

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

Civil Action No. 11-cv-02321-RPM

KENNETH G. ROHRBACH,
KAREN L. ROHRBACH,
PAUL K. ROHRBACH, and
COMPOST EXPRESS, INC.,

Plaintiffs,

v.

BOARD OF COUNTY COMMISSIONERS OF ELBERT COUNTY,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS OR STAY

On October 4, 2011, defendant Board of County Commissioners of Elbert County filed a motion to dismiss under Fed.R.Civ.P. 12(b)(6) or stay this civil action pending resolution of an action pending in the District Court, Elbert County, Colorado. The plaintiffs' filed their response on October 25, 2011. On review of the papers filed, it is

ORDERED that the defendant's motion to dismiss or stay is denied. The plaintiffs filed a motion for summary judgment as to liability on October 7, 2011. In their response to the defendant's motion to dismiss or stay, the plaintiffs refer to a pending class action in Onyx Properties, et al. v. Elbert County Board of County Commissioners, 1:10-cv-01482-LTB-KLM, in which the same counsel appear for the plaintiffs and the possibility that the Rohrbach plaintiffs may move to consolidate this action with the class action. Under those circumstances, the summary judgment motion may be contrary to the interest in judicial economy and the possibility of inconsistent results in two matters

pending in the same court. Accordingly, further proceedings in this matter will be stayed until November 15, 2011, to permit the plaintiffs to determine whether this matter should be litigated in the class action or consolidated with it.

DATED: October 28th, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge