

COLORADO COURT OF APPEALS

Court Address:

2 East 14th Avenue
Denver, CO 80203

Nature of proceeding: District Court Appeal

Appeal From:

Larimer County District Court
Judge Susan Blanco
Case No: 2016CV30362

Petitioner – Appellant: THE CITY OF
LOVELAND

v.

Respondent - Appellee: LOVELAND
EISENHOWER INVESTMENTS, LLC, a
Colorado limited liability company

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▲ COURT USE ONLY ▲

Case Number:

Div.: Ctrm.:

NOTICE OF APPEAL

Defendant-Appellant, the City of Loveland (“City”), by and through undersigned counsel, hereby give notice, pursuant to C.A.R. 3 and 4, of their Appeal in the above-referenced matter and state as follows:

I. Nature of the Case

A. General statement of the nature of the controversy

This case involves a dispute between the City of Loveland (“City”) and Loveland Eisenhower Investments, LLC (“LEI”) over the City’s inability to accept Chubbuck Inches in satisfaction of LEI’s water rights requirements. A developer, like LEI, must contribute water to the City as a prerequisite to getting the City to expand its water service to the developer’s completed development. And, the City has complete discretion on accepting the specific kind of water right that LEI has anticipated it would contribute to the City in meeting this requirement. Although the Parties entered into a contractual Annexation and Development Agreement in 2010 (the “Annexation Agreement”), LEI never obtained the City’s consent to contribute its water rights, via contract or otherwise. Nonetheless, once it discovered that the City was no longer accepting the kind of water right it owned, LEI sued the City asserting claims for breach of contract, breach of the duty of good faith and fair dealing, declaratory judgment, and permanent injunction. These claims boil down to LEI’s assertion that the City misrepresented or concealed its

ability to accept LEI's Chubbuck Ditch water rights prior to entering the Annexation Agreement, which resulted in damage to LEI. The City moved to dismiss LEI's breach of contract and breach of the covenant of good faith and fair dealing claims because they lie in tort or could lie in tort and, therefore, are barred by the Colorado Governmental Immunity Act ("CGIA"). In its December 20, 2017 Order on the City's *Motion to Dismiss, or in the Alternative Motion for Summary Judgment* and LEI's *Motion for Partial Summary Judgment* (the "Order"), the Larimer County District Court ruled that LEI's claims were not barred by the CGIA.

B. Judgment, order or parts being appealed and a statement indicating the basis for the appellate court's jurisdiction

The City files this Notice of Appeal, appealing that portion of the Court's December 20, 2017 Order on the City's Motion to Dismiss, or in the Alternative Motion for Summary Judgment (the "Order"), in which the district court determined that LEI's breach of contract and breach of the covenant of good faith and fair dealing claims are not barred by the CGIA. The Court has jurisdiction over this appeal under Colo. Rev. Stat. § 24-10-108 which provides that the CGIA Order "shall be a final judgment and shall be subject to interlocutory appeal."

C. Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs

That portion of the Order being appealed resolved all issues related to governmental immunity.

D. Whether the judgment was made final for purposes of appeal pursuant to Colo. R. Civ. P. 54(b)

The Order on governmental immunity is a final judgment subject to interlocutory appeal under Colo. Rev. Stat. § 24-10-208. Therefore, it was unnecessary to seek certification under Colo. R. Civ. P. 54(b).

E. The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel

The district court entered the Order on December 20, 2017.

F. Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request

None of the parties sought any extensions to file motions for post-trial relief.

G. The date any motion for post-trial relief was filed

None of the parties filed motions under Colo. R. Civ. P. 59.

H. The date any motion for post-trial relief was denied or deemed denied under Colo. R. Civ. P. 59(i)

None of the parties filed motions under Colo. R. Civ. P. 59.

I. Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended

None of the parties sought or received any extensions to file any notices of appeal.

II. Advisory listing of issues to be raised on appeal

Whether the District Court erred in determining that LEI's breach of contract and breach of the covenant of good faith and fair dealing claims are not barred by the CGIA.

III. Whether the transcript of any evidence taken before the trial court or any administrative agency is necessary to resolve the issues raised on appeal

No transcript is necessary to resolve the issues raised on appeal.

IV. Whether the order on review was issued by a magistrate where consent was necessary

The Order was not issued by a magistrate.

V. The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers

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VI. Appendix

A copy of the Order is attached as **Appendix A**.

Respectfully submitted: January 19, 2018.

BERG HILL GREENLEAF RUSCITTI LLP

*[Pursuant to C.A.R. 30(f) the signed
original is on file at Berg Hill Greenleaf
Ruscitti LLP]*

s/ Josh A. Marks

Josh A. Marks
Mary Sue Greenleaf
*Attorneys for Defendant-Appellant the City
of Loveland*

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2018, a true and correct copy of the foregoing **NOTICE OF APPEAL with attachments** was served electronically via ICCES and/or by depositing same in the U.S. Mail, postage prepaid, addressed to the following:

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*[Pursuant to C.A.R. 30(f), the signed
original is on file at Berg Hill Greenleaf
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s/ Linda D. Smith

Linda D. Smith