

GRANTED BY COURT

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CASE NUMBER: 2020CV30580

DANIEL MICHAEL MCDONALD
District Court Judge

**DISTRICT COURT, COUNTY OF LARIMER,
STATE OF COLORADO**

Larimer County Justice Center
201 Laporte Avenue, Suite 100
Fort Collins, CO 80521-2762
Telephone: (970) 498-6100

Plaintiff: THE CITY OF FORT COLLINS,
COLORADO, a municipal corporation,

v.

Defendants: BOARD OF COUNTY
COMMISSIONERS OF LARIMER COUNTY,
COLORADO; STREETMEDIAGROUP, LLC

▲ COURT USE ONLY ▲

Attorneys for Defendant, StreetMediaGroup, LLC:

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Case Number: 2020CV030580

Division: 4B

**DEFENDANT STREETMEDIAGROUP, LLC'S
UNOPPOSED MOTION TO STRIKE PORTIONS OF ITS
REPLY IN SUPPORT OF MOTION TO DISMISS**

Defendant StreetMediaGroup, LLC ("StreetMedia"), through its undersigned counsel, Fairfield and Woods, P.C., respectfully submits this Unopposed Motion to Strike Portions of Its Reply in Support of its Motion to Dismiss ("Motion to Strike"), and in support thereof states a follows:

Certificate of Conferral Pursuant to C.R.C.P. 121 § 1-15(8): Counsel for StreetMedia conferred with counsel for Plaintiff City of Fort Collins and counsel for Defendant Larimer County on the date of this Motion to Strike. Plaintiff City of Fort Collins and Defendant Larimer County

do not oppose the relief requested herein.

2. StreetMedia filed Defendant StreetMediaGroup, LLC's Motion to Dismiss Plaintiff's Complaint ("Motion") on February 24, 2021.

3. Plaintiff, City of Fort Collins, timely filed its Plaintiff's Response to Defendant StreetMediaGroup, LLC's Motion to Dismiss Plaintiff's Complaint ("Response") on March 17, 2021.

4. StreetMedia timely filed its Reply In Support of Motion to Dismiss ("Reply") on March 24, 2021. In subsection II.F. of the Reply, StreetMedia argued that Plaintiff failed to disclose that *Stor-N-Lock Partners #15, LLC v. City of Thornton*, No. 17CA0696, 2018 WL 2054320 (Colo. App. May 3, 2018) was not selected for publication, and therefore has " 'No Value As Precedent.' "

5. On March 26, 2021, Plaintiff filed its Plaintiff's Submission of Authority, accurately pointing out that *Stor-N-Lock* was not an unpublished case under the Colorado Rules of Appellate Procedure.

6. Undersigned counsel stands corrected. Undersigned counsel misread the header on the case as it is published in WestLaw:

2018 WL 2054320

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. A PETITION FOR REHEARING IN THE COURT OF APPEALS OR A PETITION FOR CERTIORARI IN THE SUPREME COURT MAY BE PENDING.

Colorado Court of Appeals, Division I.

STOR-N-LOCK PARTNERS # 15, LLC, a Utah limited liability company, Plaintiff-Appellant and Cross-Appellee,

v.

CITY OF THORNTON, Colorado; and City Council of the City of Thornton, Colorado, Defendants-Appellees, and

Resolute Investments, Inc., a Colorado corporation; and Qwest Corporation, a Colorado corporation, Defendants-Appellees and Cross-Appellants.

7. The above-pictured case header states only that the opinion had not *yet* been released in the permanent law reports. On re-examination, it does not say that the case is “Not Selected for Publication.”

8. Consequently, in the interest of professional comity in the course of a contentious case, StreetMedia emailed Mr. Ringel on March 26, 2021 and apologized. Further, in the interest of correcting the record and providing full candor to this honorable Court, StreetMedia moves to strike the following language (shown in ~~red strikethrough~~ text) from its own Reply:

* * *

F. ~~Plaintiff Failed to Disclose that~~ *Stor-N-Lock Partners* Has “No Value As Precedent.”

Plaintiff leans on *Stor-N-Lock Partners #15, LLC v. City of Thornton*, No. 17CA0696, 2018 WL 2054320 (Colo. App. May 3, 2018), ~~but fails to disclose to this Court that that case was not selected for publication. Cases that are not selected for publication “have no value as precedent.” *Welby Gardens v. Adams County Bd. of Equalization*, 71 P.3d 992, 999 (Colo. 2003). In fact, if this case were to reach the Court of Appeals, citation to *Stor-N-Lock* would be *forbidden* under the court’s “Policy Concerning Citation of Unpublished Opinions.”⁺ At the trial court level, the court may consider whether an unpublished decision provides any useful insight, but the court is also “free to disregard [unpublished decisions] entirely if it so chooses.” *Patterson v. James*, 454 P.3d 345, 353 (2018).~~

~~As a matter of law,~~ Plaintiff is wrong in suggesting that *Stor-N-Lock* (~~an~~

⁺~~See Policy Concerning Citation of Unpublished Opinions.~~
https://www.courts.state.co.us/Courts/Court_Of_Appeals/Forms_Policies.cfm

~~unpublished decision of the Colorado Court of Appeals~~ in any way qualifies ~~DeVilbiss~~ ~~(a published Colorado Supreme Court decision)~~. Moreover, ~~the persuasive value of Stor-N-Lock, if any,~~ works against the Plaintiff. In that case, Resolute (a co-defendant with the City of Thornton) argued that the plaintiff (Stor-N-Lock) should be required to post a bond because “the mere filing of the [C.R.C.P. 106(a)(4)] action effectively enjoins the defendant from using its property.” *Stor-N-Lock*, 2018 WL 2054320 at ¶35. The Court disagreed, holding that the:

* * *

9. StreetMedia stands by its Reply with regard to all matters therein not specifically addressed herein.

10. Undersigned counsel has provided a copy of this Motion to Strike to StreetMedia.

WHEREFORE, based on the foregoing, Defendant StreetMedia respectfully requests that this Court strike only the text shown in red strikethrough in Paragraph 8 of this Motion to Strike from StreetMedia’s Reply.

Respectfully submitted this 29th day of March, 2021.

FAIRFIELD AND WOODS, P.C.

s/ Todd G. Messenger

Todd G. Messenger, Reg. No. 38783

Amanda C. Jokerst, Reg. No. 47541

Attorneys for Defendant StreetMediaGroup, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2021, I filed the foregoing with the Clerk of the Court using Colorado Courts E-Filing. I further certify that a copy of the foregoing was sent via Colorado Courts E-Filing to the following:

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s/ Sharon Y. Meyer
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