

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.

PROPOSED SCHEDULING ORDER

1. DATE OF CONFERENCE AND APPEARANCES OF COUNSEL

Date of Conference: **Wednesday, September 20, 2023**, at 11:30 a.m. before Magistrate
Judge Scott T. Varholak.

Counsel for Plaintiff:

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2. STATEMENT OF JURISDICTION

This Court has original jurisdiction over Plaintiff's claims based on complete diversity of citizenship pursuant to 28 U.S.C. § 1332, as the amount in controversy exceeds \$75,000. This Court also has jurisdiction under 28 U.S.C. § 1331 because Plaintiff alleges violation of rights and privileges under the U.S. Constitution.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff:

Plaintiff's claims seek to remedy and prevent the improper collection and use of so-called capital facilities fees ("Facilities Fees") by GRMD, a Metropolitan District, quasi-municipal corporation, and political subdivision of the State of Colorado. In 2022, Plaintiff paid \$125,100 in Facilities Fees in order to obtain building permits to construct homes on 20 lots owned by Plaintiff within GRMD's boundaries. The fees were compelled under the auspices of collecting funds to pay for infrastructure improvements that would benefit the properties subject to the Facilities Fees ("Improvements"). GRMD and Headwaters Metropolitan District authorized the collection of such Facilities Fees through a 2006 joint resolution ("2006 Facilities Fee Resolution"). The 2006 Facilities Fee Resolution mandates that all Facilities Fees must be used solely to finance Improvements.

For roughly 12 years, GRMD deposited all Facilities Fees collected into its debt service account created for servicing the debt incurred by GRMD to pay for some Improvements. In 2019, GRMD ceased this practice. Instead, as Plaintiff learned in November 2022, GRMD has been depositing the Facilities Fees in its general fund used to pay for general governmental and administrative expenses, including litigation costs. By using the funds to cover general

governmental expenses, GRMD is not providing any special benefit or service to Plaintiff. To the contrary, GRMD is forcing Plaintiff to fund GRMD's general expenses, which should be borne equally by all taxpayers in the district.

Plaintiff has asserted nine claims seeking damages and injunctive relief: (i) breach of the 2006 Facilities Fee Resolution; (ii) violation of C.R.S. § 32-1-1001(i)(j); violation of C.R.S. § 29-2-803(1); (iv) illegal modification of GRMD's service plan; (v-vi) 42 U.S.C. § 1983 claim for violation of the Fifth Amendment of the United States Constitution; (vii-viii) 42 U.S.C. § 1983 claim for due process violations under the United States and Colorado Constitutions; and, (ix) adjudication that the 2006 Resolution was extinguished via foreclosure.

b. Defendant:

Defendant denies that it acted in violation of any law or constitutional obligation with respect to Plaintiff and denies that Plaintiff is entitled to any damages against it. As set forth in its pending Motion to Dismiss [Doc. No. 19], Defendant's collection of Capital Facilities Fees is not unauthorized, illegal or in violation of Plaintiff's constitutional rights.

4. UNDISPUTED FACTS

The following facts are undisputed:

- a. Plaintiff is a property owner and taxpayer within the Granby Ranch development in Grand County, Colorado.
- b. Defendant Granby Ranch Metropolitan District is a Metropolitan District organized and existint prurusant to the Colorado Special District Act, C.R.S. 32-1-101 *et seq.*
- c. GRMD does not own any infrastructure.

d. On June 7, 2006, Headwaters and GRMD approved an Amended and Restated Joint Resolution to Establish a Capital Facilities Fee (“2006 Facilities Fee Resolution”).

e. The 2006 Facilities Fee Resolution states that GRMD had determined to issue Limited Tax General Obligation Bonds, Series 2006 (“2006 Bonds”) to provide funding for infrastructure to serve the development the funding (“Improvements,” as defined in the 2006 Facilities Fee Resolution), which 2006 Bonds would be secured, in part, by the Capital Facilities Fees collected under the 2006 Facilities Fee Resolution.

f. The 2006 Facilities Fee Resolution established a one-time fee of \$6,255, (“Capital Facilities Fee”), due upon issuance of a building permit, with respect to all property then within GRMD boundaries, subject to increase as the Districts may deem necessary to fund the actual costs of Improvements, but not in excess of a cumulative increase of 10% per year.

g. The 2006 Facilities Fee Resolution states that “all proceeds of the Capital Facilities Fee imposed hereunder 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 reimbursement of amounts advanced by other parties.”

