

District Court, Larimer County, Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521	
<b>Plaintiff:</b>  <b>THE CITY OF LOVELAND, COLORADO, a Colorado Municipal Corporation,</b>  <b>v.</b>  <b>Defendants:</b>  <b>ROGER GOMEZ; JP MORGAN CHASE BANK, N.A.; and FIRST NATIONAL BANK OF OMAHA</b>	
<b>Dwight D. Brummet, P.C., #13162</b> <b>Attorney for Defendant, Roger Gomez</b> <b>P.O. Box 657, 325 E. 7th Street</b> <b>Loveland, CO 80539-0657</b> <b>Phone: (970) 667-2131 Fax: (970) 669-2203</b>	<p style="text-align: center;"><b>Court Use Only</b></p> <b>Case No. 2016CV30703</b>  <b>Division 4A                      Courtroom</b>
<p style="text-align: center;"><b>DEFENDANT, ROGER GOMEZ'S RESPONSE AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT TO QUIET TITLE AND FOR DECLARATORY JUDGMENT</b></p>	

DEFENDANT, ROGER GOMEZ by and through his attorney, Dwight D. Brummet, P.C., hereby responds to Plaintiff's Complaint to Quiet Title and for Declaratory Judgment as follows:

**I. PARTIES, VENUE, AND JURISDICTION**

1. Defendant admits the allegations as contained in paragraph 1 of Plaintiff's Complaint.
2. Defendant denies the allegations as contained in paragraph 2 of Plaintiff's Complaint, because the property of Defendant, Roger Gomez is now known as two lots; one of which is 3508 W. Eisenhower Boulevard and the other is 3510 W. Eisenhower Boulevard. It is believed that that property located at 3510 W. Eisenhower Boulevard is the property at issue in this lawsuit.
3. Defendant denies the allegations as contained in paragraph 3 as Defendant, JP Morgan Chase Bank does not hold the lien upon the property known as 3510 W. Eisenhower Boulevard.
4. Defendant denies the allegations as contained in paragraph 4 as Defendant, First National Bank does not hold the lien upon the property known as 3510 W. Eisenhower Boulevard.
5. Defendant admits the allegations as contained in paragraph 5 of Plaintiff's Complaint.

**II. GENERAL ALLEGATIONS**

6. Defendant hereby incorporates its responses as contained in paragraphs 1 through 5 of its Response to Plaintiff's Complaint as though fully set forth herein.
7. Defendant denies the allegations as contained in paragraph 7 of Plaintiff's Complaint. There is not an easement located within 3510 W. Eisenhower Boulevard, but there is a License. It was Defendant that subdivided the property into two lots: 3508 W. Eisenhower Boulevard and 3510 W. Eisenhower Boulevard. The disputed issue concerns the property known as 3510 W. Eisenhower Boulevard.

8. Defendant denies the allegations as contained in paragraph 8 of Plaintiff's Complaint. The City's use of the disputed property at 3510 W. Eisenhower Boulevard is under the terms of License Agreements. Copies of which are attached hereto and incorporated herein. Defendant admits the legal description provided is correct.

9. Defendant cannot admit or deny the allegations as contained in paragraphs 9 and 10 of Plaintiff's Complaint as the agreements speak for themselves.

10. Defendant would admit the allegations as contained in paragraph 11 of Plaintiff's Complaint with the assertion that the agreement does, in fact, speak for itself. As to the allegations that the City and the Railroad agreed at some unknown date that the City no longer needed to pay the License fee, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.

11. As to the allegations as contained in paragraph 12 of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.

12. As to the allegations as contained in paragraph 13 of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein as the Quit Claim Deed was not attached to Plaintiff's Complaint and therefore denies the same. As to the remaining allegation that Defendant, Roger Gomez, received title in 2013, Defendant would admit such allegation.

13. As to the allegations as contained in paragraphs 14 and 15 of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.

14. As to the allegations as contained in paragraph 16 of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same. This Defendant would admit that the transmission power lines are clearly visible, however this Defendant is without sufficient information to form a truth as to the remaining allegations.

15. As to the allegations as contained in paragraph 17 of Plaintiff's Complaint, Defendant admits that the power lines are clearly visible, however, the Defendant would deny the remaining allegations and would further assert that the small marker in the ground to verify the water lines is not located on Defendant's property and, therefore, Defendant denies the allegations as to the waterline.

16. Defendant denies the allegations as contained in paragraphs 18 and 19 of Plaintiff's Complaint.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

17. Defendant hereby incorporates its responses as contained in paragraphs 1 through 16 of its Response to Plaintiff's Complaint as though fully set forth herein.

18. As to the allegations as contained in the first sentence of paragraph 21 of Plaintiff's First Claim for Relief of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same. Defendant denies the allegations contained in the second sentence of paragraph 21 of Plaintiff's First Claim for Relief of Plaintiff's Complaint.

19. Defendant admits the allegations as contained in paragraph 22 of Plaintiff's First Claim for Relief of Plaintiff's Complaint.

20. As to the allegations as contained in paragraph 23 of Plaintiff's First Claim for Relief of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.

**SECOND CLAIM FOR RELIEF**  
**(Quiet Title)**

21. Defendant hereby incorporates its responses as contained in paragraphs 1 through 20 of its Response to Plaintiff's Complaint as though fully set forth herein.

22. Defendant denies the allegations as contained in paragraph 25 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint.

23. This Defendant cannot admit or deny the allegations as contained in paragraph 26 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint as it appears to be a Statement of Law and speaks for itself.

24. Defendant denies the allegations as contained in paragraphs 27, 28, and 29 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint.

