

District Court, Larimer County, State of Colorado Larimer County Justice Center 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500	DATE FILED: August 6, 2018 CASE NUMBER: 2016CV30703	
CITY OF LOVELAND, a Colorado Municipal Corporation Plaintiff v. ROGER GOMEZ Defendant	▲ COURT USE ONLY ▲	Case No: 16CV30703 Courtroom: 4A
ORDER GRANTING PLAINTIFF'S PARITAL MOTION FOR SUMMARY JUDGMENT		

THIS MATTER comes before the Court on motion for summary judgement from Plaintiff, City of Loveland (Plaintiff) against Defendant Rodger Gomez (Defendant). Having reviewed parties' filings on this motion, and being fully advised therein, the Court hereby finds and orders the following:

Plaintiff seeks summary judgment against Defendant arguing that the Plaintiff has established the elements to be declared the owner of a prescriptive easement to operate, maintain, and repair Power Lines on Defendant's property.

Summary judgment is a procedural mechanism that permits a trial court to deny litigants their right to trail only where "the pleadings and supporting documents establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Gibbons v. Ludlow, 304 P.3d 239, 243 (Colo.2013). All factual inferences and doubts as to the existence of triable issues of fact must be made in favor of the non-movant. Coffman v. Williamson, 348 P.3d 929, 934 (Colo.2015). Summary judgment is inappropriate even where it is "extremely doubtful" that a genuine issue of material fact exists. Westin Operator, LLC v. Groh, 347 P.3d 606, 611 (Colo.2015).

An easement is an interest in property that confers upon the holder of the easement the enforceable right to the use of property by another for a specific purpose; an easement may be established in a number of ways, including by prescription. Wright v. Horse Creek Ranches, 697P.2d 384, 387 (Colo. 1985). An easement by prescription may be acquired in Colorado when use of another's land is (1) open or notorious, (2) continuous without interruption for eighteen years, and (3) adverse or pursuant to an attempted but ineffective grant. Weisiger v Harbor, 62 P.3d 1069, 1071 (Colo. App. 2002).

The Court finds that the Plaintiff has established the required elements to be declared owner of a prescriptive easement to operate, maintain, and repair Power Lines on Defendant's property. There is no dispute that the use of Defendant's land is open or notorious, nor that Plaintiff has had continuous, uninterrupted use for the statutory period of eighteen years. Defendant attempts to argue that there is an issue of material fact that Plaintiff's use was not adverse. However Defendant did not provide any credible information to support this argument. The Court finds that use of Defendant's property by Plaintiff was adverse, and therefore all elements of easement by prescription have been met.

Having reviewed the parties' filings and tendered exhibits, the Court finds that there is no genuine issue of material fact as to Plaintiff's claim for relief. Accordingly, the Court GRANTS Plaintiff's motion for summary judgment.

DATED: August 6, 2018

BY THE COURT:

A handwritten signature in black ink, reading "C. Michelle Brinegar". The signature is written in a cursive, flowing style. The first letter "C" is large and prominent. The signature is written over a horizontal line.

C. Michelle Brinegar
District Court Judge