COLORADO COURT OF APPEALS

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CASE NUMBER: 2021CA1507

Court of Appeals No. 21CA1507
Jefferson County District Court No. 19CV30887
Honorable Jason D. Carrithers, Judge

Big Sky Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado, CDN Red Rocks, LP, and Cardel Homes US Limited Partnership,

Plaintiffs-Appellants,

v.

Green Mountain Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado,

Defendant-Appellee.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE KUHN
Harris and Grove, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced March 23, 2023

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¶ 1 Plaintiff Big Sky Metropolitan District No. 1 appeals the district court's grant of summary judgment in favor of defendant, Green Mountain Water and Sanitation District. Two other plaintiffs — CDN Red Rocks, LP and Cardel Homes US Limited Partnership (the Developers) — also appeal the court's ruling dismissing their claims against Green Mountain. We reverse the grant of summary judgment and the dismissal of the Developers' claims.

I. Background

¶ 2 This case concerns an intergovernmental agreement (IGA) between Big Sky and Green Mountain, two political subdivisions of the State of Colorado formed, in part, for the purpose of providing wastewater services. *See* §§ 32-1-101 to -1807, C.R.S. 2022 (Colorado's Special District Act). In the IGA, Big Sky and Green Mountain agreed, among other things, (1) to construct wastewater infrastructure for new users in Big Sky's service area and (2) improve Green Mountain's infrastructure, so that (3) Green Mountain could accept Big Sky's wastewater, for a tap fee, and deliver it for treatment to a reclamation district in Denver. The parties present a classic dispute over who pays, albeit with a twist: instead of arguing that their opponent must bear some cost under

the contract, both Big Sky and Green Mountain claim that they, themselves, are solely responsible for some or all of the IGA infrastructure costs.

¶ 3 Big Sky and Green Mountain executed the IGA in mid-2018. But less than a year later, the latter's Board of Directors approved a resolution terminating the IGA. The resolution further declared the IGA void since its inception on a number of grounds (though none eventually advanced in the district court or on appeal).

¶ 4 In response, Big Sky filed suit claiming that Green Mountain's resolution terminated the IGA in breach of its terms and violated Colorado's constitutional prohibition against retrospective legislation. Big Sky also asserted promissory estoppel, claiming that it detrimentally relied on Green Mountain's promises, both in the IGA and elsewhere, to accept Big Sky's wastewater. In separate cases, the Developers also brought more than a dozen claims against Green Mountain, asserting that they similarly relied on Green Mountain's promises for their development plans within Big Sky's service area.

¶ 5 In Big Sky's case, Green Mountain moved for summary judgment. The district court didn't initially rule on the motion but

instead consolidated Big Sky's case with the Developers' suits against Green Mountain. Then, after a year of consolidated litigation, Green Mountain again moved for summary judgment against Big Sky.

¶ 6 This time, the district court granted the motion. It ruled that the IGA was void as a matter of law under provisions of the Local Government Budget Law (LGBL), § 29-1-110, C.R.S. 2022, and Colorado's constitutional Taxpayer's Bill of Rights (TABOR), Colo. Const. art. X, § 20(4)(b). Because it determined the IGA was void, the district court accordingly concluded Big Sky's breach of contract, promissory estoppel, and retrospective legislation claims failed as a matter of law under applicable case law. The court thus granted summary judgment to Green Mountain on all of Big Sky's claims.

¶ 7 After ruling for Green Mountain on Big Sky's claims, the district court then sua sponte determined that, because the IGA is void, (1) the Developers' breach of contract claims should be dismissed as a matter of law, and (2) the Developers lacked standing to bring their remaining claims. The district court thus dismissed the consolidated cases of the Developers.

¶ 8 Big Sky and the Developers now appeal the court's rulings.

II. Summary Judgment Against Big Sky

¶ 9 Big Sky and the Developers contend that the district court erred by ruling that the IGA is void as a matter of law, and that Green Mountain consequently was not entitled to summary judgment. We agree that disputes of material fact should have precluded the entry of summary judgment and accordingly reverse the grant of summary judgment on Big Sky's breach of contract, promissory estoppel, and retrospective legislation claims. However, we also address Big Sky's promissory estoppel argument because it's likely to arise on remand.

