

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00882-WDM-CBS

FURLONG ENTERPRISES, LLC.,
RESIDENTIAL BUILDING SYSTEMS, INC.,
MESA SANDSTONE, LLC., and
DAVE AND LANA WATERS,

Plaintiffs,

v.

JACK NICKERSON,
individually, and in his capacity of Director of
Public Works; and
CITY OF CORTEZ, a Colorado Charter City,

Defendants.

SECOND SUPPLEMENTAL STIPULATION AND PROTECTIVE ORDER

Plaintiffs, by their counsel, and Defendants Jack Nickerson and the City of Cortez, by their counsel, stipulate and move the Court for Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure concerning counsel for Defendants. review of the tax returns of Dave Water and Lana Waters and, as grounds therefore, state as follows:

1. In this action, pursuant to F.R.C.P. 34, Defendants have requested the tax returns of Dave Waters and Lana Waters. Dave Waters and Lana Waters are of the position that their tax returns contain confidential and personal information and may not be relevant or reasonably calculated to lead to the discovery of admissible evidence. Disclosure of the tax returns could result in significant injury to the privacy interests of Dave Waters and Lana Waters.

2. The Parties have entered into this Supplemental Stipulation and request the Court to enter the within Protective Order for the purpose of facilitating counsel for Defendants' review of the requested

information and, if necessary, an *in camera* inspection of any disputed documents within that file by the Court.

3. Plaintiffs and Defendants stipulate and agree that should the Court enter this Protective Order, Plaintiffs will label the tax returns as “CONFIDENTIAL - FOR ATTORNEY’S EYES ONLY” and counsel for Defendants will be able to review the personnel file pursuant to this Protective Order.

4. The Parties have agreed that prior to counsel for Defendants review of the personnel file, the following information will be redacted from the tax returns: (1) any personal identifying information such as social security number. Plaintiffs also will redact from the tax returns the following information: (2) any information that Plaintiffs believe to be irrelevant tax information. Counsel for Plaintiffs will supply counsel for Defendants with a log concerning the information redacted as irrelevant tax information. If counsel for Defendants believes that the information redacted as irrelevant tax information should be disclosed, counsel for Defendants shall confer with counsel for Plaintiffs and attempt to reach an agreement. If counsel for Plaintiffs and counsel for Defendants cannot reach an agreement, Defendants will file a motion with the Court seeking an *in camera* review of the redacted information requesting that the Court make a determination as to the discoverability of the redacted information. Said motion shall be filed under seal pursuant to the terms of D.C.COLO.LCivR 7.2.

5. Defendants and their counsel stipulate and agree that none of the information contained within the documents reviewed by counsel for Defendants can be shared with Defendants or used **at all in this case** until and if the steps set forth below have been satisfied. Counsel for Defendants, however, shall be permitted to use the tax returns at the continued deposition of Dave Waters if only counsel for Plaintiffs and counsel for Defendants are present and any portion of such continued deposition relating to the tax returns shall be subject to this Protective Order. Any violation of this provision may subject both Defendants and counsel for Defendants to sanctions.

6. After review of the tax returns, if counsel for Defendants requests that certain documents be produced as “CONFIDENTIAL” pursuant to the Stipulation and Protective Order previously entered by the Court, the Parties and their respective counsel will confer and attempt to reach an agreement on the proposed documents.

7. If the Parties and their respective counsel cannot reach an agreement after good faith conferral, Defendants will file a motion with the Court seeking an *in camera* review of the disputed documents requesting that the Court make a determination as to the discoverability of the disputed documents. Said motion shall be filed under seal pursuant to the terms of D.C.COLO.LCivR 7.2.

8. After inspection, should the Court determine that some or all of the submitted documents are discoverable, Plaintiffs will label those documents as .CONFIDENTIAL. and they shall be subject to the terms of the Stipulation and Protective Order previously entered in this case.

9. Counsel for Defendants will only be permitted to share with Defendants information contained within the tax returns should the Court order that information be produced.

DATED at Denver, Colorado, this 11th day of June, 2010.

BY THE COURT:

s/Craig B. Shaffer
Craig B. Shaffer
United States Magistrate Judge