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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

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 moves for an order granting summary judgment in favor of EID and against respondent Mark Christopher Tracy d/b/a Emigration Canyon Home Owners Association (“**Mr. Tracy**”).

BACKGROUND

This matter involves a GRAMA request for fire flow test results for EID's water system (the "**Fire Flow Request**"). EID is a small local district that has authority to provide water and sewer service to residents within Emigration Canyon. EID has a three-member board of trustees who are elected at-large from residents in Emigration Canyon. EID contracts with Eric Hawkes ("**Mr. Hawkes**") to perform management and accounting services for EID through Mr. Hawkes' company, Simplifi Company ("**Simplifi**").

Mr. Tracy is not a resident in Emigration Canyon and not a customer of EID. Nevertheless, Mr. Tracy, either individually or through the ECHO Association, has filed six lawsuits against EID or people associated with EID, and has served numerous GRAMA requests on EID. EID has responded to multiple GRAMA requests from Mr. Tracy that were properly submitted to EID. However, Simplifi and Mrs. Hawkes are not proper or necessary parties to a GRAMA request to EID, and it is clear that Mr. Tracy has included them to harass them and try to implicate them in his alleged conspiracy theories. Therefore, EID has informed Mr. Tracy numerous times that EID will not respond to GRAMA requests that unnecessarily include Mrs. Hawkes or Simplifi Company.

On or about July 31, 2020, Mr. Tracy filed two separate actions against Mr. Hawkes, Mrs. Hawkes and Simplifi (but not EID) based on EID's purported denial of a GRAMA request. *See* Case No. 200905074 (Judge Kouris Case) and Case No. 200905123 (Judge Faust Case). On September 16, 2020, Judge Faust issued that certain *Memorandum Decision and Order* granting defendants' motion to dismiss (the "**Faust Ruling**"). In the Faust Ruling, Judge Faust found "Petitioner does not cite to any provision or language in GRAMA supporting the position that it

can sue an individual or private company based on a governmental entity’s alleged failure to respond to a GRAMA request”; and Petitioner “failed to cite any case law to support the position that Respondents are proper or necessary parties to this action.”

Notwithstanding the Faust Ruling, Mr. Tracy continued to prosecute an almost identical case before Judge Kouris. On February 24, 2021, Judge Kouris entered that certain *Memorandum Decision and Order* granting respondents’ motion to dismiss (the “**Kouris Order**”).¹ In the Kouris Order, Judge Kouris found: “[T]he majority of the allegations in the Petition have nothing to do with a purported appeal of the denial of a GRAMA request for telemetry data. In fact Mr. Tracy does not reference the actual GRAMA request until paragraph 49 of the Petition, and the GRAMA form that is the purported basis of the appeal is Exhibit AA of the Petition. The vast majority of the allegations and exhibits relate to other complaints and issues that Mr. Tracy has with EID or Respondents, and are not necessary or proper for this action.” Judge Kouris also awarded Mr. Hawkes, Mrs. Hawkes and Simplifi Company \$5,758.50 in attorney fees against Mr. Tracy (the “**First Attorney Fee Judgment**”).²

On February 11, 2021, the day after Judge Kouris ruled against Mr. Tracy, the State Records Committee held a hearing on Mr. Tracy’s first appeal of EID’s denial of his GRAMA request for the fire flow records. *See* Decision and Order, Case No. 21-09 (the “**First SRC**

¹ The hearing on the Motion to Dismiss was on February 10, 2021, and Judge Kouris issued his decision at the end of the hearing.

² On October 29, 2021, Judge Parrish issued that certain *Order Granting in Part and Denying in Part Defendants’ Motion for Attorneys’ Fees and Costs and Granting Defendants’ Motion to Amend*, in which Judge Parrish awarded EID and related parties \$92,665 in attorney fees against Mr. Tracy based on Judge Parrish’s finding that the lawsuit was vexatious and harassing. *See* Case 2:14-cv-00701-JNP [Docket No. 342].

Decision”). A copy of the First SRC Decision is attached to the Petition as Exhibit D. In the First SRC Decision, the SRC found that the GRAMA request had been improperly submitted. On the same day, Mr. Tracy served a new GRAMA request for the fire flow records, which is the request at issue in this appeal. Despite the decisions of Judge Faust, Judge Kouris and the SRC, Mr. Tracy inexplicably again included Mrs. Hawkes and Simplifi Company in the Fire Flow Request. Based on the decision and instructions of Judge Kouris, in response to the Fire Flow Request, EID’s counsel sent an email to Mr. Tracy informing him that if he wanted to continue to take the position that it was proper to submit a GRAMA request to EID c/o Simplifi Company or include Mrs. Hawkes in the GRAMA request, that Mr. Tracy would be required to pay the attorney fees awarded Mr. Hawkes, Mrs. Hawkes and Simplifi Company in the Judge Kouris case prior to EID responding (“**GRAMA Denial**”).

