

<b>District Court, Jefferson County, Colorado</b> 100 Jefferson County Parkway Golden, Colorado 80401-6002	DATE FILED: August 19, 2021 2:50 PM CASE NUMBER: 2019CV30887
Plaintiff: <b>BIG SKY METROPOLITAN DISTRICT NO. 1;</b>  Plaintiff: <b>CDN RED ROCKS, LP;</b>  Plaintiff: <b>STREAM REALTY ACQUISITIONS, LLC 1;</b>  Plaintiff: <b>THREE DINOS LLC;</b>  Plaintiff: <b>CARDEL HOMES US LIMITED PARTNERSHIP;</b> and v. Defendant: <b>GREEN MOUNTAIN WATER AND SANITATION DISTRICT.</b>	<b>▲ COURT USE ONLY ▲</b>  <b>Case Number:</b> 19CV30887 19CV31158 19CV31172 19CV31185 19CV31250  <b>Division:</b> 2 <b>Courtroom:</b> 420
<b>ORDER: MOTION FOR LEAVE TO FILE AMENDED ANSWERS</b>	

**THIS MATTER** comes before the Court upon Defendant's Motion for Leave to File Amend Answers and Counterclaims to Complaints Filed by Plaintiffs Big Sky and CDN, filed on October 8, 2020. Plaintiff filed a response on October 29, 2020, and Defendant filed a reply on November 20, 2020. After reviewing the briefs, relevant pleadings, and applicable law, the Court **FINDS** and **ORDERS** the following.

**I. BACKGROUND**

On June 6, 2019, Plaintiff Big Sky filed its Complaint for breach of contract, breach of covenant of good faith and fair dealing, violation of the Colorado Constitution’s prohibition on retrospective laws, and promissory estoppel.<sup>1</sup> Big Sky alleged that it entered into an Intergovernmental Agreement (“IGA”) with Green Mountain to transport Big Sky’s waste to

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<sup>1</sup> Compl. pp. 12-16.

Denver.<sup>2</sup> Allegedly, the day the parties finalized the IGA, Green Mountain elected to replace its board with three new board of directors who immediately reversed Green Mountain's position and declared the IGA invalid.<sup>3</sup>

On July 23, 2019, Defendant Green Mountain filed its Answer. On January 6, 2020, the Court ordered this case consolidated with actions brought by Plaintiffs CDN Red Rocks, LP—along with Stream Reality Acquisition, LLC; Three Dinosaurs, LLC; and Cardel Homes U.S. Limited Partnership (“Developer Plaintiffs”). CDN claimed it suffered from Green Mountain's invalidation of the IGA because of development plans made in reliance of the IGA. On July 1, 2020, Green Mountain filed an Amended Answer to Big Sky and Answer to CDN.

On August 20, 2020, the Court held a case management conference. The Court issued a Case Management Order (“CMO”) which set a deadline for amending pleadings (which the parties had stipulated to) for October 6, 2020.<sup>4</sup>

On October 8, 2020,<sup>5</sup> Green Mountain moved for leave to amend its answer and bring counterclaims to the complaints brought by Big Sky and CDN. Green Mountain alleges filing its motion within the CMO's deadline for amending pleadings. As such, the Court should grant leave to amend because Green Mountain allegedly discovered new information which establishes grounds for the counterclaims of breach of contract and indemnification.<sup>6</sup>

Green Mountain's counterclaims assert that Big Sky and CDN entered into a Joint Interest Agreement (“JIA”) with Green Mountain.<sup>7</sup> They formed the JIA so Green Mountain and Big Sky could bring a declaratory judgment action against another special district called Fossil Ridge.<sup>8</sup> Allegedly, Green Mountain required the declaratory action before it would enter into the IGA with Big Sky, and Big Sky would pay for all of Green Mountain's legal fees in the action as part of the JIA.<sup>9</sup> Big Sky asserts it paid all incurred fees and costs after the action settled.<sup>10</sup>

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<sup>2</sup> Compl. ¶ 44; Resp. Ex. A.

<sup>3</sup> Compl. ¶¶ 48, 69.

<sup>4</sup> CMO, Aug. 21, 2021, p. 20; Def.'s Mot. ¶ 5.

<sup>5</sup> Green Mountain alleges filing the Motion on October 6, 2020; however, the date filed in the record is October 8, 2020.

<sup>6</sup> Reply p. 5.

<sup>7</sup> Ex. 1, Second Amended Answer, p. 6 ¶ 33.

<sup>8</sup> Ex. 1, Second Amended Answer, p. 6 ¶ 33, p. 15, ¶¶ 15-19.