A. Standard of Review

¶ 10 Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. C.R.C.P. 56(c). "The moving party has the burden of establishing the lack of a triable factual issue, and all doubts as to the existence of such an issue must be resolved against the moving party." *Cung La v. State Farm Auto. Ins. Co.*, 830 P.2d 1007, 1009 (Colo. 1992) (quoting *Churchey v. Adolph Coors Co.*, 759 P.2d 1336, 1340 (Colo. 1988)). We review de novo

whether Green Mountain was entitled to summary judgment along with the associated contract and statutory interpretation issues. *Falcon Broadband, Inc. v. Banning Lewis Ranch Metro. Dist. No. 1*, 2018 COA 92, ¶ 26.

¶ 11 In interpreting the IGA, our primary goal is to "determine and give effect to the intent of the parties," which we "determine[] primarily from the language of the [IGA] itself." *Ad Two, Inc. v. City & Cnty. of Denver*, 9 P.3d 373, 376 (Colo. 2000). "In ascertaining whether certain provisions of [the IGA] are ambiguous, the instrument's language must be examined and construed in harmony with the plain and generally accepted meaning of the words employed." *Id.* Contract provisions are ambiguous, though, "when they are susceptible to more than one reasonable interpretation." *Id.* Also, we "are not bound by a trial court's decision on the ambiguity of a contract, which is a question of law." *Cheyenne Mountain Sch. Dist. No. 12 v. Thompson*, 861 P.2d 711, 715 (Colo. 1993).

B. Green Mountain Was Not Entitled to Summary Judgment

¶ 12 As noted, the district court ruled that the IGA is void under the LGBL and TABOR as a matter of law. To get there, the court concluded that the IGA unambiguously imposes infrastructure and maintenance costs on Green Mountain, and that the undisputed evidence established that Green Mountain had neither (1) appropriated any money in its 2018 or 2019 annual budgets "for the costs of construction and maintenance required under the IGA"; nor (2) "irrevocably pledged present cash reverses to pay for future obligations created under the IGA."

¶ 13 Section 29-1-110 of the LGBL states as follows:

> (1) During the fiscal year, no . . . spending agency shall expend or contract to expend any money, . . . or enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated. Any contract, verbal or written, made in violation of this section shall be void, and no moneys belonging to a local government shall be paid on such contract.
>
> (2) Multiple-year contracts may be entered into where allowed by law or if subject to annual appropriation.

See also § 29-1-102(1), C.R.S. 2022 (defining "appropriation"). And under TABOR, "districts must have voter approval in advance for . . . creation of any multiple-fiscal year direct or indirect district debt or other financial obligation whatsoever without adequate present cash reserves pledged irrevocably and held for payments in all future fiscal years." Colo. Const. art. X, § 20(4)(b).

¶ 14 On appeal, Big Sky contends that the district court erred by ruling that the terms of the IGA unambiguously commit Green Mountain to (1) expenditures in excess of the amounts appropriated or (2) a multi-year financial obligation. Green Mountain defends this ruling and also passingly contends that the IGA is also void under section 29-1-110(2) because it is a contract for multiple years of expenditures that is not "allowed by law or . . . subject to annual appropriation." In turn, Big Sky argues that the IGA unambiguously does *not* commit Green Mountain to expend any money or incur any financial obligation whatsoever.

¶ 15 We disagree with both parties. We conclude that the IGA does not *unambiguously* commit Green Mountain to either (1) expenditures in 2018 or 2019 in excess of the amounts appropriated; (2) multiple years of expenditures; or (3) a multi-year

financial obligation. Rather, we conclude that the IGA is ambiguous in key respects — thus requiring further factual development and precluding a grant of summary judgment on this record. *See Cheyenne Mountain*, 861 P.2d at 715 ("Once a contract is determined to be ambiguous, its interpretation becomes an issue of fact for the trial court to decide in the same manner as other disputed factual issues.").

¶ 16 We now address each of the multiple provisions of the IGA that potentially commit Green Mountain to expenditures or financial obligations.

