

COLORADO COURT OF APPEALS

2 East 14<sup>th</sup> Avenue  
Denver, CO 80203

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Appeal from Grand County District Court,  
Colorado

Honorable Mary C. Hoak  
District Court Case No. 2021CV030008

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**Plaintiff-Appellant:**

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

v.

**Defendants-Appellees:**

HEADWATERS METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado;  
GRAY JAY VENTURES, LLC; GRANBY  
PRENTICE, LLC; and GR TERRA, LLC.

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**Attorneys for Defendants-Appellees**

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Terra, LLC:**

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Case No. 2023CA1612

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**MOTION OF DEFENDANTS-APPELLEES TO DISMISS APPEAL  
FOR LACK OF JURISDICTION**

Defendants-Appelles Headwaters Metropolitan District (“Headwaters”), GR Terra LLC (“GR Terra”), Gray Jay Ventures, LLC, and Granby Prentice, LLC (collectively, “Defendants”) pursuant to Colo. R. App. P. 27, by and through the undersigned counsel, move to dismiss this appeal for lack of appellate jurisdiction. In support thereof, Defendants state as follows:

**CERTIFICATION OF CONFERRAL**

Counsel for Headwaters and GR Terra has conferred with Counsel for Plaintiff-Appellant who objects to this Motion.

**GROUND FOR RELIEF**

1. On September 15, 2023, appellant, Granby Ranch Metropolitan District (“Appellant” or “GRMD”), filed a notice of appeal from the district court’s orders

entered July 30, 2023 (“Orders”) granting motions that disposed of some (but not all) claims in the underlying litigation. Because several claims remain pending in the district court, there is no final judgment and GRMD’s notice of appeal should be dismissed.

2. The underlying dispute involves the Granby Ranch development in Grand County and the role of two metropolitan districts involved in that development. GRMD asserted that it was a third-party beneficiary of a lease-purchase agreement entered in 2012 (the “LPA”) between one of the districts, Headwaters, and the private owner of certain ski and golf amenities at Granby Ranch. GRMD’s Third Amended Complaint asserted various claims against Headwaters and the other defendants for damages and injunctive relief under the LPA. GRMD also asserted claims under a series of intergovernmental agreements relating to the Granby Ranch development.

3. Headwaters and GR Terra both filed five counterclaims against GRMD seeking injunctive relief, damages and attorneys’ fees and asserting that GRMD had breached various other agreements between the parties (or their predecessors in interest) relating to the Granby Ranch development. *See Exhibit A*, Headwaters’ Counterclaims to Plaintiff’s Third Amended Complaint (filed on November 3, 2022), pp. 14-39, and *Exhibit B*, GR Terra’s Counterclaims to Plaintiff’s Third

Amended Complaint (filed on November 3, 2022), pp. 14-35.

4. The Orders that are the subject of this Appeal (and attached to GRMD's notice of appeal):

- a. Granted Defendants' Renewed Motion Under C.R.C.P. 12(B)(1) to Dismiss; and
- b. Granted Defendant/Counterclaim Plaintiff GR Terra's Cross Motion for Summary Judgment on Counts I, II, and III of Defendant /Counterclaim Plaintiff GR Terra's Counterclaims to GRMD's Third Amended Complaint.

5. The Orders dismissed all GRMD's claims in its Third Amended Complaint and three of GR Terra's Counterclaims, but did not adjudicate the other counterclaims filed by Headwaters and GR Terra.

6. After entry of the Court's Orders and GRMD's notice of appeal, the parties have stipulated to the dismissal of the following Counterclaims:

- Counts II, III, V and VI of Headwaters' Counterclaims.
- Count V of GR Terra's Counterclaims.

See Stipulation for Dismissal attached as Exhibit C (the Stipulation designates whether the dismissal of various claims is with or without prejudice).

7. In addition, Headwaters and GR Terra have withdrawn any request for

damages pursuant to Count IV of each of their Counterclaims, though their claims for injunctive relief in those Counts remain pending. *See* Exhibit C.

The following charts summarize the current status of the Defendants' Counterclaims.

