

DISTRICT COURT, GRAND COUNTY, COLORADO DATE FILED: February 23, 2021 9:42 AM FILING ID: 32BEEBB3B5847 CASE NUMBER: 2021CV30008 	
Court Address: Grand County Combined Courts 307 Moffat Ave Hot Sulphur Springs, CO 80451 Telephone No.: (970) 725-3357	▲ COURT USE ONLY ▲ Case No.: Div.: Rm.:
Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, v. Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; and GP GRANBY HOLDINGS, LLC.	
<i>Counsel for Plaintiff:</i> Charles E. Norton, #10633 Alicia M. Garcia, #53860 NORTON & SMITH, P.C. 1331 17 th Street, Suite 500 Denver, Colorado 80202 Phone Number: (303) 292-6400 FAX Number: (303) 292-6401 E-mail: CNorton@NortonSmithLaw.com AGarcia@NortonSmithLaw.com	
COMPLAINT	

Plaintiff Granby Ranch Metropolitan District (“GRMD”) through its undersigned counsel, submits the following Complaint against Defendants Headwaters Metropolitan District (“Headwaters”) and GP Granby Holdings (“GPGH”) (collectively referred to as “Defendants”).

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff GRMD is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Plaintiff is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

2. Defendant Headwaters is a Metropolitan District validly organized and existing pursuant to the Colorado Special District Act, Section 32-1-101 et seq., C.R.S. Under Section 32-1-305 (7), C.R.S., the Defendant is a quasi-municipal corporation and political subdivision of the state of Colorado with all the powers thereof.

3. Defendant GPGH is Colorado Limited Liability Company in good standing with its principal place of business located at 10100 Santa Monica Blvd., Suite 1000, Los Angeles, CA 90067. Defendant's registered agent address is 7700 E. Arapahoe Rd. Ste 220, Centennial, CO 80221.

4. This Court is the proper venue for this action pursuant to C.R.C.P. 98(c) because Headwaters and GPGH (the "Districts") are located entirely within the County of Grand, State of Colorado.

GENERAL ALLEGATIONS

5. Granby Realty Holdings ("GRH"), Headwaters, and GRMD are all separate but related entities. GRH was the petitioner that sought the organization of both Headwaters and GRMD. Headwaters is the "developer district" and the sole properties within its boundaries are a single residential condominium unit and an undeveloped parcel of land which serves as a "directors parcel" for Headwaters. GRMD is the "homeowner district" which encompasses the properties within the Granby Ranch Metropolitan District. Owners of taxable real and personal property, the holders of certain option contracts, and residents within both Headwaters and GRMD are "eligible electors" who may vote in district elections. The Districts were organized by GRH so that Headwaters, which would have only developer-affiliated directors, would be the control or service district, and GRMD would pay taxes and fees to finance district services.

6. Currently, the Headwaters Board is comprised of five members, neither of whom reside within the boundaries of that district. The GRMD Board is comprised of five members all of whom are homeowners within that district.

7. On December 31, 2012 GRH and Headwaters entered into the Second Amended and Restated Lease Purchase Agreement ("LPA") for purposes of Headwaters purchasing certain Amenities under the LPA. A true and correct copy of the LPA is attached to this complaint as **Exhibit 1** and incorporated herein by this reference.

8. On April 11, 2006, the Board of Directors of the Headwaters and GRMD entered into a "Fee Resolution". GRMD is a third-party beneficiary under the LPA because it was expressly intended to be benefited under the LPA through the Fee Resolution.

9. The Fee Resolution required GRMD to collect an Amenity Fee from property owners within the Granby Ranch development which was to be remitted to Headwaters to then apply to payments due under to the LPA. Such a fee would not be able to be collected were it not for the LPA between GRH and Headwaters since Headwaters is collecting the Amenity Fee through GRMD.

10. Redwood Capital Finance Company, LLC (“Redwood”) is the predecessor in interest to GPGH. In 2005, GRH granted Redwood a deed of trust on the Leased Premise to secure repayment of certain debts.

11. Upon information and belief, GRH defaulted on this loan agreement and GPGH foreclosed on the Leased Premise sometime between May 28, 2020 and August 31, 2020. Following the foreclosure, GPGH became the successor in interest to the LPA.

12. GPGH asserts that it was not a successor in interest to the LPA because the LPA was terminated by way of the foreclosure.

13. On September 1, 2020 GPGH notified Headwaters and all residents of the community via email that the LPA purportedly had been terminated by way of a public trustee foreclosure conducted between May 28, 2020 and August 31, 2020.

14. Plaintiff maintains that the LPA was not terminated by way of public trustee foreclosure because the LPA is an installment land contract which must be foreclosed on as a mortgage through the Courts. As such, the LPA is still binding.