1. Expenditures in 2018 and 2019

¶ 17 As an initial matter, we address a timing issue in the district court's reasoning. The district court ruled that the IGA is void under section 29-1-110(1) of the LGBL, and it ostensibly based that conclusion on its interpretation that the IGA will *eventually* require Green Mountain expenditures. But section 29-1-110(1) plainly says that spending agencies may not "contract to expend any money" or "enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated" *during that fiscal year*. The eventual expenditures, then, are only

one half of the equation. In order to find a violation of this section, the contract, by its terms, would also have to require expenditures that exceed the appropriations for the given fiscal years.

¶ 18 As noted, the IGA was executed in 2018 and Green Mountain terminated it in 2019. But crucially, though the IGA has an initial contract term, at least as to some provisions, of fifteen years, the IGA contains *no timelines* for when any of its obligations kick in. Indeed, the IGA's terms do not state, for example, when construction of new infrastructure will or must begin, or when Green Mountain will or must begin accepting Big Sky's wastewater into its wastewater system. In short, the terms of the IGA do not unambiguously require Green Mountain to do anything in 2018 or 2019.

¶ 19 For this reason, we cannot agree with the district court's conclusion that the IGA is a "contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated" during 2018 or 2019. § 29-1-110(1). The district court therefore erred by ruling that the IGA is void as a matter of law under section 29-1-110(1) of the LGBL on the facts presented by Green Mountain.

2. Multiple Years of Expenditures or Multi-Year Financial Obligations

¶ 20 Thus, whether the district court was ultimately correct to conclude that the IGA is void under the LGBL and TABOR turns on whether the terms of the IGA require multiple years of Green Mountain expenditures or create multi-year Green Mountain financial obligations.

¶ 21 Absent some other statutory authorization, the plain language of section 29-1-110(2) requires a spending agency entering into a multiple-year contract to somehow subject the required expenditures to annual appropriation. After all, this subsection says that multiple-year contracts "may be entered into" — using the present tense — "if subject to annual appropriation," and it doesn't say that multiple-year contracts are valid so long as the spending agency continues to appropriate money, year after year, for a contract's expenditures. Such a requirement is already covered by subsection (1) of section 29-1-110. *See Falcon Broadband*, ¶ 35 ("[W]e won't read a statute to render any part meaningless.").

¶ 22 The parties agree that the terms of the IGA do not make any required expenditures under the agreement "subject to annual

appropriation" by, for example, an annual appropriations clause. Nor does the record disclose any other action by Green Mountain that might have satisfied this requirement.

¶ 23 But in oral argument, for the first time, Big Sky asserted that multi-year contracts are permitted by law for special districts, taking them outside the restrictions in the LGBL. That may be so, *see, e.g.*, § 29-1-203(1), C.R.S. 2022, but the parties didn't brief that argument and the record is insufficient for us to review it. We therefore decline to do so. *See, e.g.*, *Arline v. Am. Fam. Mut. Ins. Co.*, 2018 COA 82, ¶ 23 n.2 (declining to address argument made for the first time in oral argument). On remand, the parties may address whether the IGA is void under the LGBL because it commits Green Mountain — or indeed Big Sky — to multiple years of expenditures without making those expenditures subject to annual appropriation under section 29-1-110(2), or whether other authority permits those contracts for these districts.

¶ 24 Nonetheless, we conclude that the terms of the IGA do not unambiguously commit Green Mountain to either multiple years of expenditures or a multi-year financial obligation.

a. The Big Sky Sewer System

¶ 25 The parties agree that the IGA unambiguously requires Green Mountain to design and construct the lift stations, flow equalization, and force mains that are part of Big Sky's sewer system. But contrary to the interpretation of the district court and Green Mountain, we read the IGA as unambiguously providing that (1) Big Sky will ultimately own and maintain this infrastructure, and (2) Big Sky will be responsible for any of Green Mountain's design and construction costs associated with this infrastructure. Nonetheless, we further conclude that the IGA is silent — and therefore fatally ambiguous, in our view — with respect to *how* Big Sky will pay Green Mountain for these design and construction costs.

