

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 08-cv-01463-RPM

EPC Corporation, an Arizona corporation;
DENNIS C. SHAW;

Plaintiffs,

v.

JAMES G. KREUTZER,
HERMOSA PARK, LLC, a Colorado limited liability company;

Defendants.

ORDER DENYING DEFENDANT KREUTZER'S MOTION TO AMEND ANSWER

After the scheduling conference held on April 30, 2010, the defendant James G. Kreutzer filed a motion to amend answer and submitted a proposed answer, counterclaims and third-party complaint. The plaintiffs EPC Corporation and Dennis C. Shaw filed their response to the motion to amend on August 23, 2010. The plaintiffs assert that the Kreutzer proposed pleading is an attempt to circumvent and re-litigate issues that have been resolved in an action pending in the District Court, LaPlata County, Colorado, as Case Number 08cv175 brought by Vernon R. Ruwwe and other note holders against Kreutzer, EPC Corporation, Dennis Shaw, and Candelaria Corporation, and, accordingly, assert that this Court should abstain from proceeding on these issues under *Younger v. Harris*, 401 U.S. 37 (1971). The difficulty with *Younger* abstention is that it is not clear to this Court what the status of the state court rulings is but it is apparent that the note holder parties in that action are seeking through Kreutzer to litigate many of the same issues that are before the state court. Upon review of the proposed pleading by Kreutzer, it is apparent that he is not the real party in interest and does not have standing on many of the claims that he attempts to assert as counterclaims and as a third-party complaint. Kreutzer is the only defendant remaining in this civil action but the plaintiffs' claims against him may well be affected by the outcome of the state court litigation.

Upon full review, it is now
ORDERED that the defendant Kreutzer's motion to amend answer is denied and it is
FURTHER ORDERED that proceedings in this civil action are stayed pending final
resolution of the state court litigation and it is
FURTHER ORDERED that what is identified as motions in dockets 165, 167, and 169
are moot.

Dated: October 20th, 2010

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior District Judge