h. The Town of Granby, Headwaters Metropolitan District, and GRMD entered an Intergovernmental Agreement Concerning the Facilitation of Payment of Capital Facilities Fees dated April 11, 2006 (“Town Facilities Fee Agreement”).

i. Between 2006 and 2018, GRMD budgeted for and deposited the Capital Facilities Fees collected into its debt service fund to be used for debt service on the 2006 Bonds.

j. In 2019, GRMD did not budget for payment of the Capital Facilities Fees into its debt service fund and did not pay those fees into the debt service fund. Instead, in 2019, 2020, and 2021, GRMD deposited \$43,785, \$12,510, and \$68,755 respectively into its general fund.

k. During 2022, GRMD continued to budget for the collection of Capital Facilities Fees for deposit into its general fund. In GRMD's 2023 Budget, approved by its Board on November 11, 2022, GRMD estimated that a total of \$75,060 would be collected in Capital Facilities Fees in 2022 and deposited into GRMD's general fund and that \$62,550 will be collected in Capital Facilities Fees in 2023 for deposit into its general fund.

l. In a deposition taken on November 30, 2022, GRMD's manager confirmed that since 2019 all Capital Facilities Fees collected have been deposited into GRMD's general fund, which is not restricted to any particular use; those funds are available to pay GRMD's general and administrative expenses, including expenses incurred by GRMD in conjunction with its lawsuit against Headwaters and other defendants in the case styled *GRMD v. Headwaters' Metropolitan District et al*, Case No. 2021CV30008 District Court, Grand County, Colorado.

m. GRMD has not undertaken the acquisition, construction, replacement, maintenance or repair of any Improvements or any other infrastructure. Nor has it provided funding for the maintenance or repair of any such Improvements or any other infrastructure from and after 2019.

n. In 2022, Plaintiff applied for and obtained 20 building permits for the lots located at the following addresses: (1) 925 Pawnee Lane; (2) 102 Base Camp Circle; (3) 104 Base Camp Circle; (4) 106 Base Camp Circle; (5) 108 Base Camp Circle; (6) 110 Base Camp Circle; (7) 112 Base Camp Circle; (8) 114 Base Camp Circle; (9) 116 Base Camp Circle; (10) 510 Fall Line Road; (11) 570 Fall Line Road; (12) 630 Fall Line Road; (13) 690 Fall Line Road; (14) 750 Fall Line

Road; (15) 810 Fall Line Road; (16) 665 Fall Line Road; (17) 575 Fall Line Road; (18) 785 Kiowa Lane; (19) 1275 Lone Eagle Drive; and (20) 1005 Pawnee Lane (the “2022 Permits”).

o. Plaintiff paid a total of \$125,100 in Capital Facilities Fees pursuant to the 2006 Facilities Fee Resolution relating to the 2022 Permits.

5. COMPUTATION OF DAMAGES

Plaintiff seeks the following damages:

1. All recoverable economic damages, including, without limitation the \$125,100 in Capital Facilities Fees paid pursuant to the 2006 Facilities Fee Resolution for the 2022 Permits;
2. All recoverable non-economic damages;
3. Punitive damages;
4. Attorneys’ fees and costs; and
5. Statutory prejudgment and post-judgment interest.

Defendant seeks the following damages:

Defendant denies that Plaintiff is entitled to recover any of the relief requested against it. Defendant does not seek damages at this time. Defendant reserves the right to seek attorneys’ fees and costs.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting: July 25, 2023.

b. Names of each participant and party he/she represented: Andrew Glenn and JoAnn Sandifer, representing Plaintiff. William O’Connell, representing Defendant.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made:

The parties will exchange disclosures on September 25, 2023.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed.

R. Civ. P. 26(a)(1): The parties agreed to serve Rule 26(a)(1) disclosures on the date set forth above after the Court ruled on Defendant's Motion to Stay [ECF Doc. No. 20, filed 7/28/23].

e. Statement concerning any agreements to conduct informal discovery:

The parties agree to continue to discuss opportunities for informal discovery as such opportunities may arise.

f. Statement concerning any other agreements or procedures to reduce discovery

and other litigation costs, including the use of a unified exhibit numbering system: The parties agree that they will use a unified exhibit numbering system for deposition exhibits. The parties agree to bates label the documents they produce. The parties also agree to permit service of discovery requests and responses by email. The parties agree that electronic service via email should include each of the following representatives:

- For Plaintiff, all of the following: andrew.glenn@huschblackwell.com, joann.sandifer@huschblackwell.com, and ann.stolfa@huschblackwell.com
- For Defendant all of the following: woconnell@warllc.com and sthapa@warllc.com

g. Statement as to whether the parties anticipate that their claims or defenses will

involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form: The parties anticipate that their claims and defenses will not involve extensive discovery of electronically

stored information (“ESI”). The parties agree to produce documents in electronic PDF format form, unless otherwise impracticable, and, upon one party’s request regarding any excel documents, in native format.

h. Statement summarizing the parties’ discussions regarding the possibilities for promptly settling or resolving the case: The parties have discussed the possibility of settlement but have not been able to reach any agreement. The parties will continue to explore options for early resolution of the case.

