

DISTRICT COURT, GRAND COUNTY, COLORADO
307 Moffat Avenue
Hot Sulphur Springs, CO 80451

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CASE NUMBER: 2021CV30008

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

v.

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.

Attorneys for Headwaters Metropolitan District and GR Terra LLC:

Jamie H. Steiner, #49304
JoAnn T. Sandifer (*Admitted Pro Hac Vice*)
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

Attorneys for Defendant Gray Jay Ventures, LLC and Granby Prentice, LLC:

Mark E. Champoux
Kyler K. Burgi
DAVIS GRAHAM & STUBBS LLP
1550 Seventeenth Street, Suite 500
Denver, CO 80202
mark.champoux@dgsllaw.com
kyler.burgi@dgsllaw.com

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Case No. 2021CV30008

Division 1

MOTION TO CONTINUE TRIAL

Defendants Headwaters Metropolitan District (“Headwaters”), GR Terra LLC (“GR Terra”), Gray Jay Ventures, LLC (“Gray Jay”), and Granby Prentice LLC (“Granby Prentice”) (collectively “Defendants”), by and through undersigned counsel, submit this Motion to Continue the April 24, 2023, bench trial setting. In support thereof, Defendants 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 regarding this request. Plaintiff’s counsel does not consent to the requested relief.

RELEVANT PROCEDURAL HISTORY

1. This case involves multiple claims that turn upon agreements and other documents relating to the development of Granby Ranch and the various relationships between plaintiff Granby Ranch Metropolitan District (“GRMD”), Headwaters, and the former and current private developers of Granby Ranch. This Court has acknowledged the “complexity of this case.” *See* Order dated October 7, 2022, Granting Motion to Amend Complaint, p. 9.

2. Though this case was filed in February of 2021, it was not “at issue” until March 4, 2022. Trial was originally set for February 6, 2023.

3. 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 added claims against Headwaters for alleged breaches of a 2012 lease purchase agreement (“LPA”) and the Headwaters and GRMD Service Plans and new allegations that each defendant had knowledge of the LPA and a specific claim that each defendant is bound by the LPA as a covenant running with the land.

4. 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.*

5. Defendants thereafter moved for extension of the trial date based upon the number of depositions and outstanding discovery that remained to be completed. On November 17, 2022, this Court granted that motion. With the consent of all parties, the trial date was moved but only for some two months, to April 24, 2023. Defendants have withdrawn their request for a jury trial, and the Court has acknowledged that the case is now set for a ten-day bench trial, commencing on April 24, 2023.

6. The parties have continued to engage in fact and expert discovery since the trial date was moved, with both sides taking numerous depositions. A total of 16 depositions have been taken, and 3 more noticed by GRMD. Discovery concluded on March 6, 2023. Despite this, Defendants have continued to work with Plaintiff to schedule additional depositions that GRMD sought prior to the discovery cut-off.

7. In advance of the deadlines set in the Court’s Amended Case Management Order, on January 25, 2023, Defendants all filed summary judgment motions on GRMD’s claims against them as well as a renewed motion to dismiss for lack of standing. Plaintiff filed a renewed motion for summary judgment on three of GR Terra’s Counterclaims, and GR Terra filed a cross-motion for summary judgment on those claims.

8. Currently pending before the Court are: (i) Headwaters’ and GR Terra’s motion to dismiss for lack of standing, joined by Gray Jay and Granby Prentice; (ii) Headwaters’ motion

for summary judgment on Counts II and VI of GRMD's complaint; (iii) GR Terra's motion for summary judgment on Counts IV, V and VI of GRMD's complaint, joined in part by Gray Jay and Granby Prentice; (iv) Gray Jay's and Granby Prentice's motion for summary judgment on Counts I, III, V and VI of GRMD's complaint; (v) GRMD's pending motion for summary judgment on Counts I, II and III of GR Terra's Counterclaims; and (vi) GR Terra's cross motion for summary judgment on Counts I, II and III of its Counterclaims.

9. Headwaters' and GR Terra's motion to dismiss raises fundamental issues of subject matter jurisdiction that must be addressed prior to trial. The balance of the summary judgment motions raise complex legal issues involving numerous documents. The motions entail extensive briefing, and the parties have submitted hundreds of pages of exhibits. The final briefing on the motions (the reply brief on GR Terra's cross-motion for summary judgment) is not due until March 22, 2023, thirty days prior to the trial setting.