15. Even assuming that the LPA was terminated by way of foreclosure, the LPA contains a subordination clause. Section 26 of the LPA provides, in part,

Upon the request of Landlord, Tenant shall subordinate the lien of this Lease to the lien of any mortgage or deed of trust encumbering the Leased Premise, *so long as such lender provides Tenant a Non-Disturbance Agreement* in form a substance reasonably acceptable to Tenant which shall provide, among other things, that upon such lender’s succession of interest it shall be bound as Landlord to the provisions of this Lease, including the Tenant’s right to acquire the Leased Premises in accordance with Section 23....”

(emphasis added).

16. Subsequently, on November 11, 2020, GPGH notified Headwaters that even assuming the LPA was not terminated by way of foreclosure that it has ceased to operate the Amenities for in excess of 30 days, and thus, pursuant to Section 10 of the LPA, it was electing to terminate the LPA.

17. Section 10 of the LPA provides, in part, “if Tenant ever ceases to operate the Amenities on the Leased Premises for 30 days or longer . . . Landlord may, in its sole discretion and after at least 10 days advance notice to Tenant (which notice may be given within 10 days after the Tenant ceases operation of the Amenities), elect to terminate this lease”

18. The termination of the LPA will prevent GRMD from collecting fees pursuant to the LPA and will lose approximately \$6.05 million dollars in equity already paid (out of a purchase price of \$18 million) subject to the LPA from fees collected from its residents and members.

19. Notice was not properly given by GPGH as required under Section 10.

20. On or about April 8, 2020, the former operating entity, Granby Ranch Amenities (“GRA”) provided notice to the Headwaters board that it intended to terminate its agreement with Headwaters to manage the Leased Premises on or before October 5, 2020. GRA then provided notice on May 28, 2020 that it would no longer operate the Amenities after May 30, 2020. At that same board meeting, the Headwaters board resolved to award Granby Prentice Amenities/Ridgeline (“GPA/Ridgeline”) the management contract for the Leased Premise subject to receipt and execution of a mutually acceptable management agreement. GRMD is not aware of a final written agreement ever being entered into between GPA/Ridgeline and Headwaters.

21. On or about May 30, 2020 the Headwaters board voted and approved Touchstone Golf (“Touchstone”) as the new operating entity for the golf amenities. On or about September 2, 2020 GPGH informed Granby Ranch homeowners that it had contracted with Touchstone to operate the golf amenities and with Ridgeline to operate the ski amenities. The governor ordered all ski resorts to close effective March 15 and the ski amenities remained closed through December 10, 2020.

22. As such, there was never a 30-day period in which Headwaters failed to operate the amenities. Although new management companies were operating the Amenities, they were appointed by Headwaters and thus, Headwaters, despite having a new board, was still managing the Amenities through its appointed contractors.

FIRST CLAIM FOR RELIEF
(Breach of Contract against GPGH)

23. The allegations set forth in paragraphs 1 through 22 of this Complaint are incorporated by this reference as though fully set forth herein.

24. Pursuant to Section 26 of the LPA, GPGH should have provided Headwaters with a Non-Disturbance Agreement when Headwaters first took out a loan against the Leased Premise. According to Section 26, the Non-Disturbance Agreement shall provide, among other things, that upon such lenders succession of interest it shall be bound as Landlord.

25. GPGH did not provide a Non-Disturbance Agreement to Headwaters as required under Section 26 and have thus breached the LPA.

26. By terminating the LPA, GPGH has refused to be bound as Landlord to Headwaters and has thus breach its duties to GRMD as a third-party beneficiary.

27. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against GPGH as follows:

- i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;
- ii. For a decree of specific performance ordering that GPGH reinstate all existing agreements with GRMD;
- iii. For a decree of specific performance ordering that GPGH uphold the provisions of the LPA;
- iv. For GRMD's cost of suit;
- v. For such other and further relief as this Court may deem just.

SECOND CLAIM FOR RELIEF
(Breach of Contract against Headwaters)

28. The allegations set forth in paragraphs 1 through 27 of this Complaint are incorporated by this reference as though fully set forth herein.

29. Headwaters did not obtain or request a Non-Disturbance Agreement from GPGH as required under Section 26 of the LPA.

30. In failing to do so, Headwaters breached its duties to GRMD as a third-party beneficiary under the LPA.

31. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Headwaters as follows:

- i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;
- ii. For GRMD's cost of suit;
- iii. For such other and further relief as this Court may deem just.

THIRD CLAIM FOR RELIEF
(Tortious Interference with Contract against GPGH)

32. The allegations set forth in paragraphs 1 through 31 of this Complaint are incorporated by this reference as though fully set forth herein.

33. To prove tortious interference with contract under Colorado law, a plaintiff must show the existence of a valid contract; the defendant knew or reasonably should have known of the contract; the defendant intended to induce a breach of the contract; action by the defendant that induced a breach of the contract; the defendant's interference was improper; and the defendant's interference caused damages.

