

DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451	DATE FILED: December 20, 2023 4:00 PM FILING ID: 860C4E15805E1 CASE NUMBER: 2021CV30008
<p>Plaintiff: GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado,</p> <p>v.</p> <p>Defendants: HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; and GR TERRA, LLC.</p>	
<p><i>Attorneys for Headwaters Metropolitan District and GR Terra LLC:</i> Jamie H. Steiner, #49304 JoAnn T. Sandifer (<i>Admitted Pro Hac Vice</i>) Husch Blackwell LLP 1801 Wewatta St., Suite 1000 Denver, CO 80202 Phone: 303-749-7200 Fax: 303-749-7272 E-mail: jamie.steiner@huschblackwell.com joann.sandifer@huschblackwell.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case No. 2021CV30008</p> <p>Division 1</p>
<p>REPLY IN SUPPORT OF MOTION TO STRIKE AND ALTERNATIVE RESPONSE TO GRMD’S MOTION FOR ENTRY OF FINAL JUDGMENT</p>	

Plaintiff/Counterclaim Defendant Granby Ranch Metropolitan District (“GRMD”) has filed a motion asking this Court to enter final judgment on the Remaining Counterclaims¹

¹ At this time, the following counterclaims remain pending: (i) Headwaters’ claim for damages and equitable relief under the Exclusion Agreement (Count I of Headwaters’ Counterclaims) and Defendants’ claims for injunctive relief under GRMD’s Service Plan (Counts IV of Defendants’ Counterclaims).

asserted by Defendants/Counterclaim Plaintiffs Headwaters Metropolitan District (“Headwaters”) and GR Terra LLC (“GR Terra”) (“Defendants”). GRMD’s Motion For Entry of Final Judgment asks the Court to determine the merits of the Remaining Counterclaims based upon documents and deposition testimony submitted with the Motion. Apparently recognizing that the requested relief equated to an improper and untimely Rule 56 motion, GRMD latest filings now emphasize GRMD’s request for a briefing schedule for resolution of the Remaining Counterclaims.

Defendants have no objection to the Court setting a briefing schedule for the submission of proper Rule 56 motions on the Remaining Counterclaims. Defendants agree that some of the remaining issues may be capable of resolution as a matter of law based upon documents or other evidence properly submitted with those motions. Therefore, if the Court desires to reopen the deadline for dispositive motions, Defendants are more than willing to work with GRMD’s counsel to reach agreement on a briefing schedule.

But, as set forth in Defendants’ Motion to Strike and Alternative Response to GRMD’s Motion for Entry of Judgment (“Response”), the Court has not at this time reopened the dispositive motion deadline and GRMD has not filed a proper Rule 56 motion. For that reason, Defendants assert that GRMD’s Motion for Entry of Judgment is not properly before this Court. Defendants further assert that GRMD’s Motion, even if properly before the Court, did not establish a right to judgment on the merits of the Remaining Counterclaims.

GRMD’s Opposition (“Opposition”) asserts that Defendants’ Response improperly combined a motion and response to the original motion under C.R.C.P. 121(c)(1)(5). But Defendants’ Response was not a “new” motion seeking relief unrelated to the Motion for Entry

of Final Judgment. In essence, Defendants' Response simply presented alternative reasons (procedural and substantive) why the Court should reject GRMD's Motion for Entry of Judgment. Moreover, as pointed out in Defendants' Response, a "motion" is not necessary for this Court to strike GRMD's improper Motion for Entry of Judgment. This Court has the power, at any time, to strike pleadings or other papers filed with the Court on its own initiative. *See* C.R.C.P. 12(f). In any event, if this Court has concerns about C.R.C.P. 121(c)(1)(5), it can simply treat Defendants' argument regarding the procedural impediments to GRMD's Motion for Entry of Judgment as a reason to deny that Motion rather than a request for the Court to "strike" GRMD's pleading.

Interestingly, GRMD's Reply does not respond to the merits of Defendants' argument. GRMD does not assert that it has filed a proper Rule 56 Motion. Instead, it asserts that further briefing on the legal issues would be more efficient than a full trial at this point in the litigation. That does not justify GRMD's improper submission of a disguised and untimely Rule 56 motion. To the extent GRMD believes it is entitled to judgment as a matter of law on some or all Remaining Counterclaims, it must proceed in accordance with this Rule 56 and this Court's scheduling order.

If this Court is so inclined, Defendants have no opposition to amendment of the scheduling order to set a briefing schedule for supplemental Rule 56 motions with respect to the Remaining Counterclaims. otherwise, the parties can present the legal issues and evidentiary support during a bench trial to the Court. In either event, this Court should strike or deny GRMD's Motion for Entry of Judgment.

Dated: December 20, 2023

HUSCH BLACKWELL LLP

/s/ Jamie H. Steiner

Jamie H. Steiner, #49304

JoAnn T. Sandifer (Admitted Pro Hac Vice)

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Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2023 a true and correct copy of the foregoing **Reply in Support of Motion to Strike and Alternative Response to GRMD's Motion for Entry of Final Judgment** was served via the Colorado Courts e-filing system addressed to the following:

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