

**DISTRICT COURT, GRAND COUNTY,  
COLORADO**

307 Moffat Avenue/P.O. Box 192  
Hot Sulphur Springs, CO 80451  
970-725-3357

DATE FILED: June 4, 2024  
CASE NUMBER: 2021CV30008

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**Plaintiff:**

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

vs.

**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.; GR  
TERRA, LLC.



**COURT USE ONLY**

Case No: 2021CV030008

**ORDER DENYING GRMD'S MOTION FOR ENTRY OF FINAL JUDGMENT;  
ORDER SETTING A BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS TO BE  
FILED BY ANY PARTY; NOTICE THAT THE COURT DISREGARDED THE**

## MOTION TO STRIKE

This matter comes before the Court on the Plaintiff Granby Ranch Metropolitan District's ("GRMD") Motion for Entry of Final Judgment filed on October 25, 2023. On November 22, 2023, Headwaters Metropolitan District ("Headwaters") filed a Motion to Strike Motion for Entry of Final Judgment or Alternative Response to Same.<sup>1</sup> On November 29, 2023, GRMD filed a reply. GRMD's motion became ripe for ruling on December 21, 2023. Upon being fully apprised of the facts and law, the Court finds and rules as follows:

### PROCEDURAL BACKGROUND

GRMD originally alleged eight causes of action, several of which were dismissed by this Court in an order issued on January 28, 2022. With the Court's approval, on October 13, 2022, GRMD filed a Third Amended Complaint alleging six causes of action:

- (I) Breach of Contract against Gray Jay Ventures LLC ("Gray Jay Ventures");
- (II) Breach of Contract against Headwaters;
- (III) Breach of Contract against Granby Prentice LLC ("Granby Prentice");
- (IV) Breach of Contract Against GR Terra LLC ("GR Terra");
- (V) Declaratory Judgment against Gray Jay Ventures and GR Terra alleging the Second Amended and Restated Lease Purchase Agreement (the "LPA") is an installment land contract, should have been treated as a mortgage, and, therefore, could only have been terminated through a judicial foreclosure, and was not terminated through the public trustee foreclosure; and
- (VI) Declaratory Judgment and a request for injunctive relief alleging the LPA is a covenant running with the land against Headwaters, GR Terra, Gray Jay Ventures, and Granby Prentice.

(Third Amended Complaint).

Headwaters counterclaimed and alleged the following:

- (I) Breach of the Exclusion Agreement;
- (II) Breach of the Letter Agreement and Master Intergovernmental Agreement (the Court will refer to an Intergovernmental Agreement as an "IGA") Termination;
- (III) Breach of the Waiver and Release Agreement;
- (IV) Breach of GRMD's Service Plan or Improper Modification of Same;
- (V) Alternative Claim for Breach of the Second Granby IGA;
- (VI) Declaratory Judgment – Colorado Rule of Civil Procedure 57 and Colorado Revised Statute 13-51-101, et seq. alleging the 2012 LPA was terminated by foreclosure or, alternatively, through Gray Jay's notice of termination or,

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<sup>1</sup> The Court does not consider Headwaters' Motion to Strike because "[a] motion shall not be included in a response or reply to the original motion." Colorado Rule of Civil Procedure 121 § 1-15 (1)(d). As such, the Court reviews Headwaters' November 22, 2023, filing as only a response to GRMD's present motion.

alternatively, due to Headwaters' failure to appropriate funds for rental payments for the calendar years 2021, 2022, and 2023.

(Headwaters' Answer and Affirmative Defenses to Plaintiff's Third Amended Complaint, Jury Demand, and Counterclaims, filed 11/3/2022).

GR Terra also counterclaimed and alleged the following:

- (I) Declaratory Judgment “[d]eclaring that the LPA was terminated in its entirety through foreclosure of the Leased Premises, or alternatively, through Gray Jay’s notice of termination, or alternatively, due to Headwaters’ failure to appropriate funds for rental payments for the 2021 calendar year or the ensuing (sic) calendar years”;
- (II) Declaratory Judgment “[d]eclaring that the LPA and any restrictive covenants therein are terminated, removed and canceled from the property”;
- (III) Quieting Title in GR Terra to the Leased Premises, “free and clear of the LPA and any restrictive covenants, including any covenants in favor of GRMD, and declaring that GRMD has no rights to or interests in the Leased Premises . . . .”;
- (IV) Breach of GRMD’s 2016 Service Plan or Improper Modification of Same; and
- (V) Breach of the 2018 Waiver and Release Agreement.

