

Docket No.
Dated:

In The
SUPREME COURT OF THE UNITED STATES

ROBERT KLEIN

Petitioner

v.

CENTENNIAL RANCH AND ASPEN MOUNTAIN RANCH ASSOCIATION

Respondent

On Petition for Certiorari to the Colorado Supreme Court- Case No. 2018SC264

PETITION FOR WRIT OF CERTIORARI

Robert Klein

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Petitioner/Appellant/Plaintiff- Pro-se

QUESTIONS PRESENTED FOR REVIEW

1. Whether state courts are following what the legislators have put in place through the statutes? Have the legislators put Statutes in place for reasoning to be interpreted correctly and carried out wholeheartedly and in that This Court is obligated and is demanded upon to act accordingly within the confines of The Constitution when state courts do not act within the boundary writings from This Court in similar cases and of what state legislators have incorporated?
2. Whether This Courts wisdom through their opinions are being adhered too in their citing's and all the while an innocent bystander has been harmed? This Court's rulings' in numerous citing's have been abolished and This Court in the process has been made a mockery of and put on the back burners so as other courts can deviate and travel their own path?
3. Whether "costs" will continue to accrue towards petitioner in his pursuit for obedience of the Orders and should the nonprofit corporation "shall pay the member's costs incurred to obtain the ORDERS" which have NEVER been produced since 2013? C.R.S. 7-136-104(3)(a)

4. ** Whether or not two (2) COURT ORDERS deserve to be adhered too?
5. Whether discrimination and prejudice has been applied against a Pro se litigant who was pronounced the “Prevailing Party”?
6. Whether there has been a misapplication of the Rule of Laws in all the cases compiled into this case within the same claims? (6 cases)
7. Whether a prevailing party deserves the benefits associated with the law?
8. Whether the Constitution of the United States applies equally to all?
9. Whether a Court of Appeals has distracted and made excuses from Trial ORDER's in the process towards the disobedient party?
10. Whether a pro se litigant even stands the hands of time in its journey for Justice when not having counsel to represent him or the legal competence and full understanding of the process to withstand all the appeals and such?
11. Whether This Court has a duty to protect its citizens from the core of our existence through the Judicial process when a prevailing party has now

become the victim?

12. Whether The RECORD should be complete in order to reference to on appeals as it was not in this case even after Notice was given with explicit missing documents/filings?
13. Even though not a controversial case, doesn't This Court by its power through the Constitution have the obligation to protect a citizen?

LIST OF PARTIES

1. ROBERT KLEIN- Petitioner/Appellant/Plaintiff/Pro se

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2. CENTENNIAL RANCH AND ASPEN MOUNTAIN RANCH

ASSOCIATION- Respondent/Appellee/Defendant,

Mr. Gregory Watkins- attorney representing association

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OPINIONS and ORDERS
(in order of occurrences)

(All SAME claim cases involved contained in "Statement of the Case").

1. Custer County Combined Court, CO: (case- 2013C19)

- a) Custer County Combined Court; "Mediation ORDER"- "Findings of Fact and Conclusion of Law" dated 11 October 2013. Court Orders defendant to make records available for examination and copying as per certain statutes.

(Appendix H)

2. District Court, County of Custer, Colorado: (case- 2014CV4) TRIAL ORDER

- a) District Court County of Custer; "Order and Judgement"- "Findings of Fact and Conclusions of Law" after Trial was held- certain association records are ORDERED to be produced to plaintiff dated 27 October 2014.

(Appendix G)

- b) District Court County of Custer; Contempt Citation issued by the court and dated on 19 February 2015 to the defendants for failure to comply with the Court's ORDER of 27 October 2014.

(Appendix F)

- c) District Court County of Custer; Cost and Contempt Hearing dated 16 April 2015.

(Appendix E)

3. Colorado Court of Appeals: (case- 2015CA752)

- a) In accordance with its announced opinion, the Court of Appeals hereby ORDERS: Order affirmed in part, reversed in part, and case remanded with directions dated 21 July 2016.

(Appendix C)

- b) MANDATE to above Order dated 23/27 December 2016.