¶ 26 Section 3 of the IGA, titled "Design and Construction of the Big Sky Sewer System," unsurprisingly lays out the division of obligations with respect to the design and construction of the Big Sky Sewer System. Section 3.1 states that, "[a]s a condition precedent to Green Mountain fulfilling its sewer service obligation set forth Section II, Big Sky shall design and construct . . . the Big Sky Sewer System, with the exception of lift station(s), flow

equalization and force mains." Paragraphs 3.2(A) and (D) then reinforce that "the lift station(s), flow equalization, and force mains, and appurtenant facilities, . . . will be designed and constructed by Green Mountain." The recitals confirm that this was the intent of the parties: "Big Sky desires that Green Mountain design and construct . . . the lift station(s), flow equalization and force mains which are in the Big Sky Service Area."

¶ 27 Green Mountain argues, and the district court agreed, that the IGA further unambiguously provides that Green Mountain will own — and therefore incur multi-year maintenance and monitoring costs associated with — these lift stations, flow equalization, and force mains. We disagree. Section 3.7 of the IGA states that "[n]o part of the Big Sky Sewer System will be dedicated or conveyed to Green Mountain without the express written consent of Green Mountain," and that "[t]he Big Sky Sewer System shall be owned and maintained by Big Sky." And in section 3.1, the IGA says,

> The Big Sky Sewer System shall consist of: (1) the sewer main lines which will run to the service lines for the homes within the Big Sky Service Area; (2) *any new lift station(s) and force mains needed to deliver the Wastewater to the Green Mountain Wastewater Collection System*; (3) provisions for monitoring to be

> located within the lift station(s) including monitoring equipment necessary to measure, at minimum, flow and strength (the "Monitoring Stations") and (4) any other facilities outside the boundaries of Green Mountain deemed necessary by Big Sky or Green Mountain to deliver the Wastewater to the Green Mountain Wastewater Collection System.

(Emphasis added.) The IGA's definition section further defines the "Big Sky Sewer System" as "a system of infrastructure *provided by Big Sky* . . . to provide sewer service to its customers by the collection of wastewater arising within [Big Sky's service area] and delivery of the wastewater to Green Mountain for conveyance to [the Denver reclamation district] for disposal." (Emphasis added.)

¶ 28 The language in section 2.7 that Green Mountain — and the district court — relies on does not convince us that the IGA assigns ownership of the lift stations, flow equalization, and force mains to Green Mountain. It references "engineering costs associated with the design of the Big Sky Sewer System and the associated lift station(s), flow equalization, and force main(s) that will be owned and maintained by Green Mountain." But section 2.7, and section 2 in general, does not purport to concern the division of construction and ownership obligations between Green Mountain

and Big Sky (unlike section 3, which explicitly does). And more importantly, section 3.7 envisions, as noted, that Big Sky may convey ownership of parts of the Big Sky Sewer System to Green Mountain. In this context, we read the phrase in section 2.7 — the "lift station(s), flow equalization, and force main(s) that will be owned and maintained by Green Mountain" — as not affirmatively stating *that* this infrastructure will be owned by Green Mountain, but rather as capturing the possibility that Green Mountain may own this infrastructure at some point in the future.

¶ 29 We're also not convinced that the IGA unambiguously imposes on Green Mountain multi-year wastewater-monitoring costs associated with the lift stations under section 3.2(E) of the IGA. This section states that

> Green Mountain shall include provisions in the lift station(s) design for flow monitoring and sampling to determine flow rate and wastewater strength to be located in the lift station(s), at the expense of Big Sky . . . . Green Mountain has the right, but not the obligation, to impose an additional fee on Big Sky to recover the costs associated with monitoring and measuring the Wastewater.

For one, this provision places no obligation on Green Mountain to actually monitor and measure the wastewater at the lift stations; it

therefore does not unambiguously require Green Mountain to incur any associated monitoring and measurement costs. Nor does it state, or convince us, that Green Mountain will own these lift stations.