(GR Terra LLC’s Answer, Affirmative Defenses to Plaintiff’s Third Amended Complaint, Jury Demand and Counterclaims, filed 11/3/2022).

On July 30, 2023, this Court issued three separate orders:

- (I) Order Granting the Defendants Headwater Metropolitan District and GR Terra’s Renewed Motion under C.R.C.P. 12(b)(1) to Dismiss – in this order the Court dismissed GRMD’s Third Amended Complaint which included all of GRMD’s claims in this matter;
- (II) Order Denying the Plaintiff /Counterclaim Defendant GRMD’s Renewed Motion for Summary Judgment on Counts I, II, and III of Defendant/Counterclaim Plaintiff GR Terra’s Counterclaims to GRMD’s Third Amended Complaint; Order Granting the 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; and
- (III) Order Denying as Moot (1) GR Terra’s Motion for Summary Judgment on to (sic) GRMD’s Claims IV (Breach of Contract), V (Declaratory Judgment), and VI (Declaratory Judgment); (2) Headwaters’ Motion for Summary Judgment on GRMD’s Claim II (Breach of Contract against Headwaters) and VI (Declaratory Judgment); and (3) Gray Jay and Granby Prentice’s Motion for Summary Judgment as to GRMD’s Claim III (Breach of Contract) and VI (Declaratory Judgment).

On October 25, 2023, GRMD brought the present Motion for Entry of Final Judgment seeking judgment on Headwaters' Counterclaims I through IV<sup>2</sup> and on GR Terra Counterclaim IV<sup>3</sup>, arguing these counterclaims have effectively been resolved by the Court's July 30, 2023, orders and, even if they were not, the counts cannot succeed on the merits. Headwaters and GR Terra filed a Motion to Strike/Alternative Response, in which they maintain GRMD is seeking summary judgment under the guise of the present motion because GRMD seeks relief on issues the Court has yet to resolve.

### RULING

The Court denies GRMD's Motion for Entry of Final Judgment.

The crux of the present motion is whether the remaining counterclaims have been effectively resolved by the Court's July 30, 2023, orders. The Court finds the remaining counterclaims have not been so resolved.

#### I. Headwaters' Counterclaim - Breach of the Exclusion Agreement (Count I).

The Court denies GRMD's request for entry of final judgment on Headwaters' Counterclaim – Breach of the Exclusion Agreement (Count I).

According to GRMD, Headwaters' first counterclaim was "functionally resolved" or is moot. GRMD contends because the Exclusion Agreement does not provide for attorney fees and attorney fees are the only damages asserted by Headwaters, there are no further issues to resolve. See Bunnett v. Smallwood, 793 P.2d 157, 160 (Colo. 1990) ("In the absence of a statute or private contract to the contrary, attorney fees and costs generally are not recoverable by the prevailing party in a breach of contract case.") (Agreement must be "plain" and "unambiguous" and must "expressly provide[]" for an award of attorney's fees Id. at 162 and 163).

GRMD does not explain, however, how the claim was functionally resolved by the Court's previous orders. GRMD makes no attempt to connect the dots between the analysis contained in the Court's July 30, 2023, orders and this specific counterclaim. In its July 30, 2023, orders, the Court dismissed all of GRMD's claims, granted GR Terra's Cross Motion for Summary Judgment on Counterclaims I, II, and III, and deemed moot several defense motions for summary judgment on GRMD's various claims. The Court referenced and examined the Exclusion Agreement for the purpose of assessing GRMD's status as a third-party beneficiary under the 2012 LPA (or, as the case may be, an incidental beneficiary), whether GRMD sustained an injury-in-fact, and whether GRMD had standing. None of these orders examined whether GRMD breached the Exclusion Agreement itself - specifically, Sections 3.4, 4.4, 6.1, 6.2, and/or 6.3, as more thoroughly outlined in the Third Amended Complaint.

