

DISTRICT COURT, LARIMER COUNTY, STATE OF
COLORADO
LARIMER COUNTY JUSTICE CENTER
201 LA PORTE AVENUE SUITE 100
FORT COLLINS, COLORADO 80521-2761

DATE FILED: December 23, 2019
CASE NUMBER: 2016CV30362

Plaintiff: LOVELAND EISENHOWER INVESTMENTS,
LLC, a California limited liability company,

v.

Defendant: THE CITY OF LOVELAND, THE GREELEY
AND LOVELAND IRRIGATION COMPANY, a Colorado
non-profit corporation and JOHN DOES 1 through 50.

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COURT USE ONLY

**THE HONORABLE SUSAN BLANCO
DISTRICT COURT**

Case Number: 2016CV30362

Courtroom: 4C

**OMNIBUS ORDER RE: DEFENDANTS' REQUESTS FOR CLARIFICATION AND MOTION
FOR SUMMARY JUDGMENT**

THIS MATTER comes before the Court on Defendant The Greeley and Loveland Irrigation Company (“GLIC”) Motion for Clarification and Defendant City of Loveland’s Motion Seeking Clarification and Ruling Regarding Motion for Summary Judgment on Plaintiff’s Third and Fourth Claims for Relief. Having reviewed all motions, the responsive pleadings, the supporting affidavits and exhibits, and the complete file in this matter, and being fully advised in the premises, the Court FINDS and ORDERS as follows:

I. BACKGROUND

The Court builds upon the December 20, 2017 Order and consequently will not restate the facts and merits of the present. However, some pertinent procedural background information is appropriate to address the unresolved claims. On April 11, 2016, Plaintiff Loveland Eisenhower

Investments, LLC (“LEI”) filed a complaint against The City of Loveland (“the City”) and The Greeley and Loveland Irrigation Company (“GLIC”) arising from alleged violations of a 2010 Annexation and Development Agreement (“Annexation Agreement”) entered between the City and LEI that affected certain water rights for LEI’s development project. In its Complaint, LEI alleged the following claims against the City: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) declaratory relief that the City engaged in unlawful delegation of legislative authority. The Plaintiff requested additional relief against the City and GLIC in its fourth claim for relief: (4) a permanent injunction preventing GLIC from enforcing the settlement agreement between the City and GLIC. The Plaintiff alleged the following claims against GLIC: (5) intentional interference with contractual relations; and (6) intentional interference with prospective business advantage. Finally, the Plaintiff included a seventh claim for relief: (7) unjust enrichment against the nonparty shareholders, alleging non-party shareholders continued to receive benefits as a result of the agreement between the City and GLIC.

On August 28, 2017, the City filed a dispositive motion containing a motion to dismiss the breach of contract and breach of good faith and fair dealing claims as barred by the Colorado Governmental Immunity Act (“CGIA”), and a motion for summary judgment on the merits of all claims, including LEI’s third and fourth claims for relief.

On August 28, 2017, GLIC filed a Motion for Summary Judgment claiming the Plaintiff could not meet any of its claims for intentional interference with contract, or intentional interference with prospective business advantage claims.

On August 28, 2017, LEI filed a Motion for Partial Summary Judgment on its fourth claim for relief.

On December 20, 2017, this Court denied LEI's Motion for Partial Summary Judgment on its fourth claim for relief, finding there was a dispute of material facts pertaining to this claim and LEI could not show it was likely to succeed on the merits. In the same Order, this Court denied the City's "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment" on all of its claims. This Court found the CGIA did not bar LEI's first two claims against the City and found disputes of material facts that precluded summary judgment in favor of the City for the breach of contract and breach of implied covenant of good faith and fair dealing claims. Finally, on the fifth and sixth claims for relief, this Court granted in part and denied in part GLIC's Motion for Summary Judgment. This Court found LEI could not succeed as a matter of law in its fifth claim for relief against GLIC for intentional interference with contractual relations. However, Plaintiff's sixth claim for relief, intentional interference with a prospective business advantage, was not referenced in the Court's Order.

On January 19, 2018, the City filed a Notice of Appeal and petitioned for an Interlocutory Appeal of Certified Question Pursuant to C.A.R. 4.2 with the Colorado Court of Appeals, seeking intermediate appellate review of the portion of this Court's Order denying the City summary judgment as to claims (1) and (2). The City moved to dismiss claims (1) and (2) as barred by the CGIA. Consequently, on December 13, 2018, the Court of Appeals reversed the portions of the December 20, 2017 Order denying the City's motion to dismiss LEI's claims for breach of contract and breach of the implied covenant of good faith and fair dealing. The Court of Appeals found LEI's claims were barred by the CGIA. Hence claims one and two have been formally dismissed.