¶ 30 Continuing, the IGA makes it plain that Big Sky — not Green Mountain — will be responsible for Green Mountain's costs to design and construct the lift stations, flow equalization, and force mains. Section 3.1 states that "[i]t is understood and agreed that unless specifically set forth herein, Green Mountain shall not be responsible for any costs associated with the Big Sky Sewer System. Rather, all such costs shall be the responsibility of Big Sky or other entity pursuant to a contract with Big Sky."

¶ 31 Big Sky argues that this provision unambiguously shows that Green Mountain will not be required to make multiple years of expenditures or incur a multi-year financial obligation. We're not so sure. For one, it's not clear from the terms of the IGA that the design and construction of the lift stations, flow equalization, and force mains will be a multi-fiscal-year project. But more importantly, Big Sky concedes, and we agree, that the IGA is silent on whether Big Sky's "responsib[ility] for any costs associated with

the Big Sky Sewer System" means that Big Sky will (1) *reimburse* Green Mountain for its design and construction costs — therefore requiring Green Mountain to initially "expend" money — or (2) *advance* these costs or *pay* them directly.[1] Big Sky also doesn't challenge — and we agree with — the district court's conclusion that any Green Mountain payments required by the IGA — even those that are later reimbursed, dollar-for-dollar, by Big Sky — are nonetheless "expenditures" within the meaning of the LGBL. *See* § 29-1-102(2), (8)(a) (defining "expenditure" and "basis of budgetary accounting"); *cf. Falcon Broadband*, ¶ 40 & n.12 (rejecting argument that the contract at issue wasn't void because the district would recuperate funds it disbursed to the contracting party from its residents).

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[1] Green Mountain argued for the first time in oral argument that, even if Big Sky advances Green Mountain funds to pay for certain IGA costs, Green Mountain's payments using the advanced funds are nonetheless "expenditures" within the meaning of the LGBL. Big Sky, in turn, argued for the first time in oral argument that when the IGA says that Big Sky shall "reimburse" Green Mountain's costs, it really means that Big Sky will pay Green Mountain's costs directly after they become due. We decline to consider these untimely arguments. *See, e.g.*, *Arline v. Am. Fam. Mut. Ins. Co.*, 2018 COA 82, ¶ 23 n.2.

¶ 32 But, in the end, this question — how Big Sky is to be "responsible" for Green Mountain's design and construction costs — cannot be answered from the text of the IGA itself. This silence is in pointed contrast to section 4 of the IGA, which purports to cover the division of obligations with respect to certain improvements of Green Mountain's wastewater infrastructure. This section explicitly dictates that Big Sky will either advance or reimburse certain categories of associated costs of these improvements.

¶ 33 It's true, though, that the IGA's silence on how Big Sky fulfills its responsibility to pay Green Mountain's design and construction costs — whether by paying directly, advancing, or reimbursing the funds — "does not by itself necessarily create ambiguity as a matter of law." *Cheyenne Mountain*, 861 P.2d at 715. However, in this case, we conclude that this issue is "naturally within the scope of the contract" and thus the IGA's silence on this point does create ambiguity. *Id.*

¶ 34 The IGA's ambiguity with respect to Big Sky's responsibility to pay Green Mountain's design and construction costs is fatal to Green Mountain's entitlement to summary judgment on this record. For one thing, Green Mountain's assertion that these costs would

be incurred over multiple years is a factual issue that we must resolve against Green Mountain in our summary judgment review. *See Cung La*, 830 P.2d at 1009. But more importantly, whether Big Sky will reimburse or advance these costs dictates, at the very least,[2] whether the IGA may commit Green Mountain to multiple years of expenditures without making those expenditures subject to annual appropriation, in violation of section 29-1-110(2) of the LGBL, assuming that the LGBL even applies to these parties under these circumstances.

¶ 35 For these reasons, we conclude that the IGA is ambiguous with respect to whether it commits Green Mountain to multiple years of expenditures or a multi-year financial obligation with respect to the design and construction costs of the lift stations, flow equalization, and force mains that will be owned and maintained by Big Sky.

