

<p>COLORADO COURT OF APPEALS 2 East 14th Avenue, Denver, Colorado 80203</p>	<p>DATE FILED: November 29, 2023 12:08 PM FILING ID: D23BF14424587 CASE NUMBER: 2023CA1612</p>
<p>Appeal from: Grand County District Court, 2021CV030008, Hon. Judge Mary C. Hoak</p>	
<p>Plaintiff-Appellant: GRANBY RANCH METROPOLITAN 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; GR TERRA, LLC.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Appellant: David K. TeSelle, Reg. No. 29648 dteselle@burgsimpson.com Lisa R. Marks, Reg. No. 31683 lmarks@burgsimpson.com D. Dean Batchelder, Reg. No. 38425 dbatchelder@burgsimpson.com BURG SIMPSON ELDREDGE HERSH & JARDINE, P.C. 40 Inverness Drive East Englewood, Colorado 80112 Tel.: (303) 792-5595</p>	<p>Case No.: 2023CA1612</p>
<p>RESPONSE TO APPELLEES' MOTION TO DISMISS FOR LACK OF JURISDICTION</p>	

Plaintiff-Appellant Granby Ranch Metropolitan District (“GRMD”), through counsel and pursuant to CAR 27(a)(3), responds to Defendants-Appellees Headwaters Metropolitan District (“Headwaters”), GR Terra LLC (“GR Terra”), Gray Jay Ventures, LLC, and Granby Prentice, LLC, collectively Appellees’, motion to dismiss its appeal for lack of jurisdiction and states:

1. This case arose out of a dispute between the parties regarding a lease purchase agreement and various other agreements related to the financing of amenities in Grand County, Colorado. GRMD asserted a range of claims against Appellees, and Headwaters and GR Terra counterclaimed.

2. The district court entered orders on July 30, 2023, holding that GRMD was not a third-party beneficiary of the lease purchase agreement and therefore did not have standing to assert claims, and entered judgment on certain of defendants’ counterclaims.

3. Appealing from these July 30 orders, GRMD timely filed its notice of appeal on September 15, 2023.

4. In its notice of appeal, GRMD advised this court that it was filing its notice of appeal in an abundance of caution given that the July 30 orders may operate as a final judgment. *See* Sept. 15, 2023, Notice of Appeal, at 5.

5. Colorado law is clear that a notice of appeal is jurisdictional and the failure to timely file a notice of appeal is a waiver of a party's right to appeal. Therefore, acting from an abundance of caution, GRMD properly filed a protective notice of appeal.

6. GRMD believes that July orders functionally resolved all issues between the parties and operates as a final judgment. As stated in its notice of appeal, GRMD has filed a motion for entry of final judgment with the district court to confirm this fact. *See, id.*, at 5; **Exhibit 1** (October 25, 2023, Motion for Entry of Final Judgment (less attachments thereto)).

7. While the parties have, through stipulation, confirmed that the majority of the counterclaims have been dismissed pursuant to C.R.C.P. 41(a)(1)(B), *see* Exhibit C to Appellees' motion to dismiss, it

remains that Headwaters and GR Terra challenge GRMD's motion for entry of final judgment.

8. Therefore, there is a dispute between the parties as to whether or not final judgment exists and whether this appeal is properly before this court at this time.

9. GRMD disagrees that this court does not have jurisdiction over the appeal and maintains that the appeal should not be dismissed. GRMD has argued to the district court that entry of final judgment is proper given that the July 30 orders functionally resolved the dispute between the parties. *See Exhibit 1 generally.*

10. However, given that there is a dispute, and in order to conserve this court's (and the parties') resources, to avoid the risk of unnecessary briefing, and to avoid any risk of confusion that the district court has jurisdiction to consider the parties' arguments as to final judgment, the issue of jurisdiction should be resolved now.

11. Therefore, GRMD requests that Appellees' motion be denied. The appeal should not be dismissed.

12. However, to permit clarity: in ruling on Appellees' motion, rather than dismissing the appeal, this court should enter a stay of proceedings in this court and order a limited remand to the district court to allow it to rule on the motion for entry of final judgment. Either GRMD is correct and there is a final judgment (and the appeal would therefore continue) or Appellees are correct and there is not a final judgment (and the appeal would therefore be premature), but either way there would be certainty now before the parties brief the merits and before this court expends its time and resources considering the merits.

13. Alternatively, if this court grants Appellees' motion and dismisses the appeal, so that the record is clear when GRMD re-files its appeal, GRMD respectfully requests that this court clearly state that the July 30, 2023, orders of the district court do not constitute a final judgment and therefore GRMD's September 15, 2023, notice of appeal appealing those orders was premature.

14. To be clear, GRMD maintains that if its appeal were premature, any dismissal for want of a final judgment is necessarily *without*, and not with, prejudice.

Dated: November 29, 2023.

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

(Signed original on file)

/s/ D. Dean Batchelder _____

David K. TeSelle, Reg. No. 29648

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that on November 29, 2023, I served a true and correct copy of the foregoing **RESPONSE TO APPELLEES' MOTION TO DISMISS FOR LACK OF JURISDICTION**, via the Colorado Court E-Filing System, upon counsel of record, and filed an advisory copy of the same in the District Court.

/s/Natalie Elliott _____

Natalie Elliott