

DISTRICT COURT, COUNTY OF LARIMER,
STATE OF COLORADO
Court Address: 201 LaPorte Avenue
Fort Collins, CO 80521-2761
Phone Number: (970) 494-3500

DATE FILED: March 16, 2016 3:06 PM
FILING ID: 56264E0B40183
CASE NUMBER: 2015CV30938

BUCK 2ND, LLLP, a Colorado limited liability
partnership,

Plaintiff

v.

CITY OF LOVELAND, COLORADO, a municipal
corporation,

Defendant.

▲ FOR COURT USE ONLY ▲

Attorneys for Defendant City of Loveland, a
Municipal Corporation:
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Case Number: 15CV30938

Courtroom: 5B

**NOTICE OF WITHDRAWAL OF MOTION TO DISMISS, RESPONSE TO MOTION
FOR LIMITED DISCOVERY, AND MOTION FOR TWO WEEKS TO FILE
ANSWER TO COMPLAINT**

COMES NOW the City of Loveland, a municipal home rule corporation, by and through undersigned counsel, and submits this Notice of Withdrawal of Motion to Dismiss, Response to Motion for Limited Discovery, and Motion for Two Weeks to File Answer to Complaint, and in support states as follows:

NOTICE OF WITHDRAWAL OF MOTION TO DISMISS

The City's Motion to Dismiss sets out two arguments: 1) Plaintiff failed to state a claim upon which relief can be granted since payments are not due until the development is complete, meaning fully built, and money has not been appropriated. This argument essentially sets out

conditions precedent for payment to be due; and 2) the Contract is subject to the statute of limitations, and Plaintiff failed to timely file its complaint. The Court found that the applicability of the statute of limitations is determinative and allowed the parties to supplement.

Plaintiff argues that the date for the cause of action to accrue was October 21, 2015, and the City disputes this fact. The statute of limitations issue and when Plaintiff's cause of action accrued is a disputed issue of fact. Furthermore, the City believes equitable tolling is not applicable. However, without some discovery, these issues remain disputed. The City reserves the right to file a motion for summary judgment at a later date.

RESPONSE TO MOTION FOR LIMITED DISCOVERY

In conversations between counsel, the City understands that the discovery sought by Plaintiff includes multiple depositions and a 30(b)(6) deposition. This is not and could not be considered limited. As a result, the City opposed the motion. With the withdrawal of the Motion to Dismiss, the City believes the Motion for Limited Discovery is moot. Discovery will proceed under the Civil Rules of Procedure. The City requests that the Court deny the Motion for Limited Discovery.

MOTION FOR TWO WEEK DEADLINE TO ANSWER COMPLAINT

The City is prepared to file an Answer to the Complaint. The City respectfully requests fourteen days to file the Answer, up to and including March 30, 2016.

WHEREFORE, the City respectfully requests that the Court accept the Notice of Withdrawal of the Motion to Dismiss, deny the Motion for Limited Discovery, and grant the City two weeks to file its Answer.

Dated this 16th day of March, 2016.

CITY OF LOVELAND

Original signature on file

By: /s/ Alicia R. Calderón
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Assistant City Attorney

By: /s/ Laurie R. Stirman
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **NOTICE OF WITHDRAWAL OF MOTION TO DISMISS, RESPONSE TO MOTION FOR LIMITED DISCOVERY, AND MOTION FOR TWO WEEKS TO FILE ANSWER TO COMPLAINT** was served by ICCES e-Service on this 16th day of March, 2016 to the following:

Erich L. Bethke
Senn Visciano Canges P.C.
1700 Lincoln Street, #4500
Denver, CO 80203

/s/ Kayla Demmler
Original signature on file