At present, there are four remaining claims requiring resolution or clarification, specifically claims (3), (4), (6), and (7).

II. STANDARD OF REVIEW

A. Subject Matter Jurisdiction

Subject matter jurisdiction is the courts authority “to resolve a dispute in which it renders judgment.” *Trans Shuttle, Inc. v. Pub. Utils. Comm'n*, 58 P.3d 47, 49–50 (Colo. 2002). A court has jurisdiction over the subject matter if the case is one of the types of cases the court has been empowered to entertain by the sovereign from which the court derives its authority. *In re Marriage of Orr*, 36 P.3d 194, 196 (Colo. App. 2001). In considering a motion to dismiss for lack of subject matter jurisdiction pursuant to C.R.C.P. 12(b)(1), a district court examines the substance of the claim based on the facts alleged and the relief requested. *City of Aspen v. Kinder Morgan, Inc.*, 143 P.3d 1076, 1078 (Colo. App. 2006). “The plaintiff has the burden of proving jurisdiction, and evidence outside the pleadings may be considered to resolve a jurisdictional challenge.” *Id.* An objection raising the Court’s lack of subject matter jurisdiction over the claims asserted may be raised by the parties or *sua sponte* at any time in the proceeding and mandates dismissal of the action under Colo. R. Civ. P. 12(h)(3).

B. Summary Judgment

A Court may properly grant a motion for summary judgment if “there is no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c). Summary judgment is a disfavored and “drastic remedy” because it eliminates a trial on the facts. *Kaiser Found. Health Plan of Colo. v. Sharp*, 741 P.2d 714, 718 (Colo. 1987). Thus, “[w]here there are genuine issues of material fact, summary judgment is not appropriate ‘no matter how enticing [given] congested dockets.’” *People In Interest of S.N. v. S.N.*, 329 P.3d 276, 281 (Colo. 2014) (citing *Sullivan v. Davis*, 474 P.2d 218, 221 (1970)).

“The party seeking summary judgment must show there is no genuine issue of material fact, and all doubts must be resolved against that party.” *People ex rel. A.C.*, 170 P.3d 844, 846 (Colo. App. 2007). For summary judgment purposes, a “material fact” is one that will affect the case’s outcome. *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849 (Colo. App. 2007). The material evidentiary facts, not the ultimate legal conclusion, must be undisputed in order for a court to grant summary judgment. *People in Interest of S.N. v. S.N.*, 329 P.3d 276 (Colo. 2014). If the moving party establishes that there are no issues of material fact, “the burden shifts to the nonmoving party to establish that there is a triable issue of fact.” *Greenwood Trust Co. v. Conley*, 938 P.2d 1141, 1149 (Colo. 1997).

C. Declaratory Judgement

Under C.R.C.P. 57 the Court “shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” C.R.C.P. 57(a). Such declaration has the force and effect of a final judgment. *Id.* The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding. C.R.C.P. 57(f). Where a trial court determines the declaration sought would not resolve the conflict giving rise to the proceeding, it has discretion to refuse to enter a declaratory judgment. *Burkett v. Amoco Production Co.*, 85 P.3d 576, 579 (Colo. App. 2003) (citing *Lakewood Fire Prot. Dist. v. City of Lakewood*, 710 P.2d 1124 (Colo. App. 1985)).

III. ANALYSIS

In its original Motion, Defendant City of Loveland argues a motion to dismiss for lack of subject matter jurisdiction, claiming this Court lacks jurisdiction over the decision of the Water

Court for claims (3) and (4). Additionally, both Defendants filed motions seeking clarification for some of the claims raised by the Plaintiff.

A. Motion to Dismiss Claims (3) and (4) for Lack of Subject Matter Jurisdiction.

In the Court's December 20, 2017 Order, the Court ruled in favor of the Plaintiff on the third claim but failed to consider the arguments regarding jurisdiction presented by the Defendants. In the same Order, the Court addressed the fourth claim by denying the Plaintiff's request for summary judgment however the Court did not address the Defendants' jurisdictional arguments in the analysis. In its Motion Seeking Clarification, the City argues LEI's third and fourth claims for relief are barred for lack of subject matter jurisdiction. The City argues the relief sought in LEI's claims for declaratory and injunctive relief would impermissibly intrude upon the exclusive jurisdiction of the Water Court.

