERSED ON APPEAL.

The basics of this case can be paraphrased as follows: 1) Plaintiff brought claims with the expectation that researched and reasoned reliance upon argument and authorities of constitutional dimension provided for standing, 2) this court systematically disregarded the arguments and authority upon which Plaintiff had relied, 3) this court found Plaintiffs action to be frivolous as to all claims.

When bringing claims crafted to evade the payment of higher tax rates as a consequence of the TDA’s lawless abuses of urban renewal authority tax increment financing, Plaintiff relied upon the broad grant of standing that had been consistently applied to taxpayer lawsuits alleging abridgment of constitutional rights as stated in *Barber v. Ritter*, 196 P.3d 238 (Colo. 2008). Neither this court nor any of the defendants in this matter ever acknowledged that the long line of cases that include *Barber v. Ritter* even exist. The claim to standing made by Plaintiff in reliance upon this authority was also never acknowledged or addressed.

When bringing a claim for declaratory relief against the City, Plaintiff clearly stated a new theory of law that held that the Uniform Declaratory Judgment Act, C.R.S. 13-51-101 *et seq* must be liberally construed in any situation where a non-claim statute operates to bar future inquiry. The rational basis underlying this theory of law had been timely and sufficiently explained; any ruling denying a private cause of action would be tantamount to denial to

constitutional rights to petition and due process. This court ruled that it would not entertain any new theory of law where standing is concerned because “*This Court follows settled standing law requiring that an injury be direct and palpable to sustain a claim.*” See *Order Granting Defendant’s Motions to Dismiss as to Defendants City of Fort Collins, Steve Miller and Irene Josey* at p. 3.

It is not surprising that, having disregarded the arguments and authorities that Plaintiff had relied upon when filing this action, this court went on to find that Plaintiffs cause was frivolous. Ironically, this same disregard offers a distinct advantage to Plaintiff on appeal. Because no argument has thus far been entered by any Defendant in this matter to refute Plaintiff’s claim to standing, no arguments have been preserved for appeal.¹ This case is now destined for appeal with a very one-sided record.

II. THIS COURT’S REFUSAL TO TIMELY DISMISS COUNTERCLAIMS HAS SIGNIFICANTLY DELAYED APPEAL OF SEPTEMBER 10TH, 2018 JUDGMENT.

On June 5th, 2018, the TDA filed its Answer and Counterclaims. The next day, the TDA and the Town of Timnath filed a complaint that included claims that were substantially similar to the counterclaims filed on June 5th. This complaint commenced case no. 2018CV030567.

On June 26th, 2018, Plaintiff answered to the counterclaims.

On July 24th, 2018, the TDA filed a motion to dismiss the counterclaims. The TDA inaccurately stated that this motion was opposed. No other action in the court or outside of court was taken in regard to the counterclaims.

On September 9th, 2018, Plaintiff filed a request with this court that it decide the motion to withdraw counterclaims.

On March 15th, 2019, this court granted the TDA’s motion to dismiss the counterclaims.

In an exercise of an abundance of caution, Plaintiff filed a Notice of Appeal in this case with the purpose of reversing the September 10th, 2018 judgment of attorneys fees to the TDA

¹ A final opportunity has been afforded the City to preserve argument for appeal that refutes Plaintiffs new theory of law. The City has, of course had previously had ample opportunity to do this but has declined. In order to refute the new theory, the City must, in essence, argue that a person who has a grievance with the authorization of public debt does not enjoy any right to petition government through the Colorado courts unless that person happens to find himself or herself in the completely improbable position of being able to accurately predict direct and palpable injury will occur at some time years into the future within 30 days of the authorization.

and Compass Bank. This appeal was dismissed without prejudice by the Colorado Court of Appeals because the TDA's counterclaims had not been dismissed or decided.

III. THE TDAS' INTENT TO ENFORCE JUDGMENT AT THIS TIME THREATENS IRREPERABLE HARM

An appeal in of this matter and the companion case, 2018CV030567 is now imminent.

It is highly likely that a petition for original jurisdiction to the Supreme Court will be taken during the time remaining for this court to be briefed and decide on the only outstanding issue remaining in this matter, the motion for amendment of the judgment awarding fees and costs to the city. Such a petition for original jurisdiction is nearly obligatory at this point because of nearly unbelievable departure from the Rules in a related case. In case no. 2018CV030567, Judge Robert Lowenbach completely disregarded the Rules of Civil Procedure by holding a trial for damages in excess of \$100,000 without a case management order, trial management order or compliance with any other requirement of Rule 16. That court then allowed evidence that had been fabricated just 10 days before and only disclosed 3 days before the trial to be entered and form the basis of a judgment of \$25,000. Because the instant case, case no. 2018CV149, presents at least one matter of first impression that may be seen to be of statewide importance², a petition for original jurisdiction will request review of both cases.

In addition to the C.A.R. Rule 21 petition to the Supreme Court, this case will be appealed to the Court of Appeals if necessary.

As these appeals are being prepared, the TDA has stated that it intends to enter a Writ of Execution into this case to force the sale of Plaintiff's family home to satisfy the September 10th, 2018 judgment. If this process is not stayed, the TDA will inflict irreparable harm on Plaintiff and frustrate Plaintiffs ability to obtain a supercedeas bond upon filing a Notice of Appeal.

Plaintiff is actively pursuing a refinance/home equity line of credit in order to ensure a bond may be applied on appeal and/or satisfy the judgment if necessary. There is no question that having to deal with a sheriff's sale of his family's home presents the prospect of irreparable harm.

² i.e. the rights of petitioners in the face of a non-claim statute is a matter that our appellate courts would well serve the people of Colorado by deciding.

IV. THE GRANT OF A STAY FROM ENFORCEMENT HERE WILL NOT PREJUDICE DEFENDANTS.

The simple facts pertaining to finances here suggest that a grant of a stay until either a Notice of Appeal is filed or a stay pursuant to C.A.R rule 21(f) is obtained will not prejudice the Defendants.

First, as explained above, the taking of an appeal will happen in very short order.

Second, it is reasonable to presume that a stay of enforcement for the pendency of the appeal will either be available upon posting a supersedeas bond or by order of the Supreme Court pursuant to C.A.R. Rule 21(f).

Third, the financial interests of the other parties are not jeopardized here. All judgments in this case are accruing interest at the statutorily defined rate. All Defendant's are governmental entities with sufficient reserves that greatly exceed the amount of judgment awarded.³ No Defendant is in a position where the judgment amount is necessary to finance immediate needs.

V. CONCLUSION

The grant of a stay of enforcement of the judgments entered in this case is justified by the three factors listed above: 1) the high probability of reversal of the judgments on appeal, 2) the delay in appealing the September 10th, 2018 judgment due, in part, to this court's refusal to timely grant an unopposed motion to dismiss counterclaims, and 3) the absence of negative consequences associated for Defendants in the event a stay is granted.

WHEREFOR, Plaintiff, Eric Sutherland respectfully requests that this court grant a stay of enforcement of all judgements entered in this case until either a Notice of Appeal is filed in this matter or a stay is otherwise imposed by action of the Supreme Court.



Eric Sutherland

April 22nd, 2019

³ Compass Bank has assigned the entirety of its interest in the September 10th, 2018 judgment awarded jointly to the TDA and Compass to the TDA.

I hereby certify that on this 22nd Day of April, 2019, a true and correct copy of the foregoing *Plaintiff's Motion to Stay Enforcement of Judgments Pursuant to C.R.C.P Rule 62* was filed with the Court along with a proposed order. Also, a true and correct copy of the foregoing will be served via email to the following no later than April 22nd, 2019.

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By _____