In response to the GRAMA Denial, on March 15, 2021, Mr. Tracy filed a *Motion to Vacate Memorandum Decision and Order* with Judge Kouris, pursuant to which Mr. Tracy sought to vacate the Kouris Order. However, after a hearing on Mr. Tracy’s *Motion to Vacate Memorandum Decision and Order*, instead of vacating his previous order, Judge Kouris found that the Fire Flow Request (which is the request at issue in the appeal) violated his previous order and instructions to Mr. Tracy. On April 15, 2021, Judge Kouris entered that certain *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “**Vexatious Litigant Order**”). In the Vexatious Litigant Order, the Court recognized: “On February 11, 2021 (the day after this Court’s decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc’d Jennifer Hawkes and again stated that the

governmental entity was “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company.” *Vexatious Litigant Order*, pg. 3. Judge Kouris further found:

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. 3 (emphasis added).³

In conjunction with the Vexatious Litigant Order, Judge Kouris awarded defendants additional attorneys’ fees based on Mr. Tracy failure to comply with the Kouris Order.

Notwithstanding the Vexatious Litigant Order, instead of resubmitting the Fire Flow Request, Mr. Tracy appealed the purported denial to the SRC. In other words, not only did Mr. Tracy ignore the original order of Judge Kouris and re-serve the Fire Flow Request in direct violation of Judge Kouris’ Order, but Mr. Tracy appealed the denial of the GRAMA Request to the state records committee after Judge Kouris found Mr. Tracy to be a vexatious litigant and issued additional fees against Mr. Tracy based specifically on Mr. Tracy including Mrs. Hawkes and Simpli in the Fire Flow Request.

³ The “New GRAMA Request” referenced in the Vexatious Litigant Order is the GRAMA request for fire flow records which is the GRAMA Request at issue in this case.

STATEMENT OF UNDISPUTED MATERIAL FACTS

For purposes of this Motion, the following facts are undisputed:

1. On April 15, 2021, Judge Kouris entered that certain *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees, and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* (the “**Vexatious Litigant Order**”). A copy of the Vexatious Litigant Order is attached as Exhibit A.

2. In the Vexatious Litigant Order, the Court recognized: “On February 11, 2021 (the day after this Court’s decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc’d Jennifer Hawkes and again stated that the governmental entity was “Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company.” *Vexatious Litigant Order*, pg. 3.

3. Based on the new GRAMA request, the Court found:

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).

4. The “New GRAMA Request” reference in the Vexatious Litigant Order is the GRAMA request for fire flow records that is at issue in the matter.

LEGAL STANDARD

A trial court “shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.” Utah R. Civ. P. 56(a). The “purpose of summary judgment is to eliminate the time, trouble, and expense of trial when it is clear as a matter of law that the party ruled against is not entitled to prevail.” *Amjacs Interwest, Inc. v. Design Assoc.*, 635 P.2d 53, 54 (Utah 1981). For instance, summary judgment is appropriate against a party who “fails to set forth facts sufficient to establish the existence of an element essential to that party’s case.” *Christiansen v. Union Pacific R.R. Co.*, 2006 UT App 180, ¶ 6, 136 P.3d 1266 (internal quotations and citations omitted).

ARGUMENT

A. The Court Should Grant Summary Judgment Because Judge Kouris Has Already Found that the Fire Flow Request Violated His Order.

The Court should grant summary judgment because the Fire Flow Request violates the Vexatious Litigant Order previously issued by Judge Kouris.

In *Calsert v. Estate of Flores*, 2020 UT App 102, ¶ 16, the Utah Court of Appeals recognized that “[a] district judge presiding over one case ordinarily does not possess authority to declare invalid an order entered by another district judge in another case. *citing Mascaro v. Davis*, 741 P.2d 938, 946 (Utah 1987) (“One district judge cannot overrule another district court judge of equal authority.”); *Richardson v. Grand Central Corp.*, 572 P.2d 395, 397 (Utah 1977) (“Ordinarily one judge of the same court cannot properly overrule the decision of another judge of that court.”)). The Court of Appeals further recognized:

[W]here a district judge in one case has made a specific factual determination applicable to the parties in that case—for instance, that two parties are divorced, or that an individual was negligent on a particular occasion—another district judge presiding over a different case possesses no authority to second-guess the first judge's determination. The judge presiding over the second case must take the first judge's order as he or she finds it, and ordinarily may not declare it invalid. The authority to reverse, vacate, or otherwise invalidate district court determinations rests with appellate courts, not with other district judges.

Id.

It is undisputed that Judge Kouris has previously found that Mr. Tracy's inclusion of Mrs. Hawkes and Simpli in the Fire Flow Request was improper and violated his decision and order.⁴

Specifically, in the Vexatious Litigant Order, Judge Kouris found:

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).

In other words, not only does the Vexatious Litigant Order state that Mr. Tracy violated Judge Kouris' original decision and order by serving the Fire Flow Request that included Mrs. Hawkes and Simplifi Company, but Mr. Tracy has continued to blatantly and intentionally violate

⁴ The SRC's decision to ignore Judge Kouris' ruling in the Vexatious Litigant Order is somewhat baffling. However, it appears that some of the members of the SRC may not have understood that the Vexatious Litigant Order specifically addressed the GRAMA request for fire flow records, which is the GRAMA Request at issue in this matter.

the Vexatious Litigant Order. This is akin to one district court judge issuing a protective order against a party; the party intentionally violating the protective order; and the party then arguing to a second district court judge that the protective order was improper and second district court judge should reconsider the protective order.⁵ Simply put, Judge Kouris has already specifically decided that the Fire Flow Request violated his Order because the only reason to include Mrs. Hawkes and Simplifi was to harass them and attempt to implicate them in Mr. Tracy' conspiracy theories against EID.

In summary, the Fire Flow Request clearly violates the Vexatious Litigant Order, and the Court should enforce the Vexatious Litigant Order and enter summary judgment in favor of EID.

CONCLUSION

WHEREFORE, EID requests that the Court grant summary judgment in favor of EID.

DATED: March 10, 2022.

COHNE KINGHORN, P.C.

By: /s/ Jeremy R. Cook

Jeremy R. Cook

*Attorneys for Petitioner Emigration
Improvement District*

⁵ Mr. Tracy has filed with the Utah Court of Appeals a *Petition for Extraordinary Relief and Motion for an Emergency Stay*; a *Petition for Rehearing and a Second Motion for Emergency Stay*; and a direct appeal of Judge Kouris' dismissal and award of attorney's fees, all of which have been denied by the Utah Court of Appeals. *See Case Nos.* 20210743-CA and 20210227-CA.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th 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
1160 E. Buchnell Dr.
Sandy, Utah 84094
m.tracy@echo-association.com

/s/ *Jeremy Cook*

EXHIBIT A



Prepared and Submitted by:

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**IN THE THIRD DISTRICT COURT
IN AND FOR THE STATE OF UTAH**

MARK CHRISTOPHER TRACY, DBA
EMIGRATION CANYON HOME OWNERS
ASSOCIATION,

Petitioner,
vs.

SIMPLIFI COMPANY, a Utah Corporation,
ERIC HAWKES, an individual, and
JENNIFER HAWKES, an individual

Respondents.

**DECISION AND ORDER
DENYING MOTION TO VACATE,
AWARDING ATTORNEY FEES,
AND
FINDING PETITIONER MARK
CHRISTOPHER TRACY TO BE A
VEXATIOUS LITIGANT AND SUBJECT
TO RULE 83 OF THE UTAH RULES OF
CIVIL PROCEDURE**

Case No. 200905074

Judge: Kouris

This case is a petition for *de novo* judicial review of a denial of a request for documents pursuant to the Utah Government Records Access and Management Act (“**GRAMA**”). This matter is before the Court on Petitioner’s *Motion to Vacate Memorandum Decision and*

Judgement (sic) (the “**Motion**”). Oral arguments were held on April 7, 2021. The Court having considered the Motion, related memoranda, and the arguments of the parties at the hearing, hereby enters the following decision and order:

BACKGROUND

Emigration Improvement District (“**EID**”) is a Utah local district that is subject to GRAMA. On June 10, 2020, petitioner Mark Christopher Tracy (“**Mr. Tracy**”) submitted a GRAMA request to EID requesting telemetry data for EID’s water wells and water tanks (the “**GRAMA Request**”). The GRAMA Request correctly designated the governmental entity as EID, and EID responded to the GRAMA request. After appealing the purported denial of the GRAMA Request to the chair of EID’s board of trustees, Mr. Tracy brought this action. However, instead of bringing the action against EID, Mr. Tracy named only Eric Hawkes, Jennifer Hawkes and Simplifi Company (“**Respondents**”).

On February 10, 2021, the Court held a hearing on Respondent’s *Motion to Dismiss*. During the hearing, the Court issued is verbal ruling finding in part that GRAMA provides that a records request must be made to a governmental entity, and that EID was the governmental entity. See Utah Code Ann. § 63G-2-204(1)(a) (“A person making a request for a record shall submit to the governmental entity that retains the record a written request . . .”). This Court’s decision was the same as a decision issued by Judge Faust on September 16, 2020. See Case No. 200905123. In addition, on February 11, 2021, the day after the hearing in this matter, the State Records Committee of the State of Utah (the “**Records Committee**”) heard the appeal of three separate GRAMA requests submitted by Mr. Tracy for records of EID. The Records Committee

found that submitting a GRAMA request to Simplifi Company or Respondents, as opposed to EID, was not proper and denied Mr. Tracy's appeals.

On February 11, 2021 (the day after this Court's decision), Mr. Tracy submitted a new GRAMA request to EID in which he again cc'd Jennifer Hawkes and again stated that the governmental entity was "Emigration Improvement District aka Emigration Canyon Improvement District c/o Simplifi Company." (the "**New GRAMA Request**"). In response to the New GRAMA Request, EID's attorney sent Mr. Tracy an email informing Mr. Tracy that based on his continued inclusion of Simplifi Company and Mrs. Hawkes in the New GRAMA Request, the fees awarded by this Court would need to be paid prior to a response to the New GRAMA Request (the "**Response Email**").

MOTION TO VACATE

Mr. Tracy brought this Motion based on the argument that the Response Email established "factual representations made to this court regarding the status of Simplifi as a 'private corporation' and Mrs. Hawkes having 'no direct involvement with EID' were designed to improperly influence the decision of the Court and were therefore fraudulent under Rule 60(b)(3) URCP.'" See *Motion*, p. 3. The Court finds that the Motion does not establish any fraud, misrepresentations, or other misconduct of Respondents, or justify relief under Rule 60(b)(3). Specifically, the Response Email only indicated that if Mr. Tracy wanted to continue to take the position that it was proper to submit a GRAMA request to EID c/o Simplifi Company or include Mrs. Hawkes in the GRAMA request, which position is contrary to the decision of this Court,

that Mr. Tracy would be required to pay the fees awarded to Respondents in this case. Nothing in the Response Email suggests that Respondents changed their representations to this Court or their legal arguments in this matter. Accordingly, the Court denies the Motion.

ATTORNEYS FEES

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.

The Court has previously found that an award of attorney fees is proper pursuant to Utah Code Ann. § 78B-5-825(1), and the Court finds that Respondents should be awarded their reasonable attorneys' fees responding to the Motion.

VEXATIOUS LITIGANT

Rule 83(a)(1) of the Utah Rules of Civil Procedure states that the court may find a person to be a "vexatious litigant" if the person does any of the following:

(a)(1)(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate

the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(a)(1)(C) In any action, the person three or more times does any one or any combination of the following:

(a)(1)(C)(i) files unmeritorious pleadings or other papers,

(a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(a)(1)(C)(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(a)(1)(C)(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

The Court finds that Mr. Tracy has violated Rule 83(a)(1)(B) and 83(a)(1)(C). With respect to Rule 83(a)(1)(B), Mr. Tracy served and prosecuted this action after Judge Faust previously issued a decision on the same issue of law. *See* Case No. 200905123. After this Court issued its decision, Mr. Tracy ignored both decisions, again served GRAMA request to EID that were served c/o Simplifi Company and included Mrs. Hawkes, and then Mr. Tracy attempted to utilize EID's response to again argue to this Court that filing an action against on Respondents, and not EID, was proper. With respect to 83(a)(1)(C), the Court has previously found that the Petition in this action including redundant and immaterial allegations that appear to relate to other claims and issues that Mr. Tracy has against EID, and that the Petition was frivolous and filed for the purpose of harassment. The Court also finds that the Motion was unmeritorious.

The Court also finds that the Petition and the Motion were filed for the purpose of harassing Respondents in violation of Rule 11(b)(1) of the Utah Rules of Civil Procedure. As

set forth above, despite repeated opportunities from this Court, Mr. Tracy has failed to ever provide a plausible explanation of why he brought this action against Respondents, but intentionally failed to name the governmental entity, EID; or why Mr. Tracy continued to include Respondents in GRAMA requests despite repeatedly being informed that their inclusion was improper. In accordance with Rule 11(c)(2), the Court finds that an appropriate sanction to deter repetition of such conduct is to find that Mr. Tracy is a vexatious litigant.

Based on the foregoing, the Court finds petitioner Mark Christopher Tracy to be a vexatious litigant in accordance with U.R.C.P. 83(b)(4), and the Court orders that Mr. Tracy must obtain leave from the Presiding Judge of the Court prior to Mr. Tracy filing any future actions in Utah State Courts.

Approved as to Form:

/s/ Mark Christopher Tracy
Mark Christopher Tracy

————— **COURT’S SIGNATURE AND DATE APPEAR AT TOP OF** —————
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