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[2] The parties did not brief — so we do not address — whether Green Mountain, if it is timely reimbursed for all of its design and construction costs, would nonetheless incur a multi-year financial obligation without voter approval in violation of TABOR.

b. Other Provisions of the IGA

¶ 36 Nonetheless, even if the IGA does not unambiguously commit Green Mountain to multi-year expenditures or obligations associated with the lift stations, flow equalization, and force mains, Green Mountain argues that other provisions of the IGA so commit it. We're not persuaded.

¶ 37 Green Mountain first points to the so-called "GM Improvements," which we touched on above. Section 4.1 of the IGA says that

> Big Sky recognizes and agrees that certain new public improvements and infrastructure, located both within the boundaries of Green Mountain and outside of those boundaries, *may need* to be acquired, installed, constructed, upgraded or upsized in order to accommodate the Wastewater flow from Big Sky (collectively the "GM Improvements"). . . . Big Sky agrees to finance, at its sole cost the actual costs incurred by Green Mountain in planning, designing, constructing, acquiring, installing, upgrading or upsizing the GM Improvements *which Green Mountain reasonably determines are necessary* to accept Big Sky's Wastewater and mitigate odors . . . .

(Emphasis added.) An attached exhibit listed three GM Improvements "currently anticipated . . . [to be] needed to

accommodate the Wastewater flow" from Big Sky's service area and a future expanded service area the agreement envisioned.

¶ 38 However — and crucially, for our purposes — the IGA's terms do not unambiguously require expenditures for the GM Improvements. Rather, it says only that these improvements "may" be necessary — section 4.1 even contains the caveat that "to the extent these or other GM Improvements are required, they may only need to be phased in over a matter of years" — and it gives Green Mountain full discretion to determine whether and when they need to be implemented. We therefore cannot agree that section 4 of the IGA, by its terms, unambiguously commits Green Mountain to multiple years of expenditures or a multi-year financial obligation.

¶ 39 Next, Green Mountain points to the supposed maintenance, repair, and replacement costs of its own system to accommodate the increased wastewater flows from Big Sky. Here, the IGA provides that "Green Mountain shall be responsible for the maintenance, repair, and replacement of [Green Mountain's current wastewater infrastructure] at a level sufficient to allow Green Mountain to accept [Big Sky's] Wastewater flows and transmit the Wastewater." It's true that, as far as we can tell, the IGA provides

no funding mechanism for Big Sky to either advance or reimburse these costs. However, we see nothing in the IGA — or any evidence in the record — that this obligation will require Green Mountain to spend any money *above and beyond* the maintenance, repair, and replacement costs that it will already be required to spend to accommodate its own wastewater. And in our summary judgment review, we must resolve this factual issue against Green Mountain. *See Cung La*, 830 P.2d at 1009.

¶ 40 Green Mountain points to no other provision that unambiguously commits Green Mountain to multiple years of expenditures or a multi-year financial obligation. Our review reveals no other noteworthy provisions — at least no others that also don't require factual inferences in Green Mountain's favor.

¶ 41 In sum, we hold that the IGA, by its terms, does not unambiguously commit Green Mountain to multiple years of expenditures or a multi-year financial obligation. Rather, we conclude the IGA is ambiguous in this respect, as discussed above. Accordingly, we conclude that the district court erred by ruling that the IGA is void under the LGBL and TABOR as a matter of law. *See Hudgeons v. Tenneco Oil Co.*, 796 P.2d 21, 23 (Colo. App. 1990)

("[G]enerally issues relative to a party's intent cannot be resolved by summary judgment . . . ."); *cf. Allen v. Nickerson*, 155 P.3d 595, 600 (Colo. App. 2006) ("If a deed is ambiguous regarding the parties' intent, summary judgment is not appropriate."). We therefore reverse the court's grant of summary judgment in favor of Green Mountain on Big Sky's breach of contract, promissory estoppel, and retrospective legislation claims. *See Cheyenne Mountain*, 861 P.2d at 716 (returning contract dispute involving ambiguous contract to the trial court for further taking of evidence to determine the parties' intent with respect to ambiguous contract provisions).

