

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue Fort Collins, CO 80521	DATE FILED: February 3, 2020 12:54 PM FILING ID: 2E6F8EB34E578 CASE NUMBER: 2018CV149
<p>Plaintiff: ERIC SUTHERLAND, <i>pro se</i></p> <p>v.</p> <p>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 in this office; IRENE JOSEY, in her capacity as the Larimer County Treasurer and all successors to this office; THE TIMNATH DEVELOPMENT AUTHORITY, an Urban Renewal Authority; and COMPASS MORTGAGE CORPORATION, an Alabama company doing business in Colorado.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Counsel for Defendants/Judgment Creditors: The Timnath Development Authority and Compass Mortgage Corporation</p> <p>Eric R. Burris, admitted <i>pro hac vice</i> BROWNSTEIN HYATT FARBER SCHRECK, LLP 201 Third Street NW, Suite 1800 Albuquerque, NM 87102 Telephone: 505.244.0770 Email: eburris@bhfs.com</p> <p>Chloe Mickel, #50437 Jesse D. Sutz, #52395 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, CO 80202-4432 Phone: 303.223.1100 Emails: cmickel@bhfs.com; jsutz@bhfs.com</p>	<p>Case Number: 18CV149</p> <p>Division: 5B</p>
<p>REPLY IN SUPPORT OF MOTION TO ISSUE WRIT OF EXECUTION</p>	

Defendants The Timnath Development Authority (“TDA”) and Compass Mortgage Corporation (“Compass”), by and through counsel, submit the following Reply in Support of Their Motion to Issue Writ of Execution (the “Motion”).

ARGUMENT

I. The Motion Should be Granted Because TDA and Compass Possess a Substantive Right to Enforce Their Judgment and Sutherland Provides No Cognizable Legal Reason for Abrogating this Right.

Sutherland’s Response to TDA’s and Compass’ Motion to Issue Writ of Execution (the “Response”) does not provide a cognizable legal basis for denying the Motion. This Court entered judgment on September 10, 2018, in favor of TDA and Compass for its costs and fees associated with defending this action, which this Court found to be vexatious. The process of enforcing a judgment is procedural and not subject to judicial discretion. *See, e.g., Sweeney v. Cregan*, 299 P. 1058, 1059 (Colo. 1931) (describing actions to collect on a judgment “ancillary and auxiliary to the original action[.]”). Pursuant to C.R.C.P. 69(a), a writ of execution is the proper method to collect a judgment, and the Colorado Supreme Court held that a “district court [is] without power to limit the substantive right granted by the legislature to a judgment creditor to collect the judgment by execution against property of the judgment debtor.” *First Nat’l Bank v. Dist. Ct. of Denver*, 652 P.2d 613, 618 (Colo. 1982) (citing *Jones v. Dist. Ct. of Denver*, 312 P.2d 503, 504–05 (Colo. 1957)) (emphasis added).

Here, Sutherland’s Response altogether fails to address C.R.C.P. 69(a). Rather, the Response provides arguments as to why Sutherland believes, *inter alia*, that he is entitled to relief under C.R.C.P. 60(b).¹ These arguments are irrelevant as to whether TDA and Compass are entitled to collect their judgment against Sutherland. Colorado law is clear that TDA and Compass, as Sutherland’s judgment creditors, possess a substantive right to collect their judgment through execution against Sutherland’s property. *First Nat’l Bank*, 652 P.2d 618.

¹ TDA and Compass deny that Sutherland is entitled to any relief under Rule 60(b) and will oppose that motion, if filed.

Sutherland provides no pertinent argument as to why TDA and Compass should not be entitled to collect their judgment, and there is no legal basis to deny them of their right to do so.

CONCLUSION

WHEREFORE, TDA and Compass respectfully request that this Court grant the Motion and issue a writ of execution allowing TDA and Compass to enforce their judgment against Sutherland.

DATED this 3rd day of February, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of February, 2020, a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO ISSUE WRIT OF EXECUTION** was filed with the Court and served via Colorado Courts E-Filing System on all counsel of record and *pro se* party as follows:

By Email and Regular Mail

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