(Appendix D)

4. Colorado Court of Appeals: (case- 2017CA64) (Not Published)

Decision- Order Affirmed dated 28 December 2017.

(Appendix B)

5. Colorado Supreme Court; (case- 2018SC264)

- a) Colorado Supreme Court; Denied writ- dated 20 August 2018

(Appendix A)

JURISDICTION

1. This Court has the power and jurisdiction bestowed upon Them by the 28 U.S.C. 1254(1) sets for review in writ of certiorari.
2. The 14th Amendment of the Constitution of 1789 under the Bill of Rights "due process" clause. (No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws).
3. 28 U.S.C. 1257(a): When a statute is drawn into question and must be reviewed for its validity.
4. 28 U.S.C. 1654: Gives the pro-se litigant a statutory right to proceed.
5. 28 U.S.C. 1746: Compliance of mailing is in accordance with Rule 29.
6. 28 U.S.C. 2101(c): Time limit to review is well within Rule 13 standards.
7. Discrimination: is unjust or when prejudicial treatment is administered. Herein from Colorado Courts not adhering when a pro se prevailing party is concerned it its preferential treatment towards the non-obedient party and ORDERS are Not compelled from the disobedient party.
8. In August 2012, petitioner requested corporation records for inspection and copying. In September 2013 petitioner sought the Custer County Combined Court for guidance and filed a complaint. District Court, County of

Custer was then sought to inspect and copy certain association records. Six cases thus far have been involved within the same claims and to date the records requested and Ordered have Not been produced, thus requiring costs to continue until the Orders are satisfied.

On 28 December 2017, the CA entered its Order affirming the DC findings even after a Mandate was sent to DC to recalculate its previous decision.

On 20 August 2018 the Colorado Supreme Court DENIED the writ produced. Colorado Courts do not wish to stay within the boundaries of what Congress and state legislators have put in place through the statutes.

STATEMENT OF THE CASE

The refusal, perjury involved, disregard, deviation and changing from the Orders given are not to be compelled in association governing documents, states own statutes, rules, regulations, and procedures and of This Court's citing's.

The vagueness doctrine is not an exercise in semantics to emasculate legislation; rather, it is a pragmatic means to ensure fairness. Where fairness can be achieved by a commonsense reading of the statute, we will not adopt a hypertechnical construction to invalidate the provision. People v. Garcia, 197 Colo. 550, 554, 595 P.2d 228, 231 (1979).

A district court's substantial justification determination is reviewed for abuse of discretion. #8: the lack of a notice and comment procedure cannot overcome a direct statutory command, of course. Ibrahim v. U.S. Dept' of Homeland Sec., 835 F.3d 1048, 1054 (9th Cir. 2016)

.....

(Case 2013C19- Custer County Combined Court, Colorado- Inspection and Copying of Association Records).

On or about August 2012, as member in good standing in this corporation as an association to where inspection of certain records were sought in complete compliance of the association documents to include the Bylaws, SOP (standard operating procedures) and Colorado Revised Statutes.

A "COMPLAINT" was filed on 26 September 2013 in case number 13C19- County Combined Court, Custer County, Colorado and the process started.

A "MEDIATION ORDER" was given by a District judge filing both combined courts in that, the Court gave its "Findings of Fact and Conclusions of Law" dated 11 October 2013 requiring/ORDERING the association to produce the records

requested and comply with Section 38-33.3-317(2), C.R.S.(2013) and Section 38-33.3-209.5(1)(a)(V), C.R.S.(2013).The Association failed to produce certain records requested & Ordered. **(APPENDIX H)**

(Case 2014CV4- District Court- County of Custer, Colorado)

The plaintiff then filed a Complaint with the District Court, County of Custer on 23 April 2014. Summons were then issued.

On 12 August 2014 mediation took place. Filed on 13 August 2014 the mediation report was given but to no avail did the association produce records and no agreement was reached.

Trial was set for 22 October 2014 in District Court, County of Custer. The trial was carried out; documented evidence was produced by the plaintiff and admitted into the record.

