

Court: CO El Paso County District Court 4th JD

Judge: Thomas Kelly Kane

Date: 11/19/2004

Case Number: 2001CV566

Case Name: LEWIS, C RANDEL et al vs. CITY OF COLORADO SPRINGS et al

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CO El Paso County District Court 4th JD

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Review Clerk: Jeanne Golding

/s/ Judge Thomas Kelly Kane



GRANTED

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Thomas K. Kane
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

DISTRICT COURT, EL PASO COUNTY, COLORADO
20 East Vermijo Avenue
Colorado Springs, Colorado 80903

Plaintiffs:

C. RANDEL LEWIS AND DAVID S. COHEN, CO-RECEIVERS OF THE POWERS BOULEVARD/DRENNAN ROAD LOCAL IMPROVEMENT DISTRICT 1985-2, a political subdivision of the State of Colorado,

Defendant:

THE CITY OF COLORADO SPRINGS, a municipality;
et al.

△ COURT USE ONLY △

Case No. 99-CV-1944
Case No. 01-CV-0566

Div. 3

ORDER AND JUDGMENT

This matter arose upon the Joint Motion to Approve Settlement Agreement and for Entry of Declaratory Judgment (the "Joint Motion") filed herein by Plaintiffs C. Randel Lewis and David S. Cohen, Co-Receivers of the Powers Boulevard/Drennan Road Local Improvement District 1985-2 ("Receivers"), and Defendants the City of Colorado Springs (the "City"), The Banning-Lewis Ranch Company, LLC as successor in interest to CPH- Banning Lewis Ranch, LLC ("BLRC") and the Estate of Charles H. McAllister ("McAllister").

The Court finds as follows:

1. On February 23, 2001, the Receivers filed their original Complaint for Declaratory Judgment and Related Relief against the City of Colorado Springs, Case No. 01-CV-0566 (the "Annexation Litigation"). On July 12, 2002, the Receivers filed their Amended Complaint in this case, joining additional parties as Defendants in the Annexation Litigation. On October 15, 2003, the Co-Receivers filed their Second Amended Complaint in the Annexation Litigation. Each of the named Defendants was properly served with the Amended Complaint.

2. By Order entered April 5, 2004, the Court consolidated the Annexation Litigation with the Receivership Proceeding for the Powers Boulevard/Drennan Road Local Improvement District 1985-2, Case No. 99-CV-1944.

3. On March 1, 2002, the Receivers recorded a Notice of Lis Pendens against all real property subject to the terms of the Banning –Lewis Ranch Annexation Agreement (the “Annexation Agreement.”), in order to provide notice to any potential purchasers of property subject to the Annexation Agreement of the pendency of the Annexation Litigation.

4. The following Defendants have disclaimed any further interest in this case:

Frank A. Aries
Cherokee Metropolitan District
Colorado Department of Transportation
Board of County Commissioners of El Paso County
KVI Colorado Corporation
MGF Acquisition Corp.
Options Investment Corporation
United States Olympic Committee

Their disclaimers have been previously filed with this Court.

5. The following Defendants were properly served with Plaintiff’s Amended Complaint, or waived service of the Amended Complaint:

A. E. Barnes, LLC
Colorado Centre J.V.
Falcon Trucking Company
Frank R. Krejci
Raymond and Dorothy Powers
Springs Company
Tucson/Colorado Associates
Venwest Development Limited Partnership I
Worlco, Inc.
Aries Properties, Inc., a dissolved Colorado corporation
Banning Lewis Ranch Planning Association, a dissolved Colorado corporation

(the “Defaulting Defendants”). Each of the Defaulting Defendants has failed to timely file an Answer or otherwise respond to the Amended Complaint. The Receivers filed a Motion for Entry of Default against these Defaulting Defendants on August 1, 2003 (the “Default Motion”). The Court has not previously ruled on the Default Motion. Despite their defaults, Raymond and Dorothy Powers and Colorado Centre J.V. have remained somewhat active in the Annexation Litigation.

6. The following parties have filed Answers to the Amended Complaint:

City of Colorado Springs
Estate of C.H. McAllister, as successor in interest to Randle W. Case

Colorado Centre Metropolitan District
Colorado Springs Land Associates
CPII-Banning Lewis Ranch, LLC
Cygnet Land, LLC
K.P. Investment Group, L.P.
M. Diane Koken, Pennsylvania Insurance Commissioner
609 Plus Associates, Ltd.
Aries Properties, Inc. ("New Aries")
Banning Lewis Ranch Planning Association, Inc. (the "New Association")

(the "Active Defendants"). Each of the Active Defendants has either signed the Settlement Agreement, has failed to object to the terms of the Settlement Agreement, or has failed to file an opposition to the Joint Motion.