Specifically, the City argues this Court lacks jurisdiction to bypass the exclusive authority of the Water Court and interfere with the stipulation between GLIC and the City. LEI argues this Court has jurisdiction because the claims set forth by LEI are not related to the water court's jurisdiction. LEI asserts it is not seeking to change the use of its Chubbuck Inches, but rather is seeking a declaration from this Court enforcing the Annexation Agreement without breaching or affecting the Settlement Agreement between GLIC and the City. GLIC argues it is entitled to have its Settlement Agreement remain in full force because the City had apparent authority to enter into the agreement. Upon further review of the Motion for Clarification and the facts and controlling law surrounding these two claims, this Court has further considered its prior ruling and finds in favor of the Defendants for claims (3) and (4).

"[W]ater judges have exclusive jurisdiction over water matters within the division, and no judge other than the one designated as a water judge shall act with respect to water matters in that

division.” C.R.S. § 37-92-203(1); *see also In re Tonko*, 154 P.3d 397, 404 (Colo. 2007). Colorado law requires that the water courts “give effect to the stipulation of the parties” in a water court case. *See USI Props. E. Inv. V. Simpson*, 938 P.2d 168, 173 (Colo. 1997). The stipulations listed in the decrees at issue in the present case, including GLIC’s settlement with the City regarding changing Chubbuck Inches, must be given effect by the Water Court. *See USI Properties*, 938 P.2d at 173. The relief requested, either declaratory or injunctive relief, would interfere with the Water Court’s exclusive jurisdiction to give effect to the stipulation of the parties and this Court cannot bypass the Water Court’s approval of the Settlement Agreement between GLIC and the City. C.R.C.P. 57 allows parties to seek a declaration of rights but this is not without limitation and the Court may refuse to declare rights when the declaration would not terminate the uncertainty or controversy giving rise to the proceeding. A declaratory judgment in this matter is sought by LEI to declare the City unlawfully delegated its legislative authority. Plaintiff’s Complaint, ¶ 80. But LEI overlooks that this matter was reviewed and approved by the Water Court and the function of this claim would essentially amount to this Court entering a judgment potentially undermining the Water Court’s determinations. This is an improper use of C.R.C.P. 57 because LEI’s claim for declaratory relief amounts to an impermissible collateral attack on a matter resolved by the Water Court. *See Closed Basin Landowners Ass’n v. Rio Grande Water Conservation Dist.*, 734 P.2d 627, 637 (Colo. 1987). In addition, the controversy at issue would not be resolved even with a declaratory judgment in this matter. Even if the Court were to agree with the Plaintiff, the only way to fashion relief would be to supersede on the determinations of the Water Court and when relief cannot be accomplished, this Court is bound to decline to render the declaration that is sought. *See People ex rel. Inter-Church Temperance Movement v. Baker*, 133 Colo. 398 (1956); *Heron v. City & County of Denver*, 411 P.2d 314 (Colo. 1966). In light of the facts presented, the

Court agrees with the Defendants and finds that it lacks subject matter jurisdiction for claims (3) and (4) because it cannot bypass the exclusive jurisdiction of the water court's decision to give effect to the stipulations between GLIC and the City.

B. GLIC's Motion to Dismiss Claim (6)

Plaintiff's sixth claim is against GLIC for intentional interference with a prospective business advantage. To establish a claim for tortious intentional interference with a prospective business relation, Colorado Courts recognize the Second Restatement of Torts § 766B, which provides:

One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of:

- (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation; or
- (b) preventing the other from acquiring or continuing the prospective relation.

Amoco Oil Co. v. Ervin, 908 P.2d 493, 500 (Colo. 1995); *see also Dolton v. Capitol Fed. Sav. & Loan Ass'n*, 642 P.2d 21, 23 (Colo. App. 1981). "Tortious interference with a prospective business relation requires a showing of intentional and improper interference preventing formation of a contract." *Amoco Oil*, 908 P.2d at 500 (citing *Dolton*, 624 P.2d at 23).

LEI alleges a valid business relationship or expectancy existed between the City and LEI concerning the Annexation Agreement and conversion of LEI's Chubbuck Inches. LEI alleges GLIC was aware of the valid business relationship or expectancy. LEI alleges GLIC intentionally interfered with the valid business relationship or expectancy, which caused the City to breach the Annexation Agreement whereby the City would convert LEI's Chubbuck Inches. LEI alleges GLIC's intentional interference resulted in damages to LEI.