On 27 October 2014, the District Court ruled in favor of the plaintiff and again gave his ORDER and Judgment and Findings of Fact that the Association has been ORDERED to make available certain specific requested records within Section 38-33.3-317, C.R.S. (2014) and Section 7-136-102, C.R.S. (2014) **(APPENDIX G) TRIAL ORDER.**

As per the District Courts Order, plaintiff submitted "Plaintiff's Bill of Fees and Costs" filed on 17 November 2014. On 19 November 2014 the District Court's Order for Motion to Set for Hearing. Hearing notice was given for 14 April 2015.

On 19 February 2015 after considerable time had passed (114 days) from when the Order was given on 27 Oct 2014 to make the ordered requested records available, the Plaintiff filed a Motion of Contempt against the Association for not providing Ordered records.

(Time lines given in the Colorado Revised Statutes (C.R.S.7-136-102(1) and C.R.S. 7-136-104(1); to produce said records in the Order are long overdue and association was not in Compliance).

A **Contempt Citation** was issued by the District Court, County of Custer on 19 February 2015 stating that the Defendant has failed to comply with the Court's Order of 27 October 2014. (**APPENDIX F**)

On 10 April 2015 the plaintiff submitted an Amended Bill of Fees and Costs as the process going forth accumulated additional costs incurred to obtain the Order.

On 14 April 2015, a Cost and Contempt hearing was held in District Court, County of Custer. During this hearing the association failed to produce Ordered records again.

On 16 April 2015 the court rendered its Order. The "Findings of Fact and Conclusions of Law" were that the plaintiff was the prevailing party and the association was not found to be in contempt and was acquitted of that charge but was found to pay a very minimal amount of costs and fees to the plaintiff. **Attorney fees that totaled \$7,157.50 but only \$1,500.00 was awarded. Costs were \$6,953.01 and only \$1,291.72 was awarded.** A total award of \$2,791.72 compared to the

\$14,110.51 combined total spent on defending the principals and prevailed at that time. (APPENDIX E)

On 29 April 2015 a Motion to Amend Court's Order for Costs and Contempt Order was filed by plaintiff. This was **additional costs and fees** to be brought forward which **totaled another \$2,245.47**. Attorney fees were \$1,950.00 and costs were \$295.47 incurred in still trying to obtain the Orders. This Motion was presumed Denied as the time limit expired by the court not answering the Motion in accordance with C.R.C.P. 59(j).

(Case 2015CA752- Court of Appeals (CA), Denver, Colorado)

Plaintiff gave Notice of Appeal to the Court of Appeals/District Court (filed 5 May 2015) both on the contempt charge, cost and fees, other notable discrepancies, and an abuse of discretion on part of the district court. All court appeal fees were paid in compliance. Filings and all briefs were filed accordingly and timely within the C.A.R.'s.

Plaintiff filed on 8 May 2015 a Designation of Record on Appeal. The association filed a notice of cross appeal (filed 11 May 2015).

CA advised parties that all filing deadlines will be met (filed 13 May 2015).

CA sent parties a notice of change in rules and all briefs must comply with C.A.R. 28, 28.1, and 32. Failure to comply will result in briefs stricken (25 August 2015).

Plaintiff Motioned for Exceeding Limit of Words in Opening Brief on 18 September

2015 and was Denied on 25 September 2015. Plaintiff Motioned for Extension of Time to File Opening Brief as it got lost within the U.S. Postal Service process. This Motion was Denied on 2 October 2015.

On 6 October the Defendant Motioned for Enlargement of Time to File Cross-Appeal Brief. Plaintiff filed his Opening Brief on 8 October 2015. On 19 October 2015, plaintiff Objected to the defendants motion of time in that it already passed and the court gave strict compliance for all deadlines as set in C.A.R. 28(b), 28.1(d), 31(a)(b) and through the CA notice of filing on 25 August 2015.

Briefs may not be filed whenever or wherever counsel may find it convenient. (Smith v. Woodall, 129 Colo. 435, 270 P.2d 746 (1954). Fraka v. Malernee, 129 Colo. 87, 267 P.2d 651, 653. (Herein the CA allowed defendants late brief to be filed but denied plaintiffs timely extension request).

