

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:23-cv-01351-RMR-STV

GRCO LLC, a Missouri limited liability company,

Plaintiff,

v.

GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,

Defendant.

PLAINTIFF’S RESPONSE IN OPPOSITION TO MOTION TO STAY

Plaintiff, GCRO LLC, by and through undersigned counsel, submits the following Response in Opposition to Motion to Stay (“Motion”) submitted by Defendant, Granby Ranch Metropolitan District (“GRMD”).

INTRODUCTION

Plaintiff, a property owner, taxpayer, and real estate developer within GRMD, initiated the underlying suit to halt GRMD’s unconstitutional misappropriation of Plaintiff’s personal property. All Plaintiff’s claims turn upon its challenges to GRMD’s use of a capital facility fees imposed by GRMD for property owners to develop lots within GRMD. Per the terms of the resolution authorizing the fees, the proceeds can only be used to fund infrastructure within GRMD or to pay down related debt incurred to fund such infrastructure. Since 2019, however, GRMD has admittedly deposited all such fees collected into its General Fund, which GRMD uses to pay for everything from administrative expenses to legal fees. Staying this action will only prolong

GRMD's unlawful actions to the detriment of Plaintiff and other property owners and taxpayers of GRMD.

Here, a stay is unwarranted since each of the *String Cheese* factors weighs against it. First, Plaintiff possesses a strong interest in expeditiously prosecuting this case so it can end GRMD's unconstitutional actions as quickly as possible. Any delay only increases the likelihood that Plaintiff or others will again be subject to the fees at issue and used by GRMD for improper purposes. Conversely, the burden on GRMD in participating in discovery is minimal, as the Motion readily admits. Each of Plaintiff's claims, except for one, are based on a common set of facts.¹ The scope of discovery should be narrow and will primarily involve facts and documents readily available to GRMD. Further, nothing short of a complete dismissal of the action—which Plaintiff believes is unlikely—will appreciably affect the scope of discovery.

As a general rule, the courts in this district do not grant discovery stays just because a dispositive motion is pending. There is no reason to deviate from that general rule in this case.

BACKGROUND

Plaintiff brought the underlying action on May 26, 2023 (as amended on July 12, 2023), alleging that GRMD's practices surrounding the capital facility fees collected since 2019 violates the authorizing resolution, Colorado statutes and common law, and Plaintiffs' constitutional rights. *See generally* Am. Compl. (Doc. No. 15). In 2006, GRMD—in conjunction with Headwaters Metropolitan District—passed a joint resolution requiring the payment of a one-time \$6,255 capital

¹ Plaintiff's last count varies to some extent in that it raises the issue whether the 2006 Fee Resolution was extinguished by foreclosure. That is largely a legal issue that will turn upon the undisputed documents attached to the complaint.

facility fee (“Fees”) to obtain a building permit for development of lots within GRMD. The resolution stated that proceeds:

“will be used solely for the purpose of financing the acquisition, reimbursement, construction, replacement, maintenance and repair of the Improvements, including, but not limited to, paying debt service on, and other costs related to, the Series 2006 Bonds and any obligations refunding such Series 2006 Bonds and reimbursements of amounts advanced by other parties.”

Id. at Ex. 7, ¶ 6 (emphasis added). “Improvements” are defined as infrastructure described in the District’s service plans. *See, e.g., id.* at Ex. 7, Fourth Whereas Clause.

From 2006 to 2019, GRMD collected and used the Fees for repayment of its Series 2006 Bonds, debt incurred to finance infrastructure that benefitted the lots paying those fees. Beginning in 2019, however, GRMD has deposited all Fees into its General Fund. The General Fund is not restricted to any specific use and can be used for the payment of GRMD’s general and administrative expenses, including, for example, legal fees. *Id.* at ¶ 54. Since 2019, GRMD has collected hundreds of thousands of dollars in Fees from Plaintiff, which it has placed into its General Fund. During this time, GRMD has not acquired, constructed, replaced, or repaired any infrastructure within its borders. *Id.* at ¶ 51. Nor does it have plans to undertake any capital improvement projects. *Id.* at ¶ 52.

GRMD’s misappropriation of the Fees paid by Plaintiff violates Colorado law and implicates significant constitutional concerns. Plaintiff contends that by diverting the proceeds from the Fees from their narrowly defined purpose, GRMD has (i) violated the terms of the authorizing resolution, (ii) imposed fees that are not permitted under C.R.S. § 32-1-1001(1)(j), (iii) violated C.R.S. § 29-1-803(1), (iv) illegally modified its Service Plan, (v) violated Plaintiff’s rights under the Takings Clause of the Fifth Amendment of the United States Constitution, and (vi)

violated Plaintiff's rights under the Due Process Clause of the Fifth Amendment of the United States Constitution and the Colorado State Constitution. *See* Am. Compl. ¶¶ 17-36.