GLIC argues it did not intentionally interfere with LEI's prospective business relationship because it did not have knowledge LEI had not banked its Chubbuck Inches when they were first acquired. GLIC argues it was the City that proposed no further conversion of Chubbuck Inches for municipal use. GLIC argues LEI failed to allege or prove GLIC engaged in any wrongful act which hindered the City from performing on their contract or enter into business dealings with LEI.

The Court finds there are genuine disputes of material facts. LEI alleges GLIC was fully aware of the Annexation Agreement between LEI and the City, GLIC knew LEI was unaware of the Settlement Agreement between GLIC and the City, and GLIC knew LEI entered into the Annexation Agreement based on its expectation and belief that its Chubbuck Inches could and would be converted. Plaintiff's Complaint, ¶ 57. LEI further alleges GLIC knew LEI would be seeking to convert its Chubbuck Inches for use in its project and that GLIC entered into the Settlement Agreement with the purpose and intent of interfering with the Annexation Agreement to prevent conversion of the LEI's Chubbuck Inches. *Id.*, ¶¶ 58-59. Specifically, LEI alleges GLIC knew LEI was developing a commercial project and annexing into Loveland, GLIC knew LEI would need municipal water for its project, GLIC knew LEI had Chubbuck inches, GLIC assumed LEI was using its Chubbuck Inches for development, GLIC knew LEI was not using its Chubbuck Inches for irrigation and GLIC never informed LEI of its dispute with the City or that GLIC was actively trying to prevent further conversion of Chubbuck Inches to municipal use by Loveland. Finally, LEI alleges GLIC intentionally interfered with the Annexation Agreement and has attempted to prevent the lawful conversion of LEI's Chubbuck Inches. *Id.*, ¶ 60. Specifically, LEI alleges GLIC knew, by entering into the Settlement Agreement, it was intentionally preventing conversion of Chubbuck Inches making LEI's performance of its project more expensive and burdensome. LEI alleges the purpose of the Settlement Agreement was to prevent LEI from

acquiring Chubbuck Inches and converting them for future projects. Although it is undisputed LEI entered the Annexation Agreement after GLIC entered into the Settlement Agreement, the allegations raised by LEI give rise to a dispute of material fact as to whether GLIC was intending to prevent LEI from acquiring or continuing the prospective business relationship with the City given LEI's history of pattern and practice of acquiring Chubbuck Inches and converting them with the City. Because these issues raise a genuine disputed fact, the Court will not grant summary judgment.

C. Seventh Claim for Relief: Unjust Enrichment of Non-Party Shareholders

LEI alleges GLIC unlawfully interfered with the Annexation Agreement between LEI and the City, which resulted in a benefit to the Non-Party Shareholders "who continue to receive the unused portion of LEI's Chubbuck Inches free of charge." Plaintiff's Complaint, ¶ 98. LEI argues it is unjust for the non-party shareholders to retain that benefit. The problem with this claim is it is not against either of the Defendants. The necessary and indispensable party to this claim has not been served as the shareholders are necessary parties to the resolution of the present dispute. In addition, there is no proper way for the Court to fashion a remedy even if LEI was able to successfully prove the seventh claim. Even if LEI is successful, the Court, once again, would undermine the Water Court because the relief sought by LEI would bypass the exclusive jurisdiction of the Water Court's decision to remove the benefits to non-party shareholders.

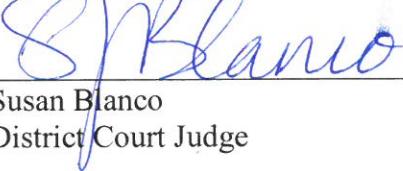
IV. CONCLUSION

ACCORDINGLY, Defendant City's "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment" is GRANTED as to remaining claims (3) and (4). Defendant GLIC's Motion

for Summary Judgment is GRANTED as to claim (4) and DENIED as to claim (6). Finally, claim (7) is DISMISSED.

SO ORDERED this 23rd day of December, 2019.

BY THE COURT:



Susan Blanco
District Court Judge

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing ORDER was delivered to the attorney of record and parties appearing *pro se* in the following manner:

[] For counsel in Fort Collins who have agreed to such procedure, by placing said copy in the attorney pick up files located in the Larimer County Justice Center, 201 LaPorte Avenue, Suite 100, Fort Collins, Colorado.

[] For all other counsel and/or parties appearing *pro se*, by placing said copy in the United States Mail with the correct postage affixed thereon.

[X] For all other counsel and/or parties appearing *pro se*, by electronic filing.

/s/ Nathan Fall