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<sup>2</sup> On December 10 2023, after GRMD filed its motion, the Court approved the stipulation of the parties filed on November 2023, dismissing Headwaters' Counterclaims II, III, V, and VI.

<sup>3</sup> On December 10, 2023, after GRMD filed its motion, the Court approved the stipulation of the parties filed on November 2023, dismissing GR Terra's Counterclaim V.

GRMD appears to suggest that because this Court dismissed GRMD's claims, the dismissal somehow extends to all counterclaims. ( " ... [L]itigation is now done, and the claimed breaches are moot given that the Court dismissed GRMD's claims in the July 30 Orders" (Mot. at p. 14) "The apparent dispute at hand relates to Headwaters' allegation that GRMD breached the agreement by bringing claims in this case—claims that are now dismissed." (Reply at p. 4)). GRMD does not, however, set forth any legal authority supporting its "functionally resolved" argument or its belief that this Court is authorized to enter judgment on a claim this Court has yet to adjudicate.

GRMD also argues Headwaters cannot succeed with its first counterclaim because Headwaters only seeks attorneys' fees as damages and the Exclusion Agreement does not "contain an express, unambiguous fee-shifting provision." (Mot. at p. 12). GRMD's evidence does not, however, support its argument. The cited deposition of Roxanne Hoover demonstrates only that Headwaters seeks attorneys' fees as damages "[a]s of now" and that the legal team was seeking other damages, in addition to the attorneys' fees. (Mot. Ex. 7 at p. 234). The Court need not address whether the Exclusion Agreement provides for such an award because the evidence demonstrates Headwaters seeks more than just attorneys' fees,

For these reasons, the Court denies GRMD's request to enter final judgment as to the Breach of the Exclusion Agreement.

II. Headwaters and GR Terra's Counterclaims - Breach of GRMD's Service Plan or Improper Modification of the Same (Headwater's Counterclaim IV, GR Terra's Counterclaim IV).

The Court denies GRMD's request for entry of final judgment on Headwaters' and GR Terra's Counterclaim – Breach of GRMD's Service Plan or Improper Modification of the Same (Headwater's Counterclaim IV and GR Terra's Counterclaim IV).

Again, GRMD argues that because Headwaters and GR Terra have limited their breach of contract damages to attorney fees, there are no remaining issues to litigate on the merits and because Headwaters and GR Terra have failed to assert any recoverable damages, there is no basis upon which to support an award for attorney fees. Alternatively, GRMD maintains the counterclaims are moot because there is no basis for the claim.

For the reasons set forth above, the Court finds GRMD has failed to demonstrate the resolution of these Counterclaims.

In addition, Headwaters and GR Terra seek "an order from this Court to permanently enjoin GRMD's material departure from its Service Plan without the requisite approval required by C.R.S. § 32-1-07(2)(a)." (GR Terra LLC's Answer, Affirmative Defenses to Plaintiff's Third Amended Complaint, Jury Demand, and Counterclaims ¶ 147(D); Headwaters Answer, Affirmative Defenses to Plaintiff's Third Amended Complaint, Jury Demand, and Counterclaims ¶ 171(D)). GRMD has not demonstrated Headwaters and GR Terra are not entitled to injunctive relief as a matter of law and this Court will not entertain such an argument

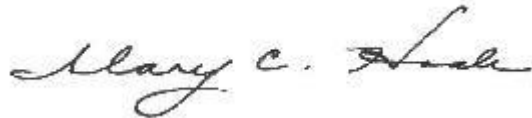
at this procedural juncture. As GR Terra and Headwaters correctly note, that is more properly reserved for summary judgment.

### **CONCLUSION**

**WHEREFORE**, the Court hereby **DENIES** GRMD's Motion for Entry of Final Judgment.

The Court, however, will re-open the briefing scheduled to allow any party to file a dispositive motion or motions. The briefing schedule is as follows: dispositive motions, such as motions to dismiss or motions for summary judgment, may be filed by either party by June 27, 2024, responses thereto by July 19, 2024 and replies by July 26, 2024.

**SO ORDERED** this 4th day of June 2024.

A handwritten signature in cursive script that reads "Mary C. Hoak". The signature is written in black ink and is positioned above a horizontal line.

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Mary C. Hoak, District Court Judge