

DISTRICT COURT, PARK COUNTY, COLORADO Court Address: P.O. Box 190, 300 Fourth Street, Fairplay, CO, 80440	DATE FILED: August 20, 2015 4:14 PM CASE NUMBER: 2014CV30056 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) INDIAN MOUNTAIN CORP v. Defendant(s) INDIAN MOUNTAIN METROPOLITAN DISTRICT	
Case Number: 2014CV30056 Division: B Courtroom:	
Order: Order to Show Cause and Citation	

The motion/proposed order attached hereto: GRANTED.

Show Cause Date September 9, 2015 at 9:00 AM.

Issue Date: 8/20/2015



STEPHEN A GROOME
 District Court Judge

DISTRICT COURT, PARK COUNTY, STATE OF COLORADO P. O. Box 190 Fairplay, Colorado 80440	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 14CV30056 Ctrm/Div: _____
<p>Plaintiff:</p> <p>INDIAN MOUNTAIN CORP.</p> <p>v.</p> <p>Defendant:</p> <p>INDIAN MOUNTAIN METROPOLITAN DISTRICT</p>	
ORDER TO SHOW CAUSE AND CITATION	

THIS MATTER comes before the Court on Defendant Indian Mountain Metropolitan District’s Verified Motion for Show Cause Order regarding Criminal Contempt of Court under C.R.C.P. 107(c) and Request for *Ex Parte* Consideration. The Court, being fully apprised on the matter herein, FINDS and ORDERS as follows:

FINDINGS OF FACT

1. Indian Mountain Subdivision is located in Park County, Colorado. The subdivision consists of approximately 2,500 lots, which are owned by approximately 2,200 lot owners (the “Lot Owners”). To date, approximately 800 domestic wells have been drilled on certain of the lots.
2. This case concerns the augmentation plan (the “Plan”) that allows the Lot Owners to divert potable drinking water through their own domestic wells under their own permits or decrees.
3. In about 1976, Indian Mountain Corp. (“IMC”) acquired title to the Plan from the developer of the Indian Mountain Subdivision. In 2013, James Ingalls acquired IMC, and title to the Plan, through a series of stock transfers. Subsequently, IMC sued IMMD, claiming, among other things, that: (1) IMMD should be required to reimburse IMC for operations of the Plan for 2012 and 2013, and (2) IMC should be allowed to charge IMMD a fee to operate the Plan going forward. IMMD denied these claims, and counterclaimed, asserting, among other things, that IMC could not charge a fee for operating the Plan because it owned the Plan in constructive trust for the residents of the Indian Mountain Subdivision.
4. On March 16, 2015, after a trial to the Court, the Court entered written Findings, Conclusions, and Orders (the “Order”). In the Order, the Court entered judgment against IMC on all of its claims; and the Court entered judgment for IMMD on its constructive trust counterclaim.

5. On March 30, 2015 IMC filed a Motion for Post-Trial relief, requesting, among other things, that the Court award damages to IMC for its operation and maintenance of the Plan from 1976 through 2013 in the amount of \$10,000 per year, compounded at an annual rate of 8%, or more than \$2,500,000.00. The Court denied IMC's Motion for Post-Trial relief in full.

6. IMC has appealed this Court's judgment. Case No. 15 CA 1055. The appeal is presently pending before the Court of Appeals.

7. On or about August 11, 2015, IMC sent Letters and Invoices (collectively, the "Letters" or singularly, a "Letter") to each of the 2,220 Lot Owners. As one of the Lot Owners, IMMD received one of the Letters.

8. As relevant here, the Letter to IMMD provides that:

As a result of the Court's order finding that IMC is entitled to be reimbursed for its maintenance, repair and operation of the augmentation plan, IMC has provided the enclosed invoice and this explanation of the same. (Emphasis added.)

9. The Letter demands payment to IMC of \$1,000 per lot owned by IMMD (regardless of whether the lot contains a well) to account for the operations of the Plan from 1976 to 2012. The Letter also provides that "[i]f paid within 45 days of this invoice date, the amount due is discounted by \$500 [per lot] (reducing the total amount owed to \$500 [per lot owned])."

10. The claimed amount due includes interest at the statutory rate allowed on judgments. In addition, the Letter states that "[i]f payment is not received within 45 days of the date of this invoice, the discount is no longer available and the full amount of the invoice will begin to accrue interest at the rate of 8% annually or the highest rate permissible by law."