Although GRMD has moved to dismiss the entirety of the Amended Complaint, Plaintiff disputes GRMD's arguments for dismissal, and this action should not be stayed pending the resolution of that motion. Plaintiff's claims are well-founded, and, given their shared factual foundation, should even *one* claim survive, the scope of discovery will emerge virtually unchanged. Plaintiff should be allowed to move forward with discovery and resolution of these claims before additional funds are collected and unlawfully dissipated by GRMD.

ARGUMENT

It is well settled that “stays of the normal proceedings of a court matter should be the exception rather than the rule, and courts in this District generally disfavor stays.” *Barrington v. United Airlines, Inc.*, 565 F. Supp. 3d 1213, 1216 (D. Colo. 2021) (internal quotations and citations omitted). GRMD argues that their request should be analyzed under the factors set forth in *String Cheese Incident, LLC v. Stylus Shows, Inc.*, No. 1:02-CV-01934-LTB-PA, 2006 WL 894955, at *2 (D. Colo. Mar. 30, 2006). But GRMD's application of those factors is riddled with falsities and contradictions. *See* Def.'s Mot. to Stay ¶¶ 4-11 (Doc. No. 20). Setting aside GRMD's attempts to exaggerate the scope and potential burden of discovery, the *String Cheese* factors demonstrate that there is no reason for this Court to take the exceptional measure of staying discovery pending disposition of their Motion to Dismiss.

A. Plaintiff's interest in expeditiously halting GRMD's illicit misappropriation of its property warrants denying the Motion.

The first *String Cheese* factor is the “plaintiff's interests in proceeding expeditiously with the civil action and the potential prejudice to plaintiff of delay.” *String Cheese*, 2006 WL 894955,

at *2. GRMD argues that this factor weighs in favor of a stay because the “majority of the key evidence in this case” is already available and in Plaintiff’s possession and is “unlikely to be affected by a stay.” Def.’s Mot. to Stay ¶ 6. In making this argument, GRMD completely glosses over the first variable in the factor: Plaintiff’s interest in proceeding *expeditiously*. See *Sanchez v. Hartley*, No. 13-cv-01945-WJM-CBS, 2016 WL 7176718, at *7 (D. Colo. Apr. 26, 2016) (“[A] private citizen is entitled to claim the timely protection of the law”). Given the number of claims raised in Plaintiff’s Amended Complaint, a ruling on a GRMD’s Motion to Dismiss could take significant time, which this Court has identified as a clear mark of prejudice. See *Four Winds Interactive LLC v. 22 Miles, Inc.*, No. 16-cv-00704-MSK-STV, 2017 WL 121624, at *2 (D. Colo. Jan. 11, 2017) (finding the first *String Cheese* factor to weigh against a stay because of the plaintiff’s interest in proceeding expeditiously, and because a final determination on the motion to dismiss “could take several months”).

Plaintiff’s property has allegedly been misappropriated by GRMD. Plaintiff is continuing to develop lots in Granby Ranch and will be subject further payments of these Fees, as would other property owners that seek to develop lots. The protection of property is a cornerstone of our Nation’s legal system, and Plaintiff should not be forced to delay pursuing that protection. Further, delay could negatively impact Plaintiff’s capacity to forecast its necessary expenditures (i.e., fees and legal costs), impeding its ability to continue to conduct its business and develop GRMD property.

B. Discovery will not unduly burden GRMD since this action concerns a narrow set of facts that, as GRMD concedes, are largely already known.

The second *String Cheese* factor, “the burden on defendants” of proceeding with discovery, also weighs against granting GRMD’s proposed stay. *String Cheese*, 2006 WL 894955, at *2. In

arguing that Plaintiffs would not be burdened by a stay on discovery, GRMD asserts that “[t]he majority of key evidence in this case [is] attached as Exhibits 1 through 8 to the Amended Complaint.” Def.’s Mot. to Stay ¶ 6. However, in spite of this, GRMD asserts that “[t]he burden on Defendant would be great should discovery proceed.” *Id.* at ¶ 7. Plaintiff fails to see how both propositions could be true.