7. CONSENT

At least one party does not consent to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules: The parties agree to a limit of ten (10) depositions per side and will follow the requirements of Fed. R. Civ. P. 30(a) except as expressly stated otherwise in § 8b below. The parties agree to the presumptive limit of twenty-five (25) written interrogatories, including discrete subparts, per side per Fed. R. Civ. P. 33(a)(1).

b. Limitations which any party proposes on the length of depositions: The parties will follow the time limits of one day of seven (7) hours as set forth in Fed. R. Civ. P. 30(d)(1) for up to ten (10) depositions per side (including the (30(b)(6) deposition) as well as any expert witness depositions. The parties agree to attempt to shorten the length of depositions where possible.

c. Limitations which any party proposes on the number of requests for production and/or requests for admission: The parties agree to limit requests for production of documents to thirty (30) and requests for admissions to twenty-five (25).

d. Deadline for service of Interrogatories, Requests for Production of Documents and/or Admissions: Friday, March 8, 2024, 46 days prior to the close of discovery.

e. Other Planning or Discovery Orders: All discovery motions shall be made in compliance with the Practice Standards of this Court. The parties anticipate filing a stipulated protective order to protect confidential information exchanged during discovery prior to the Scheduling Conference.

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings: Per Fed. R. Civ. P. 15(a)(2), the deadline for joinder of parties and amendment of pleadings will be **Monday, November 6, 2023**, the first business day following forty-five (45) days after the date of the scheduling conference on Wednesday, September 20, 2023.

b. Discovery Cut-off: Tuesday, April 23, 2024.

c. Dispositive Motion Deadline: Thursday, May 23, 2024.

d. Expert Witness Disclosures

1. The parties shall identify anticipated fields of expert testimony, if any:

Plaintiff reserves the right to disclose an accounting or other expert, and any necessary rebuttal experts in accordance with Fed. R. Civ. P. 26. Plaintiff reserves the right to supplement this disclosure.

Defendant reserves the right to disclose an accounting or other expert and/or one or more rebuttal experts.

2. Limitations which the parties propose on the use or number of expert witnesses: The parties limit the number of experts to two (2) per side plus rebuttal experts.

3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before: Friday, February 23, 2024, the first business day following sixty (60) days prior to the discovery cut-off.

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before: Monday, March 25, 2024, the first business day following thirty (30) days after the original expert disclosures.

e. Identification of Persons to Be Deposed:

Plaintiff:

- Defendant's 30(b)(6) designee(s) - 7 hours total.
- Defendant GRMD board members between 2019 and the present, up to 7 hours each.
- GRMD's manager and accountant, up to 7 hours each.
- Any retained experts, up to 7 hours each.
- Any other individuals or entities with knowledge relating to the claims or defenses, up to 7 hours each.

Defendant:

- Plaintiff's 30(b)(6) designee – 7 hours total.
- Individuals identified in Plaintiff's Rule 26(a)(1) disclosures – 7 hours each.

- Plaintiff's retained experts.

The parties reserve their right to depose other witnesses as discovery progresses. The parties need not move to amend this scheduling order to depose persons not identified in the above lists provided that the parties adhere to the limits on the number of depositions and length of depositions set forth in §§ 8a and 8b, above.

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held in this case at the following dates and times:

b. A final pretrial conference will be held in this case on _____ at _____ Mountain Time. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement: None at this time.

b. Anticipated length of trial and whether trial is to the court or jury: Trial is anticipated to take 3-5 days. At this time, neither party has demanded a jury. In the event Defendant's Motion to Dismiss is denied, Defendant anticipates including a jury demand in its Answer.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S.

**Courthouse/Federal Building, La Plata County Courthouse, 1060 E. 2nd Avenue, Suite 150,
Durango, Colorado 81301: None.**

12. NOTICE TO COUNSEL

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by serving the motion contemporaneously upon the moving attorney's client.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

The scheduling order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this ___ day of September, 2023.

BY THE COURT:

United States Magistrate Judge Scott T. Varholak

APPROVED:

/s/ JoAnn T. Sandifer

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