

DISTRICT COURT, GRAND COUNTY, COLORADO 307 Moffat Avenue Hot Sulphur Springs, CO 80451	DATE FILED: November 3, 2022 10:42 AM FILING ID: DF800F44AD8F7 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>
MOTION TO CONTINUE TRIAL	

Defendant Headwaters Metropolitan District (“Headwaters”) and GR Terra LLC (“GR Terra”), by and through undersigned counsel, submits this Motion to Continue Trial (“Motion”). In support thereof, Headwaters and GR Terra state as follows:

CERTIFICATION PURSUANT TO C.R.C.P. 121 § 1-15(8)

Counsel for Headwaters and GR Terra conferred with Plaintiff's counsel and counsel for Gray Jay Ventures, LLC and Granby Prentice, LLC. Plaintiff's counsel did not consent or oppose, but instead indicated that GRMD cannot provide a response until after the GRMD meeting on Friday November 4, 2022, at which time the matter will be discussed. Co-defendants' counsel consent to the requested relief.

RELEVANT PROCEDURAL HISTORY

1. This case involves multiple claims that turn upon a series of agreements and other documents governing the relationship between GRMD, Headwaters and the private developer of Granby Ranch. Those documents date back to 2003, and many of the key documents have been amended or terminated over the years. This Court has acknowledged the "complexity of this case." See Order dated October 7, 2022 Granting Motion to Amend Complaint, p. 9.

2. The Court entered the Case Management Order on May 5, 2022. The Order sets a ten-day jury trial is scheduled to commence on February 6, 2023.

3. GR Terra diligently propounded discovery requests on June 17, 2022. GRMD responded to the requests on August 12, 2022.

4. GR Terra and Headwaters also issued 30(b)(6) notices on August 25, 2022, setting the depositions for September 13 and 14, 2022.

5. GR Terra and Headwaters followed up on GRMD's discovery response with a golden rule letter sent on August 30, 2022, requesting information necessary for conducting the September depositions. See August 30, 2022 Letter attached hereto as **Exhibit 1**.

6. GRMD asked for multiple extensions to respond to the golden rule letter. The parties

agreed to move the depositions due to the schedule of the witnesses and the outstanding response to the golden rule letter. GRMD responded to the letter substantively on September 22, 2022, providing with that response a second supplemental disclosure and amended responses to the discovery requests. The 30(b)(6) depositions of GRMD took place on October 5 and 6, 2022.

7. Additional GRMD former board member depositions of Matt Girard and Glenn O’Flaherty were conducted on October 26 and 27, and GR Terra/Headwaters have requested additional depositions of other GRMD board members and consultants.

8. GRMD has not yet taken any depositions in this case, although they have inquired about the availability of several former Headwater’s board members and Headwaters is in the process of contacting those board members to determine whether they will voluntarily participate in depositions.

9. While the parties have been cooperating in terms of scheduling depositions, there are a large number of potential witnesses and given the timeline of the agreements that GRMD has put at issue, locating many of those individuals is difficult and time-consuming.

10. On October 7, 2022, over Headwaters/GR Terra’s objection, the Court granted Plaintiff’s Motion for Leave to File the Third Amended Complaint. The Third Amended Complaint adds allegations of breaches of the LPA and Service Plans against Headwaters and new allegations that each defendant had knowledge of that the LPA and are bound by its provisions as a covenant running with the land.

11. Defendants Answers and Counterclaims are due on November 3, 2022. As the Court recognized in its October 7 Order, “reassessments [of the new claims and defenses and resulting discovery] will be required.” Order, p. 9. The Court further stated that while the

amendment did not necessarily require that the trial be delayed, “the parties may choose otherwise.” *Id.*

12. Because of the delay in the depositions, among other reasons, the parties agreed to an extension of expert disclosures for all parties and filed a motion seeking such relief with the Court.

13. The new deadlines, which were approved by the Court are as follow:

Event	Original Deadline	New Deadline
Plaintiff, Counterclaimant, Cross-Claimant or Third-Party Plaintiff Expert Disclosures	9/30/22	11/1/22
Defending Party Expert Disclosures	10/31/22	12/1/22
Rebuttal Expert Disclosures	11/21/22	12/22/22
702 Motions	11/28/22	12/29/22

14. Recently, on October 28, 2022, GRMD’s counsel requested an additional 3-week extension to provide its expert disclosures. *See Garcia Email Request*, attached hereto as Exhibit 2. Specifically, GRMD seeks the following schedule:

Plaintiff’s Disclosure Deadline	November 22, 2022
Defendants’ Disclosure Deadline	December 23, 2022
Rebuttal Disclosure Deadline	January 12, 2023

15. As GRMD stated in its motion, Defendants’ request for continuance of the trial setting would moot GRMD’s motion for extension of these expert disclosures.

16. Absent a continuance, Plaintiff’s proposed new schedule would result in the parties submitting rebuttal expert reports three weeks before trial, leaving inadequate time for expert

depositions and Rule 702 motions before trial.

