

FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Civil Action No. 10-cv-02216-WJM-KLM

STROH RANCH DEVELOPMENT, LLC, a Colorado limited liability company,

Plaintiff,

v.

- (1) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 2,
- (2) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 3,
- (3) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 4,
- (4) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 5,
- (5) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 6,
- (6) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 7,
- (7) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 8,
- (8) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 9,
- (9) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 10,
- (10) CHERRY CREEK SOUTH METROPOLITAN DISTRICT NO. 11,
- (11) THE PIVOTAL GROUP, INC.,
- (12) PIVOTAL PARKER INVESTMENTS, LLC, a Delaware limited liability company
a/k/a (13) PARKER INVESTMENTS 2009, LLC,
- (14) PIVOTAL COLORADO II, LLC,
- (15) NORTH PARKER INVESTMENTS, LLC,
- (16) KURT WOLTER,
- (17) KIMBERLY JENSEN,
- (18) GREG MCILVAIN,
- (19) MARK EAMES,
- (20) GREG EPP,
- (21) BILLY HARRIS, and
- (22) JOHN DOES 1 through 8,

Defendants.

**ORDER DENYING JOINT MOTION FOR SUMMARY JUDGEMENT WITHOUT
PREJUDICE ECF NOS. 166, 167, 168 AND 169**

This matter is before the Court on the Defendants Motions (“Defendants”) several Motions for Summary Judgment (“Defendants’ Motions”). (ECF Nos. 166-169.) Plaintiff Stroh Ranch Development, LLC (“Plaintiff” or “SRD”) has filed a Response to each of these Motions, (ECF No. 185-188) and Defendants have filed a Reply. (ECF 194-195, 197.)¹

In light of the Court’s Order earlier today (ECF No. 233), as well as the parties’ joint request for a settlement conference before Magistrate Judge Kristen L. Mix, the Court denies Defendants’ remaining Motions for summary judgment (ECF Nos. 166-169) without prejudice. Leave is granted to the Defendants to refile these Motions, should they choose to, not before April 15, 2013 and no later than May 17, 2013.² Defendants would be well served, should they choose to refile their Rule 56 motions, to consider carefully the effect of the Court’s ruling today on the facts, issues and arguments they previously raised in motions ECF Nos. 166 - 169.

Before such filing, and because of the complexity of this case and the inter-relatedness of the named-Defendants, the Court will Schedule a Rule 16(c)(2)(E) Conference pursuant to the Federal Court Rules of Civil Procedure. See also D. Brock Hornby, *Summary Judgment Without Illusions*, 13 GREEN BAG 2D 273, 284-55 (2010) (where Judge Hornby sums up the Rule 16(c)(2)(E) mechanism noting that a district court “may require a pre-filing conference to ascertain whether issues are appropriate

¹ Note there was no Reply Brief filed by the named-Defendant in the Motion for Summary Judgment (ECF No. 169.)

² Plaintiff may choose to file Responsive Briefs to the renewed motion or may rely on their prior Briefs in Response.

for summary judgment, whether there are disputed issues of fact, and whether the motion, even if granted, would expedite . . . litigation.”)

Here, and for the purposes of this case, the Court will rely upon the Rule 16(c)(2)(E) Conference to gain insights into the appropriateness of the parties re-filing Defendants’ Motions (and Plaintiff’s Responses), particularly in light of the Court’s Order that was handed down earlier today. (ECF No. 233).

At the Rule 16(c)(2)(E) Conference, the Court will seek the parties’ positions, *inter alia*, on the following issues: (1) whether Defendants intend to refile their Motions (ECF Nos. 166-169) (if at all); (2) whether there is scope for the Defendants to modify or streamline their Motions (ECF Nos. 166-169), especially where there are overlapping facts and issues; (3) whether the issues regarding Reserved Powers, Notice and Breach³ (not addressed in today’s Order) overlap with facts and issues in ECF Nos. 166-169, and whether the issues of Reserved Powers, Notice and Breach continue to be ripe for disposition at the summary judgment stage, when the Court has held today that the Reimbursement Agreements require extrinsic evidence for interpretation purposes.

Before the parties attend the Rule 16(c)(2)(E) Conference, they will be directed to ‘meet and confer’ by April 8, 2013 and file with the Court a Status Report addressing points (1)-(3) above, along with a summary of Defendants’ Motions. (ECF Nos. 166-169.) The Status Report should provide a summary of the issue(s) in each of Defendants’ Motions (ECF Nos. 166-169) and be no more than five pages in length

³ The Court notes, however, that the issue of contract interpretation is now a question of fact in accordance with today’s Order.

exclusive of the first-page caption, signature blocks, and certificate of service.⁴

This Status Report is to be filed no later than April 11, 2013 at 5pm.

Conclusion

Based on the foregoing, the Court ORDERS and DIRECTS as follows:

1. Defendants Motions for Summary Judgment (ECF Nos. 166-169) are DENIED WITHOUT PREJUDICE;
2. Defendants are GRANTED leave to file renewed motion(s) for summary judgment. Should Defendants choose to refile one or more of these summary judgment motions, they may not do so before April 15, 2013, but they must be filed no later than May 17, 2013;
3. Plaintiff may choose to respond to the renewed motion(s) or may rely on their prior Briefs in Response. (ECF No. 185-188.) If they choose to rely on their previously filed briefing, they should notify the Court. Timing as to the filing of Plaintiff's briefing, and Defendants' reply briefing, will be determined at the Rule 16(c)(2)(E) Conference;
4. The Court DIRECTS the parties to attend a Rule 16(c)(2)(E) Conference on April 15, 2013 at 10:00 am;
5. The Court DIRECTS the parties to 'meet and confer' before the Rule 16(c)(2)(E) Conference by no later than April 8, 2013 consistent with what

⁴ For example, ECF No. 165 was noted for the following issues: (A) Interpretation (B) Reserved Powers (C) Breach and (D) Notice. These labels were helpful during the course of oral argument on February 25, 2013; and a similar approach should be taken in the labeling of the relevant issues in the Status Report that will be relied upon at the Rule 16(c)(2)(E) Conference.

has been stated in this Order;

6. The Court DIRECTS the parties to file a joint Status Report by no later than April 11, 2013 at 5pm consistent with what has been stated in this Order; and
7. The Court DIRECTS the parties to promptly apply their best efforts to confirm a date certain for the settlement conference before Magistrate Judge Kristen L. Mix, pursuant to the Court's Order granting the parties' request for this settlement conference. (ECF No. 229.)

Dated this 18th day of March, 2013.

BY THE COURT:



William J. Martinez
United States District Judge