

DISTRICT COURT, COUNTY OF PARK,
STATE OF COLORADO
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FAIRPLAY, CO 80440
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DATE FILED: October 13, 2015
CASE NUMBER: 2014CV30056

PLAINTIFF:

INDIAN MOUNTAIN CORP.

vs.

DEFENDANT:

INDIAN MOUNTAIN METROPOLITAN DISTRICT

Δ COURT USE ONLY Δ

Case Number: 14CV30056

FINDINGS, CONCLUSIONS, AND ORDERS RE CONTEMPT PROCEEDING

This matter comes before the court for a hearing held on October 9, 2015 regarding a contempt of court proceeding initiated, pursuant to Rule 107 of the Colorado Rules of Civil Procedure ('C.R.C.P.'), by Indian Mountain Metropolitan District ('Metro District') against Indian Mountain Corp. ('IMC') and James Ingalls, individually. James Ingalls is the sole owner, stockholder, and principal of IMC. The Metro District was represented by Peter J. Ampe, Esq. of Hill and Robbins, P.C. IMC and Ingalls were represented by David S. Kaplan, Esq.

The Court takes judicial notice and incorporates herein by reference the trial testimony and exhibits as well as the findings, conclusions and orders entered in this case following a trial to the Court, as well as post-trial motions. This case is currently pending in the Colorado Court of Appeals, so this Court's jurisdiction is limited to enforcement of its Orders entered prior to the notice of appeal.

In August of this year, IMC mailed a letter to every lot owner in the Indian Mountain Subdivision along with invoices requesting payment of \$1,000 per lot for water augmentation plan costs of maintenance and repairs from 1976 to 2012. See the Metro Districts' Exhibit VVV for an example of the subject letter and invoice. The contents of this letter constitutes the primary source of the Metro District's contention that IMC & Ingalls' letter contains **"false representations (which) disrespect the Court, obstruct the administration of justice, and interfere with the Order of this Court."**

As a result of IMC's letter, some lot owners paid IMC per the invoice. IMC agreed to hold the funds received pending the outcome of this contempt proceeding.

Legal Authority

C.R.C.P., Rule 107(a)(1) defines contempt. As relevant here, contempt is defined as “. . . **behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful. . . order of the court. . .**”

‘**Indirect contempt**’ is defined as “**Contempt that occurs out of the direct sight or hearing of the court.**” Rule 107(a)(3). The Metro District alleges that IMC’s conduct constitutes indirect contempt.

The power to punish for contempt is inherent in all courts. The Court has the power to enforce obedience to its orders. *Allen v. Bailey*, 91 Colo. 260, 14 P.2d 1087 (Colo. 1932); *People v. McGlotten*, 134 P.3d 487, 489 (Colo. App. 2005).

The power to punish contempt should be used sparingly with caution, deliberation, and due regard to constitutional rights; it should be exercised only when necessary to prevent actual, direct obstruction of, or interference with, the administration of justice. *In re People in Interest of Murley*, 124 Colo. 581, 239 P.2d 706 (1951); *Conway v. Conway*, 134 Colo. 79, 299 P.2d 509 (1956).

Intent to interfere with the administration of justice is not required for a contempt finding; rather, the intent is a guide to be used by the trial court in exercising its discretion to punish. *In re Stone*, 703 P.2d 1319 (Colo. App. 2004).

Relevant Court Orders

Excerpts from Findings, Conclusions, and Orders entered on March 16, 2015:

The court further finds and concludes that IMC holds title to the Augmentation Plan and its associated rights as trustee for the express benefit of the Indian Mountain property owners, the beneficiaries. As long as IMC retains ownership, IMC has a duty to maintain and operate the Augmentation Plan keeping it in compliance at all times. As long as IMC elects to retain ownership, IMC is entitled to be reimbursed for its actual and reasonable expenses for maintenance, repair and operation of the plan. IMC may delegate this task to IMMD or turn over ownership to IMMD, after which IMC’s ongoing obligations regarding the Augmentation Plan shall cease. (Emphasis added).

* * * * *

IMC’s second claim is for unjust enrichment. “Unjust enrichment occurs when (1) at the plaintiff’s expense, (2) the defendant received a benefit, and (3) under circumstances that would make it unjust to the defendant to retain the benefit without paying.” *Lawry v. Palm*, 192 P.3d 550, 564 (Colo. App. 2008).

In that regard, IMC alleges that IMMD was unjustly enriched in 2012 and

2013 because Indian Mountain property owners were unjustly enriched by utilizing the Augmentation Plan to use their wells. For the reasons stated above, the court finds and concludes that IMC has failed to establish a prima facie case for unjust enrichment and finds in favor of IMMD and against IMC. (Emphasis added.)