Again on 21 and 24 November 2015, Defendant Motioned for Enlargement of Time to File Cross appeal Brief. Plaintiff Objected again on 1 December 2015 as defendant was overdue accordingly to the courts instructions and rules.

It is the right of litigants to rely upon the rules as written, and it is the duty of courts to enforce them when timely objection is made. Continental Air Lines v. Denver, *supra*. 129 Colo. 1, 266 P.2d 400. (Hereto again the court let disobedience prevail and allowed the defendants motion to proceed).

Defendant's Second Motion for Enlargement of Time to File Cross-Appeal Brief is filed on 16 December 2015. The court Granted this on 21 December 2015. Plaintiff AGAIN Objected to Appellee's 2nd Motion to Extend Time to File on filing date of 31 December 2015. On 4 January 2016 the Court so Noted plaintiffs objection but allowed the defendant in non-compliance to proceed . NOTE: Here is

where the CA has started to get off track and has allowed the Defendant leeway outside the rules but yet the plaintiff is not to drive off course even when timely motions was submitted and his motions were denied.

Plaintiff files Appellant Reply Brief on 6 January 2016. A Motion to Dismiss Cross Appeal filed 1 February 2016 from the defendant. On 6 February 2016 defendant filed Appellee's Amended Answer Brief. On 17 February 2016 the CA Granted the motion and dismisses the cross appeal.

On 21 July 2016 the CA renders its decision. Order Affirmed in Part, Reversed in Part, and Case Remanded With Directions. The CA calculated the attorney fees that totaled \$7,157.50. An expert witness testified that all costs and fees were reasonable. The CA spoke of what the prevailing party is entitled to, but yet turned its cheek on the statutes. The CA stated that the District Court's ruling does not reflect a calculation of the lodestar amount. (**APPENDIX D**).

The CA gave note to the effect that records were either made available or did not exist. NOTE: Again it is established that all records allowed by Law to be produced were not brought forth. The CA also noted that the Association did not willfully violate the 2014 records Order in the contempt charge. If records ordered to be produced were not, are mandated by statute, is this not contempt even when the holders of the records (defendants) had the ability, knowhow, and admitted they "vividly" remember, or the records were lost or destroyed or they had them in their

possession and they admitted they refused to produce them. Witnesses stated there were meetings and relevant matters to the order. The court even stated there were meetings but no minutes. This is in violation of the statutes and was the referee's duties to compel compliance. The transcripts speak for themselves as has been noted on appeal.

The CA now changes the hands of time in that it substituted its own take and determined something other than what the Trial Court Ordered and required to be carried out. The CA changed the Order of the trial court in its findings of fact stating there were no certain records. (**APPENDIX D**).

The CA gives Mandate and Orders to the District Court on 23/27 December 2016. On 29 December 2016 the District Court gives its Attorney's Fees Award Remand Order that being the same. (**APPENDIX C**)

Appellant again has been punished by not receiving what a "prevailing Party" is entitled to through the laws (statutes) all the while the Trial Orders haven't been fulfilled.

(Case 2017CA64 filed 19 January 2017- decided 28 December 2017)

The CA gives advisement on yet another case is assigned within the same claims (five case numbers assigned to be exact). This is a continuance of the foregoing cases and on cost and fees award and for NOT complying with 2 Court Orders and a Contempt Citation issued by the Court which will continue to have costs incurred

until the Orders are obeyed and satisfied. Now it seems this pro-se litigant will be further burdened by the process of the judicial system. Again the Orders have not been adhered too and costs will continue to incur until the orders are compelled.

On 28 December 2017, the CA “Ordered Affirmed” in its previous opinion.

(APPENDIX B)

(Case 2018SC264 decided on 20 August 2018)

On 20 August 2018 even after a Writ contesting different aspects of the cases so noted, the Colorado Supreme Court Denied the writ. **(APPENDIX A)**.

FACTS OF THE CASE

(transcripts speak for themselves- all the below admitted into evidence)

I. Inspection and Copying of Association records is what these cases is all about. Records to date that have NEVER been produced although (2) two COURT ORDERS and a Contempt Citation have been given to the Association. One in County Combined Court and one in District Court. Both in the County of Custer, Colorado utilizing the same magistrate.

