

The Order of the Court is stated below:

Dated: April 15, 2021
02:53:03 PM

/s/ MARK KOURIS
District Court Judge



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*

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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

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