34. GPGH was aware of both the LPA and the Fee Agreement. GPGH was aware of the Section 10 termination requirement under to LPA and that failure for Headwaters to operate the Amenities would trigger termination under Section 10.

35. GPGH intentionally tried to prevent Headwaters from operating the Amenities and hired another company to operate the Amenities.

36. GPGH's actions triggered termination under Section 10 which caused GRMD to suffer damages as a third-party beneficiary of the LPA.

37. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against GPGH as follows:

- i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and

including an award of attorney's fees incurred in bringing and maintaining this action;

- ii. For a decree of specific perform ordering that GPGH reinstate all existing agreements with GRMD;
- iii. For a decree of specific performance ordering that GPGH uphold the provisions of the LPA;
- iv. For GRMD's cost of suit;
- v. For such other and further relief as this Court may deem just.

FOURTH CLAIM FOR RELIEF

(Breach of the Covenant of Good Faith and Fair Dealing against Headwaters)

38. The allegations set forth in paragraphs 1 through 37 of this Complaint are incorporated by this reference as though fully set forth herein.

39. Under Colorado law, every contract contains an implied duty of good faith and fair dealing. This covenant is contained in contracts entered into by political subdivisions of the state of Colorado such as GRMD and Headwaters and private entities such as GPGH.

40. The good faith performance doctrine attaches to contracts to effectuate the intentions of the parties and to honor their reasonable expectations.

41. A violation of the duty of good faith and fair dealing gives rise to a claim for breach of contract.

42. Headwaters failed to uphold its duty of good faith and fair dealing under the LPA and the Fee Agreement by failing to perform under Section 26 of the LPA by obtaining the non-disturbance agreement from GPGH.

43. Headwaters failed to uphold its duty of good faith and fair dealing under Section 10 of the LPA when it participated in the conspiracy to make it appear as if it were not operating the amenities when in fact it was.

44. WHEREFORE, Plaintiff requests that this Court enter judgment in its favor and against Headwaters as follows:

- i. For general damages, in the monetary amount to be determined at trial, which will allow GRMD to recover any equity paid into the LPA by GRMD since 2006, and including an award of attorney's fees incurred in bringing and maintaining this action;
- ii. For GRMD's cost of suit;
- iii. For such other and further relief as this Court may deem just.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment against GPGH)

45. The allegations set forth in paragraphs 1 through 44 of this Complaint are incorporated by this reference as though fully set forth herein.

46. The LPA was not terminated through the public trustee foreclosure because it was an installment land contract. As such, the LPA created a security interest benefitting GPGH's predecessor in interest, Redwood, and GPGH, to the extent GPGH is the legal successor in interest to the LPA.

47. An installment land contract is characterized by the following elements: (1) the owner's agreement to sell and the buyer's agreement to buy; (2) the promise of the buyer that he will make payments, usually over a long period of time and in installments, and that buyer will keep the premises insured and maintain them; (3) the seller's promise that he will deliver a deed when the payments have been completed; and (4) an agreement that, in the event of default by the buyer in making the payments or performing the other covenants contained in the instrument, the seller may declare the contract at an end and retain the payments made as liquidated damages.

48. The LPA meets the criteria for an installment land contract in a number of ways including but not limited to (1) GRH agreeing to sell and Headwaters agreeing to purchase the Leased Premises; (2) the LPA was to automatically renewed for 49 additional one-year terms; (3) GRH promised to deliver a deed when the payments were completed; and (4) upon default, GRH had the right "to terminate this Lease and reenter the Leased Premises;" in addition, under Section 3.a of the LPA, "the Rental Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim or recoupment for any reason whatsoever."

49. Courts should treat an installment land contract as a mortgage based upon a number of factors, including the amount of the vendee's equity in the property, the length of the default period, the willfulness of the default, whether the vendee has made improvements, and whether

the property has been adequately maintained. The parties had been performing under the LPA for over 14 years at the time of the foreclosure, including 14 years of rental payments which went towards the amount of equity in the property. Additionally, GRMD has paid out approximately \$6.05 million (of the \$18.9 million total due) to GRH under the LPA since 2006.

50. Plaintiff is a party that is interested under a written contract, or other writings constituting a contract, and may have determined any question of construction or validity arising under the contract, and obtain a declaration of rights, status, or other legal relations thereunder, pursuant to the terms of C.R.C.P. 57 and the Uniform Declaratory Judgments Law, § 13-51-101 et seq., C.R.S.

WHEREFORE, Plaintiff requests a declaratory judgment of this Court including, without limitation, that:

- a. The LPA is an installment land contract.
- b. That the LPA should have been treated as a mortgage and thus could only have been terminated through a judicial foreclosure.
- c. The LPA was not terminated through the public trustee foreclosure.

Dated this 23rd day of February, 2021.

NORTON & SMITH,
A Professional Corporation

s/ Charles E. Norton
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ADDRESS FOR PLAINTIFF

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