

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 07-cv-01723-WYD-CBS

LARIVIERE, GRUBMAN & PAYNE, LLP, a California limited liability partnership,

Plaintiff,

v.

EDWARD H. PHILLIPS, an individual;
JOHN C. HERMAN, individually and as a partner of Duane Morris, LLP;
ALLEN L. GREENBERG, individually and as a partner of Duane Morris, LLP;
DUANE MORRIS, LLP, a limited liability partnership;
M. SHANE EDGINGTON, individually and as a member of Hensley, Kim &
Edgington, LLC;
HENSLEY, KIM & EDGINGTON, LLC, a Colorado limited liability company,

Defendants.

and

EDWARD H. PHILLIPS,

Counterclaimant

v.

LARIVIERE, GRUBMAN & PAYNE, LLP, a California limited liability partnership,

Counterclaim Defendant.

ORDER

THIS MATTER is before the Court on a review of the Renewed Motion for Judgment on the Pleadings by Defendants Duane Morris, LLP, Allen L. Greenberg and John C. Herman (Doc. # 283) and Plaintiffs' Response to John C. Herman's, Allen L. Greenberg's, Duane Morris' and the HKE Defendants' Motion for Judgment on the

Pleadings (Doc. # 301). Both filings attach matters outside the pleadings. While the motion itself attaches public filings from another case filed in this Court which I may take judicial notice of, Plaintiffs attach other matters outside of the pleadings in the response.

If the evidence attached to Plaintiffs' response is not excluded, the motion for judgment on the pleadings filed pursuant to Fed. R. Civ. P. 12(c) must be treated as a motion for summary judgment. FED. R. CIV. P. 12(d); *Lucero v. Gunter*, 52 F.3d 874, 877 (10th Cir. 1995) . I find that it is appropriate to consider the evidence attached to both the motion and the response in resolving the motion filed under Rule 12(c).

Accordingly, notice is hereby given that the Renewed Motion for Judgment on the Pleadings by Defendants Duane Morris, LLP, Allen L. Greenberg and John C. Herman shall be treated as a motion for summary judgment and the evidence attached to the motion and response shall be considered. Any party who wishes to submit additional materials for the Court to consider in connection with the motion for summary judgment may do so by Tuesday, September 29, 2009, or in any further briefing to be filed in connection with the motion.

In conclusion, it is

ORDERED that the Renewed Motion for Judgment on the Pleadings by Defendants Duane Morris, LLP, Allen L. Greenberg and John C. Herman (Doc. # 283) is converted to a motion for summary judgment. It is

FURTHER ORDERED that if any party wishes to submit additional material to be considered in connection with the motion for summary judgment, they shall do so by **Tuesday, September 29, 2009** or in any further briefing to be filed in connection with the motion.

Dated: September 16, 2009

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge