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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

EMIGRATION IMPROVEMENT
DISTRICT,

Petitioner,

vs.

UTAH STATE RECORDS COMMITTEE,
and MARK CHRISTOPHER TRACY d/b/a
Emigration Canyon Home Owners
Association,

Respondents

**REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Case No. 210905044

Judge Laura Scott

Petitioner Emigration Improvement District (“**EID**”), by and through counsel and pursuant to Utah R. Civ. P. 56, hereby submits this reply brief in support of EID’s *Motion for Summary Judgment*.

RESPONSE TO RESPONDENT'S STATEMENT OF MATERIAL FACTS

The alleged facts in paragraphs 2, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, and 17 of the *Memorandum Opposing Motion for Summary Judgment* (the “**Opposition**”) of respondent Mark Christopher Tracy (“**Mr. Tracy**”) are immaterial for purposes of this motion, and EID therefore accepts them as true for purposes of this motion only. EID’s response to the only disputed fact is set forth verbatim below.

Mr. Tracy’s Fact No. 19. On September 14, 2021, the Utah State Court of Appeals ruled that a request for governmental records must identify the public records office and controlling shareholders and must be served on the same before the appellate court can determine if the same are exempt from GRAMA provisions.

EID’s Response. EID objects on the basis that the statement is not a “fact”, but is simply Mr. Tracy’s interpretation, and mischaracterization, of language in an Order, and the plain language of the Order speaks for itself. Moreover, in contrast to Mr. Tracy’s position, the Order of the Court of Appeal stated: “We do not mean to suggest that it would have been proper to serve a GRAMA request on Respondents. Although the parties spent much of their briefing energy on whether GRAMA applies to nongovernmental entities and individuals, it is not necessary for us to reach that issue to resolve this appeal.” *See Memorandum Opposing Motion for Summary Judgment*, Exhibit A, fn. 3.

ARGUMENT

A. The Court Should Grant Summary Judgment.

Mr. Tracy does not dispute any of the material facts relied upon by EID in its motion for summary judgment. Specifically, Mr. Tracy does not dispute that the Vexatious Litigant Order stated:

Mr. Tracy was informed at least six times by this Court, Judge Faust, the State Records Committee or EID’s attorney that GRAMA requests should be made only to the public entity, Emigration Improvement District. At the hearing, Mr. Tracy was not able to provide any plausible explanation for disregarding the decision of this Court and continuing to include Simplifi Company or Mrs. Hawkes in the New GRAMA Request, which leads this Court to conclude that Mr. Tracy’s reason for continuing to include Simplifi Company and Mrs. Hawkes

was to continue to harass Respondents. Simply put, Mr. Tracy could have easily avoided any issues by following the decision and order of this Court, but inexplicably chose to disregard the Court's decision and continue to harass Respondents by including them in GRAMA requests that Mr. Tracy knew should be served only on EID.

Vexatious Litigant Order, pg. 4. (emphasis added).

Mr. Tracy also does not dispute that the GRAMA request at issue in this case is the “New GRAMA Request” reference by Judge Kouris in the Vexatious Litigant Order; and Mr. Tracy does not make any arguments or cite to any case law with respect to why this Court should not follow the decision and order of Judge Kouris.

Instead, Mr. Tracy makes two arguments. First, Mr. Tracy argues that the Utah Court of Appeals has “ruled that a GRAMA request form must both identify the public records office and be served on the controlling shareholders in sole possession of public records before the court may determine if injunctive relief for willful violations of GRAMA provisions is warranted.” *Opposition*, p. 8. However, that is not what the Order of the Court of Appeals states. In contrast to Mr. Tracy’s position, the Order states: “We do not mean to suggest that it would have been proper to serve a GRAMA request on Respondents. Although the parties spent much of their briefing energy on whether GRAMA applies to nongovernmental entities and individuals, it is not necessary for us to reach that issue to resolve this appeal.” *See Memorandum Opposing Motion for Summary Judgment*, Exhibit A, fn. 3. Thus, the Court of Appeals’ Order does not conflict with or overrule the Vexatious Litigant Order.

Second, Mr. Tracy argues that the Court of Appeals “expressly ruled that it maintains subject matter jurisdiction over private corporations and controlling shareholder in sole possession of public records.” *Opposition*, p. 8. Again, Mr. Tracy mischaracterizes the Order of the Utah

Court of Appeals. The Court of Appeal did not state that it had jurisdiction over private corporations and controlling shareholder in sole possession of public records. Instead, the Court of Appeals simply indicated that “[t]he fact that Tracy may have not sued the right parties, or that he does not meet the statutory requirements of a GRAMA claim, does not implicate the court’s subject matter jurisdiction; rather, it simply means the Tracy’s claims lack merit.” *See Memorandum Opposing Motion for Summary Judgment*, Exhibit A, fn. 4.

In summary, the Order of the Court of Appeals does not conflict with or overrule the Vexatious Litigant Order.

CONCLUSION

Mr. Tracy does not dispute the language in the Vexatious Litigant Order; Mr. Tracy does not dispute that the GRAMA request at issue in this matter is in direct violation of the Vexatious Litigant Order; and Mr. Tracy does make any arguments or cite to any case law with respect to why this Court should not follow the previous decision and order of Judge Kouris. Accordingly, the Court should enter summary judgment. Moreover, because it is clear that Mr. Tracy continues to believe that he can simply ignore the Vexatious Litigant Order and continue to serve GRAMA requests in direct violation of the Vexatious Litigant Order, the Court should take such other actions as the Court deems reasonable to unequivocally convey to Mr. Tracy that he cannot simply disregard an order of the court.

DATED: March 28, 2022.

COHNE KINGHORN, P.C.

By: /s/ Jeremy R. Cook

Jeremy R. Cook

*Attorneys for Petitioner Emigration
Improvement District*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2022, a true and correct copy of the foregoing document was served by email to the following:

Mark Christopher Tracy
dba Emigration Canyon Home Owners Association
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/s/ Jeremy Cook