C. Big Sky Cannot Assert Promissory Estoppel Against Green Mountain If the IGA is Void

¶ 42 Though we reverse the district court's summary judgment and ruling that the IGA is void as a matter of law, we address the court's ruling on Big Sky's promissory estoppel claim because it's likely to arise on remand. We conclude that, if the IGA is void, we also agree with the district court that Big Sky is foreclosed under the applicable case law from asserting a promissory estoppel claim against Green Mountain. *See generally Pinnacol Assurance v. Hoff*, 2016 CO 53, ¶ 32 (elements of promissory estoppel claim).

¶ 43 As an initial matter, we disagree with Big Sky that its promissory estoppel claim did not depend on the validity of the IGA. The only other Green Mountain promise that Big Sky identifies — its "will-serve" promise to provide Big Sky with wastewater services in a 2015 letter — was expressly subject to "the successful negotiation" of the IGA.

¶ 44 As far as Green Mountain's promises in the void IGA, then, the case law is clear — "the party contracting with a governmental entity bears the risk that 'all recovery, including *quantum meruit*, [will be] denied' if the contract isn't valid." *Falcon Broadband*, ¶ 41 (quoting *Normandy Ests. Metro. Recreation Dist. v. Normandy Ests., Ltd.*, 191 Colo. 292, 295, 553 P.2d 386, 388-89 (1976)). And in this case, Big Sky had the duty when negotiating the IGA to ascertain whether it complies with the LGBL. *Id.* If the IGA is void, then, Green Mountain "cannot be estopped to deny the validity of the contract." *Rocky Mountain Nat. Gas, LLC v. Colo. Mountain Junior Coll. Dist.*, 2014 COA 118, ¶ 31.

¶ 45 Contrary to Big Sky's assertion, the *Normandy Estates* exception to this rule is not applicable in this case. *See generally La Plata Med. Ctr. Assocs., Ltd. v. United Bank of Durango*, 857 P.2d

410 (Colo. 1993) (applying the *Normandy Estates* exception). It applies only "where property is furnished to [the government entity] under an unenforceable contract, and [that entity] has not paid for the property." *Normandy Ests.*, 191 Colo. at 296, 553 P.2d at 389 (contract for purchase and sale of land); *La Plata*, 857 P.2d at 418-19 (government entity retained benefit of medical office). But Big Sky's promissory estoppel claim is not premised on any property that it furnished to Green Mountain under the IGA, but rather on Green Mountain's alleged promises that induced Big Sky into financial losses. This exception therefore does not apply.

¶ 46 Accordingly, we conclude that if the IGA is void, the district court was correct to conclude that Big Sky's promissory estoppel claim fails as a matter of law.

¶ 47 In sum, we reverse the district court's grant of summary judgment on Big Sky's breach of contract, promissory estoppel, and retrospective legislation claims.

III. Dismissal of Developers' Claims

¶ 48 Next, because we conclude the district court erred by ruling that the IGA is void as a matter of law, we also reverse the court's dismissal of the Developers' breach of contract claims. The

Developers further argue that the district court also erred by ruling that, if the IGA is void, they lacked standing to bring their non-breach-of-contract claims against Green Mountain. We agree with that argument, so we also reverse the district court's order dismissing the Developers as parties to the case.[3]

A. Additional Background

¶ 49 At the end of its order granting summary judgment to Green Mountain on Big Sky's claims, the district court sua sponte "review[ed] the effects this Order has on the claims of the Developers." The court concluded that, because the IGA is void, (1) the Developers' breach of contract claims were "dismissed as matter of law," and (2) the Developers lacked standing to bring their other claims against Green Mountain.

¶ 50 Recognizing, though, that Green Mountain moved for summary judgment "against Big Sky specifically," the court gave the Developers twenty-one days to file responses to its ruling "should they wish to argue for their standing in this case." In their

[3] We do not address the Developers' other contention — that the district court reversibly erred by sua sponte dismissing their claims — because it is not likely to arise on remand.

responses, the Developers argued that (1) the court erred by ruling that the IGA was void under the LGBL and TABOR; (2) the court's sua sponte dismissal of their claims was inappropriate; and (3) in any event, they had standing for at least some of their claims even if the IGA is void.

