

DISTRICT COURT, LARIMER COUNTY, COLORADO
Larimer County Justice Center
201 La Porte Avenue, Suite 100
Fort Collins, CO 80521-2761
(970) 498-6100

**Plaintiff: THE CITY OF LOVELAND, a Colorado
Municipal Corporation,**

v.

**Defendants: ROGER GOMEZ; JPMORGAN CHASE
BANK, N.A.; and FIRST NATIONAL BANK OF
OMAHA.**

Attorneys for Defendant City of Loveland, a
Municipal Corporation:
Alicia R. Calderón, #32296
Assistant City Attorney
Vincent Junglas, #43697
Assistant City Attorney
Loveland City Attorney's Office
500 E. Third Street, Suite 330
Loveland, CO 80537
(970) 962-2544
Alicia.Calderon@cityofloveland.org
Vincent.Junglas@cityofloveland.org

Case Number: 16CV 30703

Division: 4A

**PLAINTIFF CITY OF LOVELAND'S REPLY TO
DEFENDANT'S COUNTERCLAIMS**

COMES NOW the Plaintiff, the City of Loveland [hereafter "City"], by and through undersigned counsel, hereby responds to Defendant's First Counterclaim and Second Counterclaim.

In support hereof, the City responds, alleges and avers as follows:

I. FIRST COUNTERCLAIM

1. The City denies the allegation contained in paragraph 1 of Defendant's First Counterclaim of Defendant's Response that Defendant Roger Gomez is a predecessor in interest to any relevant Colorado Southern Railway License Agreements. *See Assignment of Leases and Permits, Exhibit 1.* The City admits it had License Agreements with the Colorado and

Southern Railway Company for the construction, maintenance, and operation of the water system along the right-of-way of the railway company.

2. The City admits the allegation as contained in paragraph 2 of Defendant's First Counterclaim of Defendant's Response.
3. The City denies the allegation as contained in paragraph 3 of Defendant's First Counterclaim of Defendant's Response.
4. The document quoted in paragraph 4 of Defendant's First Counterclaim of Defendant's Response speaks for itself and no response is required.
5. The City denies the allegation as contained in paragraph 5 of Defendant's First Counterclaim of Defendant's Response.
6. The City denies the allegations as contained in paragraph 6 of Defendant's First Counterclaim of Defendant's Response.

WHEREFORE, the City denies any and all allegations contained in the paragraph requesting preemptive relief, removal of the water pipes, and costs and fees. Defendant Roger Gomez is not a predecessor in interest to any relevant Colorado Southern Railway License Agreements as said agreements were assigned to City in 1989. *See Assignment of Leases and Permits, Exhibit 1*

II. SECOND COUNTERCLAIM

7. The City hereby incorporates paragraphs 1 through 6 and all responses set forth above as if fully set forth herein.
8. The City denies the allegations as contained in paragraph 8 of Defendant's Second Counterclaim of Defendant's Response.
9. As to the allegations contained in paragraphs 9, 10, 11, and 12 of Defendant's Second Counterclaim of Defendant's Response, the City is without sufficient information to form a truth as to the allegations contained therein and therefore denies the same.
10. The City denies the allegations as contained in paragraph 13 of Defendant's Second Counterclaim of Defendant's Response.
11. The City denies the allegations as contained in paragraph 14 of Defendant's Second Counterclaim of Defendant's Response.
12. The City denies any allegation not specifically addressed above.

WHEREFORE, the City denies any and all allegations contained in the paragraph requesting damages, costs, and fees.

AFFIRMATIVE DEFENSES

1. The City asserts a prescriptive utility easement or easement by estoppel for the water system, including pipes and appurtenances thereto, and for the overhead electrical transmission lines through 3510 W. Eisenhower Boulevard.
2. The City asserts Defendant is not an agent or successor in interest to the Railway Company.
3. The City reserves the right to assert any other defenses after disclosures and any discovery is completed, and hereby requests leave of Court to amend this Response if necessary, at a later date.

REQUESTS FOR RELIEF

WHEREFORE, the City having answered Defendant's Counterclaims, respectfully requests the Court:

- A. Dismiss the Counterclaims with Prejudice;
- B. Enter judgment in favor of the City granting the quiet title for the utility easements in question;
- C. Enter judgment in favor of the City and against Defendant for attorney fees and costs and such other relief as the Court deems just and proper.

Respectfully submitted this 8th day of September, 2016

The original pleading signed by Alicia Calderón and Vincent Junglas is on file at the Loveland City Attorney's Office.

By: /s/ Alicia Calderón
Alicia Calderón, #32296
Assistant City Attorney

By: /s/ Vincent Junglas
Vincent Junglas, #43697
Assistant City Attorney

Attorneys for Plaintiff
Loveland City Attorney's Office
500 East Third Street, Suite 330
Loveland, CO 80537
(970) 962-2540
Alicia.Calderon@cityofloveland.org
Vincent.Junglas@cityofloveland.org

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Plaintiff City of Loveland's Reply to Defendant's Counterclaims was served via the method listed below on this 8th day of September, 2016 to the following:

Via ICCES e-Service
Dwight D. Brummet
Dwight D. Brummet, P.C.
PO Box 657
Loveland, CO 80539-0657
Attorney for Defendant Roger Gomez

Via US Mail, first class postage prepaid:
First National Bank of Omaha
1620 Dodge Street
Omaha, NE 68197

JP Morgan Chase Bank, N.A.
c/o The Corporation Company
1675 Broadway, Suite 1200
Denver, CO 80202

/s/ *Kayla Demmler*
Original signature on file