With one exception, all Plaintiff’s claims center on GRMD’s deposit of the Fees into a General Fund for general expenses rather than using them for the designated purposes set forth in the authorizing resolution. As GRMD concedes, the scope of discovery in this case is narrow: the vast majority of the relevant information is already in Plaintiff’s possession, *i.e.*, documents relating to GRMD’s use of the Fees since 2018, a four-year timeframe. This is true *regardless of which claims survive the Motion to Dismiss*. Although the causes of action vary, the claims in Plaintiff’s Amended Complaint share a common factual foundation; discovery for one claim is virtually indistinguishable from discovery for another.

The narrow scope of factual issues in this action means that GRMD will not be subjected to any extraordinary burdens during the discovery process. *See Webb v. Brandon Exp. Inc.*, No. 09-cv-00792-WYD-BNB, 2009 WL 4061827, at *2 (D. Colo. Nov. 20, 2009) (“Parties always are burdened by discovery and the other requirements for the preparation of a case. That is a consequence of our judicial system and the rules of civil procedure. There is no special burden here.”); *see also Baldwin v. United States*, No. 11-cv-02033-MSK-KLM, 2011 WL 5177698, at *2 (D. Colo. Nov. 1, 2011) (concluding that the defendant would not be prejudiced in the absence of a stay pending resolution of its motion to dismiss because the “ordinary burdens associated with litigating a case do not constitute undue burden”).

C. Staying this action will also inconvenience the Court by cluttering the docket and rendering it less manageable with little chance of reducing the scope of discovery.

The third *String Cheese* factor is “the convenience to the court.” *String Cheese*, 2006 WL 894955, at *2. “The District’s general rule to avoid discovery stays while a dispositive motion is pending recognizes that there are burdens to the court and to the public in delaying, potentially for months, those cases where a dispositive motion is filed.” *McGinn v. El Paso Cnty., Colorado*, No. 22-CV-01387-WJM-MDB, 2022 WL 16924058, at *4 (D. Colo. Nov. 14, 2022) (citations and internal quotations omitted).

As outlined above, even if some of the claims are dismissed (which Plaintiff will vigorously oppose), the scope of discovery and core issues in the case will remain virtually unchanged. Judicial economy will not be enhanced by a stay at this stage of the case. *See, e.g., Patterson v. Santini*, 11-cv-01899-RM-KLM, 2014 WL 349085 at *3 (D. Colo. Jan. 31, 2014) (“It is not convenient for the Court to have stale cases cluttering its docket.”); *Lester v. Gene Express, Inc.*, No. 09-cv-02648-REB-KLM, 2010 WL 743555, at *2 (D. Colo. Mar. 2, 2010) (“The Court is inconvenienced by an ill-advised stay because the delay in prosecuting the case which results from the imposition of a stay makes the Court’s docket less predictable and, hence, less manageable.”); *Lester*, 2010 WL 743555, at *2 (adding that this is particularly the case when “the stay is tied to ... [a] pending motion on which ultimate success is not guaranteed”).

D. The requested stay is unlikely to protect third parties from the threat of unwarranted discovery and carries the risk of subjecting other property owners to the unlawful misappropriation of their property.

Lastly, the fourth and fifth *String Cheese* factors – “the interests of persons not parties to the civil litigation” and “the public interest” – both weigh heavily in favor of denying GRMD’s motion. GRMD asserts that discovery will burden third parties because it is “likely that third parties

will be subject to subpoenas and requests for production of documents.” Def.’s Mot. to Stay ¶ 9. GRMD does not provide any specifics to support that claim; it does not identify what third parties would be subject to discovery or why. Plaintiff’s Amended Complaint focuses solely on acts taken by GRMD, as discussed above. In fact, the interests of non-parties and the public at large are served by Plaintiff’s lawsuit.

Anyone seeking a building permit within GRMD and subject to the Fees has an interest in ensuring that the Fees are put towards infrastructure that benefits those paying the fees. The taxpayers who fund GRMD’s operations and repayment of its debt share an interest in ensuring that GRMD is properly using the funds it collects. For these reasons, both non-parties and the public-at-large have a vested interest in ensuring that the case moves forward as expeditiously and efficiently as possible.

CONCLUSION

The *String Cheese* factors weigh against the imposition of a stay on the discovery process—a stay would burden the Plaintiff, the Court, non-parties, and the public-at-large, *without imposing any meaningful burden on GRMD*. Absent a complete dismissal of Plaintiff’s claims, a stay will have minimal impact on the scope of discovery in this case. Therefore, Plaintiff respectfully requests that this Court exercise its discretion to deny GRMD’s Motion in its entirety.

Respectfully submitted this 11th day of August, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2023, I electronically filed the foregoing, **PLAINTIFF'S RESPONSE IN OPPOSITION TO MOTION TO STAY** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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