7. Since the commencement of the Annexation Litigation, the following property owners have transferred title to their properties to third parties identified below (the "Transferees"):

- a. Frank A. Aries transferred title to all his property to Golden Gate Apartments, Ltd., L.P..
- b. CPH Banning-Lewis Ranch, LLC transferred title to a portion of its property to the Colorado Department of Transportation, and the balance of its property to BLRC;
- c. Springs Company transferred title to a portion of its property to the Colorado Department of Transportation, and the balance of its property to Church for All Nations, Inc.;
- d. Cygnet Land, LLC transferred title to a portion of its property to Colorado Department of Transportation
- e. Randle W. Case transferred title to all of his property to the Estate of C.H. McAllister
- f. Raymond Powers and Dorothy Powers transferred title to all of their property to the Raymond L. Powers and Dorothy M. Powers Irrevocable Trust
- g. Worlco, Inc., through its liquidator, transferred title to all of its property to the Pennsylvania Insurance Commissioner, as Statutory Liquidator for World Live and Health Insurance Company of Pennsylvania, in Liquidation
- h. The City of Colorado Springs transferred a portion of its property to the Colorado Department of Transportation:

- i. Colorado Springs Land Associates transferred a portion of its property to the Colorado Department of Transportation

At its request, The Banning-Lewis Ranch Company, LLC is hereby joined as a party defendant to this litigation as the successor in interest to defendant CPH-Banning Lewis Ranch, LLC. Each of the Transferees was already a party to the Annexation Litigation, has been joined as a party to the Annexation Litigation, has signed the Settlement Agreement, and/or has both actual and constructive knowledge of the Annexation Litigation and therefore took title to its property subject to the claims and defenses asserted in the Annexation Litigation.

8. The Court has considered its subject matter and personal jurisdiction and finds jurisdiction to be present and proper. Venue has been considered and is proper.

9. Certain of the parties to the Annexation Litigation have entered into a Settlement Agreement resolving the issues raised in the Annexation Litigation. The Receivers have provided all other Defendants and Transferees with a copy of the Settlement Agreement, and have provided them with the opportunity to sign it. In addition, each Defendant and Transferee has been served with a copy of the Joint Motion. No objections to the Joint Motion were filed with the Court.

10. As of the date of this Order, the following Defendants and Transferees have signed the Settlement Agreement:

- a. City of Colorado Springs
- b. CPH Banning Lewis Ranch, LLC
- c. BLRC
- d. Estate of C.H. McAllister
- e. A.E. Barnes, LLC
- f. Colorado Centre Metropolitan District
- g. The Raymond L. Powers and Dorothy M. Powers Irrevocable Trust
- h. 609 Plus Associates, Ltd.
- i. MGF Acquisition Corp.
- j. K. P. Investment Group, L.P.
- k. M. Diane Koken, Pennsylvania Insurance Commissioner
- l. Board of County Commissioners of El Paso County

11. Pending before the Court are claims for declaratory judgment filed by various parties to the litigation seeking a declaration of the parties' respective rights and obligations under the Annexation Agreement. Certain parties have filed the Joint Motion seeking entry of a declaratory judgment on these claims, declaring rights and obligations under the Annexation Agreement to be in conformance with the terms of the Settlement Agreement.

12. The Court has considered the Joint Motion, the terms of the Settlement Agreement, the representations of counsel for those parties who have signed the Settlement Agreement, the objections and representations of counsel for any parties objecting to the Settlement Agreement, applicable authorities, and the file of this Court. All objections to the Settlement Agreement are hereby overruled.

The Court orders as follows:

- A. The Joint Motion is granted and the Settlement Agreement is approved. Its terms are incorporated by this reference and made an order and judgment of this Court. The Settlement Agreement is attached hereto as **Exhibit 1**.
- B. By this Order and Judgment, the Court declares the rights and obligations of the Receivers, each Defendant, and each Transferee, regardless of whether each such party has executed the Settlement Agreement, and their successors and assignees, under the Annexation Agreement to be as stated in the Settlement Agreement.
- C. The Court finds and concludes that the Annexation Agreement is valid and binding. Except to the extent clarified by the terms of the Settlement Agreement, the Annexation Agreement remains in full force and effect and is binding on all parties, their successors and assigns.
- D. All claims and counterclaims asserted by any party in the Annexation Litigation, and any comparable claims for relief asserted by the Receivers in the Receivership Proceeding, except as such claims are expressly preserved by the terms of the Settlement Agreement, are hereby dismissed, with prejudice, each party to pay its own fees and costs.
- E. The Receivers are directed to promptly record a certified copy of this Order and Judgment in the real property records of El Paso County. The terms of the Settlement Agreement, and this Order and Judgment, shall run with the land set forth on Exhibit A to the Settlement Agreement, to the same extent that the Annexation Agreement runs with the land, and shall be binding on all parties to the Annexation Litigation, all Transferees, and their successors and assigns.
- F. There being no just reason for delay, this Order and Judgment is made final pursuant to C.R.C.P. 54(b).
- G. The consolidation of the Annexation Litigation with the Receivership Proceeding is hereby terminated, final judgment having been entered in the Annexation Litigation.

Dated this ____ day of October, 2004.

By the Court:

Thomas Kelly Kane
District Court Judge