25. This Defendant cannot admit or deny the allegations as contained in paragraph 30 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint as it appears to be a Statement of Law and speaks for itself.

26. Defendant denies the allegations as contained in paragraph 31 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint.

27. As to the allegations as contained in paragraph 32 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint, this Defendant is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.

28. Defendant denies the allegations as contained in paragraphs 33 and 34 of Plaintiff's Second Claim for Relief of Plaintiff's Complaint.

**AFFIRMATIVE DEFENSES**

1. Plaintiff has failed to assert a claim or cause of action against the Defendants upon which relief can be granted.

2. Plaintiff's claims are barred by the Statute of Frauds.

3. Plaintiff's claims are barred by the applicable statute of limitations.

4. Plaintiff's claims are barred by Waiver and Estoppel.

5. Plaintiff's claims are barred by the doctrine of unclean hands.

6. This action is groundless, was and is brought in bad faith for the purposes of harassing Defendants, and totally without merit entitling Defendants to an assessment of attorney's fees and costs, pursuant to C.R.S. §13-17-101.

**FIRST COUNTERCLAIM**

1. Plaintiff and Defendant's predecessor in title, Colorado and Southern Railway Company, a corporation, entered into License Agreements on May 1, 1936 and October 15, 1954, copies of which are attached hereto and incorporated herein, providing that the City of Loveland as Licensee, could construct, maintain and operate pipe for water along the right-of-way along the railway company.

2. Pursuant to said License Agreement, Licensee was to pay the railway company the sum of \$12.00 per year.

3. The City of Loveland has failed to pay the annual compensation.

4. Pursuant to said agreement, "Disuse of said conduit for the purpose for which it is to be utilized, continuing at any time for a period of (1) year, shall constitute an abandonment thereof and of the privileges herein specified; and in the case of such abandonment or the breach by the Licensee of any of the conditions, agreements or covenants herein contained, the Railway Company shall have the right to terminate this agreement at any time by giving thirty (30) day's notice in writing to the Licensee of its intention to so terminate the same, and at the expiration of said 30 day's notice the privileges and licenses herein specified shall terminate and be at an end and the Licensee shall be without recourse or redress of any character against the Railway Company by reason thereof."

5. The City has failed to make its compensation payments. Defendant has provided 30 day's notice to the City of Loveland, terminating the License pursuant to the terms of the License Agreement and requested that the City remove such conduit or make such modifications as may be required by Defendant.

6. Defendant has made demand upon the City of Loveland and the City of Loveland has failed to make its compensation payments and has brought this action instead.

WHEREFORE, Defendant requests preemptive relief requiring the City of Loveland to remove the water pipes pursuant to the License Agreement. Defendant further asks this Court for an order assessing his costs, expert witness fees and attorney fees against Plaintiff, and for any and all other and further relief the Court deems just and proper.

#### **SECOND COUNTERCLAIM**

7. Defendant hereby incorporates his allegations as contained in his First Counterclaim as though fully set forth herein.

8. The City of Loveland is attempting to acquire Defendant's property without compensation.

9. The Defendant is the owner of the property legally described as follows:

A parcel of land located in the Northwest Quarter (NW ¼) of Section Sixteen (16), Township Five North (T.5N.), Range Sixty-nine West (R. 69 W.) of the Sixth Principal Meridian, Larimer County, Colorado, more particularly described as follows:

Commencing at the northeast corner of the Northwest Quarter (NW ¼) of said Section Sixteen (16); thence West along the north line of said Section Sixteen (16) a distance of 250 feet; thence South 540.82 feet to a point on the northerly right of way line of The Colorado and Southern Railway Company which is the true point of beginning; thence South 81° 50' West 175.78 feet along said northerly right of way line; thence South 8° 10' East 100 feet to a point on the southerly right of way line of said railroad; thence North 81° 50' East 175.78 feet along said southerly right of way line to a point; thence North 8° 10' West 100 feet to the true point of beginning; containing 17,578 square feet more or less.

10. Defendant attempted to use this property for the construction of a storage business.

11. To pursue this business endeavor, Defendant divided the property into two lots and was not aware of the existing water line until he was informed by representatives of the City of Loveland that the storage units Defendant intended to construct could not be constructed.

12. Due to the inability of Defendant to construct the units, Defendant has calculated his loss of income at approximately \$5,470.00 per month.

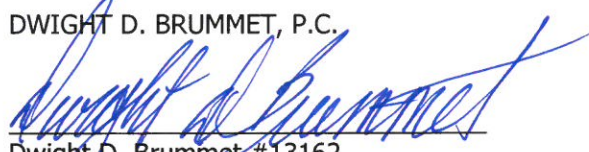
13. To acquire this property from Defendant, Plaintiff must pay reasonable compensation to Defendant.

14. The Plaintiff has failed to pay such sums to Defendant, and as such, the action of the City of Loveland is an unjust taking of Defendant's property.

WHEREFORE, Defendant requests damages for the unlawful taking. Defendant further asks this Court for an order assessing his costs, expert witness fees and attorney fees against Plaintiff, and for any and all other and further relief the Court deems just and proper.

Respectfully submitted this 18<sup>th</sup> day of August, 2016.

DWIGHT D. BRUMMET, P.C.



Dwight D. Brummet #13162

Attorney for Defendant, Roger Gomez

#### CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of August, 2016, I caused to be served on the following, a true and correct copy of the foregoing **Defendant, Roger Gomez's Response and Counterclaims to Plaintiff's Complaint to Quiet Title and for Declaratory Judgment** via ICCES:

Alicia Calderon  
Vincent Junglas  
Loveland City Attorney's Office  
500 E. Third Street, Suite 330  
Loveland, CO 80537  
Attorney for Plaintiff