11. James Ingalls is the sole owner and shareholder of IMC.

12. IMMD's Motion was verified by Susan Stoval, President of IMMD.

FINDINGS OF LAW

13. A trial court retains jurisdiction to enforce its judgment during the pendency of an appeal. *Molitor v. Anderson*, 795 P.2d 266, 268 (Colo. 1990).

14. Courts have inherent authority to issue orders that are necessary for the performance of judicial functions. *People v. McGlotten*, 134 P.3d 487, 489 (Colo. App. 2005). As part of its inherent authority, the court has the power to enforce obedience to its orders through contempt sanctions. *Id.* at 489-90.

15. Criminal contempts are all those acts in disrespect of the court or its process, or which obstruct the administration of justice, or tend to bring the court into disrepute. *People ex rel. Attorney General v. News-Times Pub. Co.*, 84 P. 912, 956 (Colo. 1906); *see also* C.R.C.P. 107(a)(1) (contempt includes "behavior that obstructs the administration of justice" and "interference with any lawful writ, process, or order of the court.").

16. The power to punish for criminal contempt, as a punitive measure to coerce obedience, is an inherent and indispensable power of the court and exists independently of legislative authorization. *People v. Barron*, 677 P.2d 1370, 1372 and 1372 n.2 (Colo. 1984).

17. Indirect criminal contempt is contempt that occurs out of direct sight or hearing of the court. *See* C.R.C.P. 107(a)(3).

18. Under C.R.C.P. 107(c), when it appears to the court by motion supported by affidavit that indirect criminal contempt has been committed, the court may *ex parte* order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. For the purposes of this Rule, contempt is defined as, among other things, behavior that obstructs the administration of justice or interference with order of the Court, C.R.C.P. 107(a)(1); and indirect contempt is defined as contempt that occurs out of the direct sight or hearing of the Court. C.R.C.P. 107(a)(3).

CONCLUSION

19. IMMD has made a *prima facie* showing that IMC has committed indirect criminal contempt against the Court. At trial, the Court entered judgment against IMC, and after trial, the Court denied IMC's request for post-trial relief. Nevertheless, IMC sent Letters to the each of the approximately 2,220 Lot Owners in the Indian Mountain Subdivision which represent that the exact opposite occurred. Among other things, the Letters falsely represent that IMC prevailed in the above captioned action; that IMC obtained a judgment, including statutory interest, from this Court; and that, as a result of this judgment, the residents of Indian Mountain are under an existing obligation of this Court to pay money to IMC.

20. IMC's false statements appear to: (1) contradict the Orders of this Court; and (2) implicate the Orders of this Court in a fraud upon the public. As such, these false representations disrespect the Court, obstruct the administration of justice, and interfere with the Order of this Court.

21. A true and correct copy of this Order shall be deemed a citation of the Court.

WHEREFORE, James Ingalls, as the sole owner of IMC, shall appear before this Court on September __, 2015, at __ (AM/PM) to show cause why he and/or IMC should not be punished for indirect criminal contempt. Punishment may entail both punitive and remedial sanctions. The possible punitive sanctions are a fine or imprisonment or both, the maximum jail sentence not to exceed six months. The possible remedial sanctions are:

- A. An Order of this Court directing James Ingalls and/or IMC to disgorge any money received from any of the residents as a result of the Letters;
- B. An Order of this Court directing James Ingalls and/or IMC to send additional letters to each of the recipients of the Letters disavowing any claims to money as a result of the past operations of the augmentation plan;
- C. An Order of this Court removing IMC as trustee for the augmentation plan, and substituting IMMD as trustee of the augmentation plan; and

D. An Order of this Court awarding to IMMD, and against James Ingalls and/or IMC, IMMD's costs and reasonable attorney's fees incurred in this proceeding.

At least 21 days before the time designated for the hearing, IMMD shall serve directly upon James Ingalls a copy of the Verified Motion and a Copy of this Order and Citation. If James Ingalls fails to appear at the time so designated, and it is evident to the Court that James Ingalls was properly served with copies of the Verified Motion and this Order and Citation, the Court will issue a warrant for James Ingalls' arrest.

DONE this ___ day of August, 2015.

BY THE COURT

District Court Judge

Attachment to Order - 2014CV30056