After the Court entered its ruling, IMC filed a motion for post-trial relief seeking, among other things, an award (presumably for unjust enrichment) for reimbursement of IMC's actual and reasonable costs for maintenance, repairs, and operation of the augmentation plan from 1976 to 2012.

On May 6, 2015, the Court entered an order denying IMC's motion stating as follows:

The court ruled that Plaintiff is entitled to its "actual and reasonable expenses for maintenance, repair, and operation of the plan." However, Plaintiff failed to meet its burden of proof regarding the 'actual and reasonable expenses' incurred in 2012 and 2013. Furthermore, at trial Plaintiff did not seek payment for such expenses for prior years, and failed to meet its burden of proof regarding any such claimed expenses. (Emphasis added.)

Excerpts From IMC's Letter

As you know, on March 16, 2015, Park County District Court Judge Stephen Groome entered his Findings, Conclusions and Orders As you will recall, IMC filed this lawsuit to confirm its ownership of the augmentation plan water rights in the face of Indian Mountain Metropolitan District's threat to sue IMC in a class action lawsuit in an attempt to take the water rights. Judge Groome concluded that 'IMC holds title to the Augmentation Plan and its associated water rights as trustee for the express benefit of the Indian Mountain property owners, the beneficiaries.' Order at p. 8. Judge Groome further concluded that IMC 'may not charge for or profit from the use of the Augmentation Plan water rights but that 'IMC is entitled to be reimbursed for its actual and reasonable expenses for maintenance, repair and operation of the plan.' Order at p.8. IMC subsequently asked Judge Groome to define the amount owed to IMC but its request for clarification was denied. 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.)

Was IMC's Letter Contemptuous?

The issue before the Court is whether the language of IMC's letter to the Indian Mountain property owners constitutes "behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful . . . order of the court. . ."

The letter's language implied to the Indian Mountain citizens that the Court had

ordered them to pay the invoice for 1976 to 2012 expenses. The letter resulted in IMC receiving payments from some of the property owners. In fact, the letter's wording is inconsistent with the Court's March 16th Findings, Conclusions and Orders, especially as clarified in its May 6th Order denying IMC's request to be awarded these expenses (for failure to meet IMC's burden of proof at trial as to its actual and reasonable expenses incurred).

After the trial the Court found that IMC held legal title to the Augmentation Plan and its associated water rights as trustee for the express benefit of the Indian Mountain property owners as beneficiaries. As trustee, IMC has a fiduciary duty to put the interests of the beneficiaries ahead of its own. IMC's letter was misleading and was clearly designed to collect money from property owners, which is inconsistent with IMC's fiduciary duties as trustee.

The Court is also concerned that IMC's position, especially in light of the letter's detailed attempt to justify reimbursement for its 'reasonable' expenses, totally ignores the Court's finding that any reimbursement must be for 'actual' expenses incurred (and that they also must be reasonable). Plus, 'reimbursement' means paying back 'actual' amounts expended, not an estimate as to what may be reasonable expenses to pay out.

Based on the foregoing, the Court finds and concludes that the evidence has established beyond a reasonable doubt that IMC's conduct was contemptuous and constitutes behavior that obstructs the administration of justice and interferes with this Court's orders.

The Metro District has sought both punitive and remedial sanctions for IMC's contempt. The Court declines to impose punitive sanctions and finds that IMC's conduct did not rise to the level of actual intent to deceive the Indian Mountain property owners. Rather, the wording of IMC's letter was crafted to 'stretch' the meaning of this Court's intent in the favor of IMC. The fact is that IMC's wording did result in some Indian Mountain property owners being misled into paying the invoiced amount.

Thus, in order to purge the contempt, IMC and Ingalls must refund to Indian Mountain property owners all monies received by IMC as a result of IMC's letter and invoices no later than thirty (30) days from the date of this Order. In that regard, the Court finds and concludes that, since IMG and Ingalls agreed in Court to hold the disputed monies it received from property owners, they readily have the ability to purge the contempt by refunding these funds within said thirty (30) days. In order to provide incentive for the prompt purging of the contempt, in the event IMG and Ingalls have failed to comply fully with the purge remedy, then it is ordered that Ingalls shall be incarcerated in the Park County Jail beginning thirty-one (31) days from the date of this order and held there until such time as purging has been completed.

Court Costs and Attorney Fees

In accordance with C.R.C.P. Rule 107(d)(2), the Metro District is awarded its court costs and reasonable attorney fees incurred in the prosecution of this contempt proceeding. IMG and Ingalls are ordered to pay same. Unpaid amounts shall earn interest at 8% per annum compounded annually. The Metro District shall submit a bill of costs and affidavit re attorney fees within twenty (20) days of the date of this order.

Entered this 13th day of October 2015.

BY THE COURT:



A handwritten signature in blue ink, appearing to read "Stephen A. Groome", written over a horizontal line.

Stephen A. Groome
District Court Judge