¶ 51 In its next order, the district court first affirmed its ruling that the IGA was void but noted that the Developers' IGA arguments "amount[ed] to motions to reconsider or requests seeking similar relief" that the court could not consider. Then, noting the Developers' concerns over its sua sponte dismissal, the court amended its summary judgment order to make it clear that it did not actually dismiss the Developers' claims until after it gave them a chance to "present briefs as to which claims were dismissed" by its ruling that the IGA was void. Finally, the court ruled that the Developers lack standing for any of their claims because they were all "incidental to the IGA and barred from recovery due to the IGA being void."

B. The Developers' Standing on Their Remaining Claims

¶ 52 The Developers contend that they have standing to bring a number of their claims even if the IGA is void.

¶ 53 Green Mountain argues that the Developers improperly attempt to incorporate by reference much of their argument in the district court. We agree that the Developers' arguments on this issue are not well developed. And we disapprove of their attempts to "incorporate by reference their arguments" in their responses to the district court's initial standing ruling, which effectively "attempt[ed] to shift — from the litigants to the appellate court — the task of locating and synthesizing the relevant facts and arguments." *Castillo v. Koppes-Conway*, 148 P.3d 289, 291 (Colo. App. 2006); *People v. Phipps*, 2016 COA 190M, ¶ 11 ("Such incorporations by reference also circumvent C.A.R. 28(g), which limits the length of briefs.").

¶ 54 However, the crux of the Developers' argument boils down to two points: (1) the district court's order does not fully analyze whether they have standing to bring their claims and (2) some of their claims were not derived from the IGA.

¶ 55 The district court found:

> In their current briefs, the Developers did not address whether their claims as third-party beneficiaries are denied as part of the void . . . IGA. Rather, the parties allege claims stemming from the will serve letter of

> September 8, 2015, an MOU of August 31, 2015, and other alleged assurances which established sewer services, property rights, service agreements, and other promises. However, all such alleged obligations were conditional upon developments made between Big Sky and Green Mountain, i.e. were assurances to form and follow from the ultimate agreements made in the IGA. Such claims are barred for "all recovery" under a policy of "harsh results" because the third-party benefits are incidental to contractual obligations with a government entity.

(Footnote omitted.)

¶ 56 On appeal, the Developers argue that many of their claims did not stem from the documents the district court identified in its order. For example, they claim that Cardel's first claim was "for declaratory relief[, which] relied on the Cardel will-serve letter and other bases beyond the IGA."

¶ 57 The Cardel complaint, in turn, alleges that Cardel sought a declaration of its rights under a different will-serve letter between Green Mountain and Cardel. We see no references to the IGA in that will-serve letter. And it does appear that Cardel raised this issue to the district court in asserting its standing to bring at least some of its claims.

¶ 58 On this briefing, we decline to affirmatively determine whether, if the IGA is void, the parties have standing to pursue their remaining claims. However, we also do not see how this Cardel claim was "to form and follow from the ultimate agreements made in the IGA." It is not clear from this record what grounds the district court relied on to determine that the Developers did not have standing to pursue claims that are not dependent on the IGA. We conclude that this portion of the judgment does not permit meaningful appellate review. *Argo v. Hemphill*, 2022 COA 104, ¶ 46 (citing *In re Marriage of Aldrich*, 945 P.2d 1370, 1379 (Colo. 1997)).

¶ 59 Accordingly, we reverse the district court's standing order — titled "Order: Responses to Order of May 6, 2021" — which determined that the Developers lacked standing and dismissed them from the action. We also reverse that portion of the court's "Order: Cross Motion for Summary Judgment" finding that the Developers lacked standing. On remand, the district court should conduct whatever proceedings it deems necessary to fully determine and make findings about the Developers' standing for any remaining claims, if the court should again determine that the IGA is void under the LGBL and TABOR.

IV. Disposition

¶ 60 The summary judgment dismissing Big Sky's and the Developers' claims and the order dismissing the Developers for lack of standing are reversed. The matter is remanded for further proceedings consistent with this opinion.

JUDGE HARRIS and JUDGE GROVE concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at **www.cobar.org/appellate-pro-bono** or contact the Court's self-represented litigant coordinator at 720-625-5107 or **appeals.selfhelp@judicial.state.co.us.