<sup>9</sup> *Id.*; Comp. ¶¶ 28, 31-33.

<sup>10</sup> Ex. 1, Second Amended Answer, p. 6 ¶ 33., p. 15 ¶¶ 10-18.

## II. LEGAL STANDARDS

The Court has discretion on whether to grant leave to amend a complaint, although it may grant leave freely when “justice so requires.”<sup>11</sup> This liberal policy toward amendments provides for just, speedy, and inexpensive determinations of actions, ensuring that substantive rights outweigh mere form.<sup>12</sup>

In deciding whether to grant a motion to amend, the Court must consider the totality of the circumstances, balancing the policy favoring amendment against the burden the amendment imposes on the other party.<sup>13</sup> A court may deny leave to amend where the opposing party would be prejudiced, the amendment is futile, or the moving party has unduly delayed in moving to amend.<sup>14</sup>

## III. ANALYSIS

### A. Prejudice to Opposing Party

The Court finds that granting leave to amend would be prejudicial due to developments in the case since Green Mountain filed the motion on October 8, 2020. Subsequent to Green Mountain’s motion to amend, the Court has ruled the IGA void and Big Sky’s claims have been dismissed.<sup>15</sup> In a separate order, the Court is dismissing CDN and the other Developer Plaintiffs for lack of standing.<sup>16</sup> Granting leave prejudices Big Sky and CDN’s ability to prepare a defense to the counterclaims because they have already been, or are now, dismissed from the case.

Indeed, Big Sky has already demonstrated an intent to pursue an appeal.<sup>17</sup> Granting leave now would force the parties to have to restart trial preparation, conduct new litigation on their standing and status in the case, and delay their appellate proceedings. Of significance, the hinderance to any appeal would also cause substantial delay to the Developer Plaintiffs, forcing them to wait for the conclusion of an action in which they have no role.<sup>18</sup>

Therefore, the Court finds granting the leave to amend would significantly prejudice the plaintiffs.

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<sup>11</sup> C.R.C.P. 15(a); *Civ. Serv. Comm’n v. Carney*, 97 P.3d 961, 965 (Colo. 2004).

<sup>12</sup> C.R.C.P. 1(a); *Vinton v. Virzi*, 269 P.3d 1242, 1245 (Colo. 2012).

<sup>13</sup> *Civil Serv. Comm’n*, 97 P.3d at 966.

<sup>14</sup> *Akin v. Four Corners Encampment*, 179 P.3d 139, 146 (Colo. App. 2007).

<sup>15</sup> See Order May 6, 2021.

<sup>16</sup> See Order: Responses to Order of May 6, 2021, filed Aug. 19, 2021.

<sup>17</sup> See Court of Appeals, Order, Appeal Dismissed, Aug. 3, 2021.

<sup>18</sup> *Id.*

Furthermore, if the Court denies the motion to amend, the Court would not be dismissing the counterclaims with prejudice. Given the sophistication of the parties and the amount of litigation performed already in this case (as demonstrated in part by the 353 filings in the 19CV30887 case alone), the Court finds it highly likely that Green Mountain would face a minimal burden by having to bring their claims through commencement of a new action.

### **B. Futility**

The Court also finds that the request to amend is futile according to Green Mountain's own assertions. In its Reply, Green Mountain states, "[i]f its Motion to Dismiss, or Motion for Summary Judgment, had been granted, Green Mountain would not have amended its Answer and filed Counterclaims, as CDN and/or Big Sky would no longer be a party to this case."<sup>19</sup> In light of the Court's granting Green Mountain's cross motion for summary judgment, it is unclear to the Court why Green Mountain has not yet moved to withdraw the motion to amend, at least as it relates to Big Sky.<sup>20</sup> In any event, the motion is now futile because CDN and Big Sky will no longer be parties to this case pursuant to other orders issued by this Court.

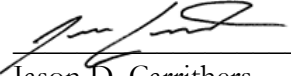
## **IV. CONCLUSION**

The Court finds granting leave for a second amended answer and counterclaims would be prejudicial and futile.<sup>21</sup>

For these reasons, the Court **DENIES** Defendant's Motion for Leave to File Amend Answers and Counterclaims to Complaints Filed by Plaintiffs Big Sky and CDN.

**SO ORDERED** in Golden, Colorado on August 19, 2021.

**BY THE COURT:**

  
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Jason D. Carrithers  
District Court Judge

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<sup>19</sup> Reply p. 6.

<sup>20</sup> See Order May 6, 2021.

<sup>21</sup> *Akin*, 179 P.3d at 146.