17. In addition, Summary Judgment motions are currently due on November 23, 2022. As this Court is aware, this case involves multiple legal issues and those issues that could be dispositive of all claims. Plaintiff has already filed one summary judgment motion, with briefing stayed pending discovery. Headwaters/G.R. Terra are planning to file summary motions addressed to the claims against them. The parties' motions will raise complex legal issues for the Court's consideration prior to trial. The current schedule does not provide adequate time for the parties to complete discovery that may be relevant to the summary judgment motions prior to the summary judgment deadline.

LEGAL STANDARD

The decision to grant or deny a continuance depends on whether there is good cause and a trial court is left with discretion to make this determination. C.R.C.P. 121 §1-11; *Cherry Creek Sch. Dist. No. 5 v. Voelker*, 859 P.2d 805, 809 (Colo. 1993). When determining whether to grant a continuance the court should consider the circumstances of the particular case, weighing the right of the party requesting the continuance against the prejudice that may result from the delay. *Fed. Land Bank of Wichita v. B.A.V., Inc.*, 809 P. 2d 1110, 1112 (Colo. App. 1991). The Court has inherent authority to manage its docket and broad discretion in allowing deviations from the terms of pretrial orders entered under Rule 16. *People v. Owens*, 330 P.3d 1027 (Colo. 2014). "The decision to grant or deny a continuance lies within the sound discretion of the trial court and will not be set aside on appeal absent a clear abuse of discretion." *Butler v. Farner*, 704 P.2d 853, 858 (Colo.1985). The enforcement of the provisions of C.R.C.P. 16 on case management orders

and discovery deadlines should focus on “avoiding undue surprise and assuring each party has the opportunity to prepare for and present evidence, at trial.” *Todd v. Bear Valley Vill. Apartments*, 980 P.2d 973 (Colo. 1999).

ARGUMENT

A continuance is warranted to avoid prejudice to GR Terra and Headwaters, who continue to diligently pursue discovery but need additional time to complete discovery, develop their defenses and counterclaims, and brief the myriad of legal issues that will be presented to the Court on summary judgment motions. The claims that Plaintiff filed in this lawsuit involve a complex set of agreements involving the rights and obligations of governmental bodies and private entities. The agreements span decades, some dating back to 2003. Many of the key agreements have been amended or terminated over the years. The Plaintiffs’ claims seek over \$6 million in damages and/or the imposition of a lease purchase agreement that will significantly deter development of Granby Ranch.

More than sixteen months after commencing this action, GRMD sought and received leave to amend its complaint for a third time (over these Defendants’ objection), inserting new issues into the litigation. GRMD is also seeking an additional extension of its expert disclosure deadline that will move the expert disclosures back so that they are completed just three weeks before trial. While the parties have been cooperating in terms of scheduling depositions, there are many witnesses that remain to be deposed. In addition, there are numerous legal issues that will be presented to the Court in summary judgment motions – issues that could be dispositive of the claims. GRMD has already filed a motion for summary judgment, with briefing stayed pending discovery, and the Defendants are planning to file additional summary judgment motions

addressed to the claims against them. The current schedule does not provide adequate time for the parties to complete discovery and file those motions prior to the current summary judgment deadline. Moreover, Defendants do not believe the current schedule allows the Court ample time to consider and rule upon those Motions.

The current February trial setting is the first trial setting in this case. While Plaintiff will not suffer any prejudice if the trial is continued, Defendants will be prejudiced in that they do not have adequate time to engage in fact and expert discovery on the significant claims against them, submit judgement motions, and prepare for trial under the current schedule.

CONCLUSION

For the reasons outlined above, Defendant Headwaters Metropolitan District and GR Terra LLC respectfully request that trial be continued to a later date to be determined and that a status conference be set to determine a new trial date.

Dated: November 3, 2022

HUSCH BLACKWELL LLP

/s/ Jamie H. Steiner

Jamie H. Steiner, #49304

JoAnn T. Sandifer (Admitted Pro Hac Vice)

Attorneys for Defendants Headwaters

Metropolitan District and GR Terra LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2022 a true and correct copy of the foregoing **MOTION TO CONTINUE TRIAL** was served via the Colorado Courts e-filing system addressed to the following:

David K. TeSelle
Brian K. Matisé
Erica N. Garcia
BURG SIMPSON ELDREDGE HERSH & JARDINE, P.C.
40 Inverness Drive East
Englewood, CO 80112
dteselle@burgsimpson.com
bmatise@burgsimpson.com
egarcia@burgsimpson.com
Attorneys for Plaintiff

Mark E. Champoux
Kyler K. Burgi
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
Telephone: (303) 892-9400
Facsimile: (303) 893-1379
mark.champoux@dgsllaw
kyler.burgi@dgsllaw.com
*Attorneys for Defendant Gray Jay Ventures, LLC and
Granby Prentice, LLC*

/s/ Tessa Kern

Legal Support Team Specialist