10. The Court has informed the parties of its substantial case load and scheduling challenges between now and the scheduled trial date on April 24, 2023. This Court's order dated February 23, 2023, granting Plaintiff's unopposed request for additional time for its summary judgment responses expressed concerns about having time to complete the review and analysis necessary to rule on all pending motions given the Court's schedule and stated that the Court was not sure that the requested extension would not impact the trial setting. Similarly, when this Court granted Defendants' unopposed motion for extension of time to file its replies in support of summary judgment, it stated that "[t]he Court acknowledges the Defendants recognize the trial date in this matter is in jeopardy due to the pending numerous, complex dispositive motions." Order dated March 1, 2023.

11. During the next five weeks, the parties will need to prepare pre-trial filings and exhibits, prepare witnesses for trial, submit a trial management order and schedule a trial management conference. There will be various pre-trial issues to address with the Court. Some or all of that work may be unnecessary depending upon the Court's rulings on the dispositive motions. Defendants understand that the Court has limited time and resources to review and rule on the motions between now and the April 24, 2023 trial setting.

12. Defendants request a continuance to allow the Court additional time to rule on the pending motions and to allow the parties and the Court sufficient time prior to the trial setting to assess the issues, if any, that will be presented at trial.

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

The claims that Plaintiff filed in this lawsuit invoke complex agreements relating to the rights and obligations of quasi-governmental bodies and private entities. The agreements span decades, some dating back to 2003. Many of the agreements relied upon by GRMD have been amended, replaced and/or terminated over the years. Both parties have taken numerous depositions, many of individuals no longer associated with either District. A total of 16 depositions have been taken, with several more noticed by GRMD. Though the parties worked together to schedule those depositions, the discovery has been very time-consuming and hindered the parties’ ability to file dispositive motions earlier in the case (though the parties did file their respective motions prior to the deadline in the Court’s Amended Case Management Order).

The parties have filed six different dispositive motions that, *inter alia*, raise threshold issues regarding GRMD’s right to enforce the LPA entered by Headwaters and GRH, GRMD’s right to compel and direct a public body’s performance of alleged obligations under that agreement, and whether the LPA was terminated by the 2020 foreclosure or other means. GRMD’s claims seek over \$6 million in damages and/or the reinstatement of a lease purchase agreement – a result that Defendants claim will deter development of Granby Ranch and jeopardize the continued operation of the ski and golf amenities.

As set forth above, Defendants seek a continuance to provide the Court additional time to rule upon the six dispositive motions pending before it, motions that will not be fully briefed until

March 22, 2023. During the next five weeks, the parties will need to prepare pre-trial filings and exhibits, and prepare witnesses for trial. There will be various pre-trial issues to address with the Court. Some or all of that work could be unnecessary depending upon the Court's rulings on the dispositive motions.

The pending motions could eliminate the need for trial and/or greatly narrow the scope of the trial. One pending motion requires the Court to decide whether it has subject matter jurisdiction over this dispute. Defendants submit that it is the best interests of all parties, and the Court, to allow the Court additional time to rule upon the dispositive motions in advance of the trial setting. The additional time could avoid the potential for unnecessary work and unnecessary expenditure of the parties' and Court's resources (including the taxpayer dollars funding GRMD's claims).

In addition, Defendants will need to bring in one or more out-of-state witnesses for trial. Defendants have advised those witnesses that the trial setting is "in jeopardy." Defendants would like to provide those witnesses sufficient advance notice to make plans for the trial.

Moreover, although discovery has closed, there are outstanding discovery issues. On the discovery deadline, March 6, 2023, GRMD supplemented its disclosures to identify multiple new individuals "likely to have discoverable information." Defendants have requested depositions of three of those individuals. In addition, GRMD has scheduled for April 4, 2023 a deposition of a former Headwaters' board member previously offered for deposition in February (Randal Lewis) but not scheduled at that time by GRMD. And at the end of February, GRMD served a deposition subpoena on another former Headwaters' board member (Julie Krueger). That deposition is the subject of a pending motion to quash before this Court.

Any continuance will not increase the expense to the parties. If anything, it could potentially reduce the expense to Plaintiff and Defendants. Discovery is closed and, other than the depositions previously discussed by the parties, discovery should remain closed.

The Court's first trial setting was in February of 2023, and the Court's initial continuance was only two months. Defendants do not believe Plaintiff will be prejudiced if the trial is continued. The relief Plaintiff seeks in this case – reinstatement of the LPA and/or damages – will be available at a later date.

CONCLUSION

For the reasons outlined above, Defendants 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: March 14, 2023

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

DAVIS GRAHAM & STUBBS LLP

/s/ Kyler K. Burgi

Mark E. Champoux, #40480

Kyler K. Burgi, #46479

Attorneys for Defendants Gray Jay Ventures,

LLC and Granby Prentice, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2023 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