### **Headwaters' Counterclaims Against GRMD**

Count	Relief	Status
I	Declaratory/injunctive relief and damages for breach of Exclusion Agreement	<b>Pending</b>
II	Breach of Letter Agreement and Master IGA Termination	Dismissed Per Stipulation
III	Breach of Waiver and Release Agreement	Dismissed Per Stipulation
IV	Declaratory relief and damages for breach/improper modification of GRMD Service Plan	Damages claim withdrawn; <b>injunctive relief remains pending</b>
V.	Alternative claim for breach of Second Granby IGA	Dismissed Per Stipulation
VI.	Declaratory relief that LPA was terminated	Dismissed Per Stipulation

### **GR Terra Counterclaims Against GRMD**

Count	Relief	Status
I	Declaratory relief that LPA was terminated	Summary Judgment granted in favor of GR Terra
II	Declaratory relief that LPA was terminated	Summary Judgment granted in favor of GR Terra
III	Judgment quieting title free and clear of LPA	Summary Judgment granted in favor of GR

		Terra
IV	Declaratory Relief and Damages for Breach/Improper Modification of GRMD Service Plan	Damages claim withdrawn; <b>injunctive relief remains pending</b>
V.	Breach of Waiver and Release Agreement	Dismissed Per Stipulation

8. As set forth above, Headwaters has two pending counterclaims and GR Terra has one pending counterclaim (“Remaining Claims”). Thus, there is no final judgment and this Court lacks jurisdiction over this appeal.

9. This Court’s jurisdiction is limited to final judgments. C.R.S. § 13-4-102(1); C.A.R. 1(a)(1). A final judgment is one “which ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding.” *Harding Glass Co. v. Jones*, 640 P.2d 1123, 1125 & n.2 (Colo. 1982); *see also Musick v. Woznicki*, 136 P.3d 244, 249 (Colo. 2006) (“Generally, judgment in a case is deemed final when it ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do except execute the judgment.”).

10. Colorado Rule of Civil Procedure 54(b) provides that in the absence of express direction from the court, “any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities

of fewer than all the parties shall not terminate the action as to any of the claims, or parties . . . .” C.R.C.P. 54(b).

11. “When summary judgment does not dispose of the entire action, the judgment is not final for purposes of appeal unless the trial court expressly determines that there is no just reason for delay, and orders entry of final judgment.” *Redmond v. Chains, Inc.*, 996 P.2d 759, 762 (Colo. App. 2000) (citing C.R.C.P. 54(b)); *accord Manka v. Martin*, 614 P.2d 875, 878 (Colo. 1980); *Allied Colorado Enterprises Co. v. Grote*, 397 P.2d 225, 226-27 (Colo. 1964).

12. The Orders do not dispose of all claims in the litigation and do not contain language explicitly “determin[ing] that there is no just reason for delay,” and making “an express direction for the entry of judgment.” C.R.C.P. 54(b). Such certification was not requested, and it is not appropriate in any event. As such, there is no final judgment, and the trial court retains jurisdiction to decide the remaining claims. *Musick*, 136 P.3d at 250-51.

13. GRMD’s Notice of Appeal is not to the contrary. GRMD does not state (nor could it) that a final judgment has entered or that a Rule 54(b) certifications has occurred. GRMD’s attempt to appeal the Orders is therefore facially defective.

14. GRMD’s appeal was premature and should be dismissed for lack of jurisdiction. *Harding Glass Co.*, 640 P.2d at 1127; *Allied*, 397 P.2d at 227.

WHEREFORE, Defendants-Appellees move this Court for an order dismissing appellant GRMD's appeal for lack of appellate jurisdiction and for such other and further relief as this Court deems just and proper.

Dated this 22 day of November, 2023.

HUSCH BLACKWELL LLP

*/s/ Jamie H. Steiner*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of November, 2023, a true and correct copy of the foregoing **MOTION OF DEFENDANTS-APPELLEES TO DISMISS APPEAL FOR LACK OF JURISDICTION** was served via the Colorado Courts e-filing system on the following:

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