The District Court even administered a Contempt Citation stating the defendant failed to comply with a court order. A citation that has not been satisfied to date.

Over (7) seven Official requests for inspection and copying records were given to the Association dating back to August 2012. Petitioner is a member of an association as a corporation. A total of (7) seven travel trips from the east coast to Westcliffe, Colorado to defend the rights, seek judicial guidance through the courts, and to inspect/copy records were undertaken. Three different association attorneys advised the association 7 x's in their writing's/letters to produce the records also, but all fell on deaf ears. Two Mediations took place but to no avail were records produced. Violations of Covenants, Bylaws, SOP rules, Statutes, C.R.C.P.'s and most offensive were 2 Court Orders. Financial statements

were redacted and the court never followed through.

Director's duties, record retention, copying and inspection rights all compiled through the rule of law contained below were NEVER produced: C.R.S 7-136-101(1)(5); 7-136-102;(1)(2)(3)(6c); 7-136-103(2); 7-136-104(1)(2)(3); 15-1-103(2)(3); 38-33.3-209.4; 38-33.3-209.5(1)(a)(V); 38-33.3-308(7); 38-33.3-317(1)(2a); House Bill 12-1237; Senate Bill 05-100.

II. A Declaration of Covenant 14 was abused, brought up at trial and set afloat:

Courts must construe covenants as a whole based upon their underlying purpose, but will enforce a covenant as written if clear on its face. West v. Evergreen Highlands Ass'n., 73 P.3d 13 (Colo. 2003).

III. Settlement offers were denied to be admitted into evidence at trial by the court which were admissible and permissible: All part of costs if turned away.

C.R.S. 13-17-202((1)(I): If the plaintiff serves an offer of settlement in writing at any time more than fourteen days before commencement of the trial that is rejected by the defendant, and the plaintiff recovers a final judgment in excess of the amount offered, then the plaintiff shall be awarded actual costs accruing after the offer of settlement to be paid by the defendant.

The plain language of 13-17-202(1)(a) does not require an offer of settlement to contain such terms, and does not require an offer of settlement be in any particular form. While courts in other states have interpreted statutes similar to 13-17-202 so as to require formal offer of settlement or a specific referencing to an offer of settlement statute, we are not persuaded by the analysis in those cases. Dillen v. HealthOne, L.L.C. 108 P.3d 297 (Colo. App. 2004) No. 03CA1189.

The provisions of this section are mandatory and a trial court does not have discretion to refuse to award actual costs due a party. Graven v. Vail Assocs., Inc., 888 P.2d 310 (Colo. App. 1994)

APPENDIX D: Court of Appeals: (case 2015CA0752) Order Affirmed in Part, Reversed in Part, and Case Remanded with Directions dated 21 July 2016.

CA totaled up hours of legal fees to be that of 24.5 with a total of \$7157.50 not including on appeal. The court states that the district court erred in awarding only a portion of fees requested. Court reverses the order. Fees are only part of the costs that shall be awarded to the prevailing party. IF any part of the trial courts order is sent back, then its discretion has been abused. And if the trial court failed the MANDATE and an ORDER from the CA, its discretion/wisdom is in jeopardy, misunderstood, or unfair also.

As an apparent matter of first impression in Colorado, we conclude that a party in any action to pierce the corporate veil of a corporation may recover the attorney fees and costs incurred in that action Swinerton Builders v. Nassi, No. 10CA1847, 272 P.3d 1174 (Colo. App. 2 February 2012).

Successful plaintiffs are allowed costs and reasonable attorney fees. Colorado Constitution: Article X (entitled Revenue), Section 20 (taxpayers Bill of Rights.

C.R.S. 38-33.3-123(1)(b),(c),(I): gives the prevailing party reimbursement means which states, the court “shall” award reasonable attorney fees, costs, and costs of collection to the prevailing party.

*****C.R.S. 7-136-104(3)(a),(b),(c),(d): sets the standards to follow after the court ordered inspection of records, and states that, the court “shall” also order the nonprofit corporation to pay member’s costs, including reasonable counsel fees, and the court may order the nonprofit corporation to pay member for any damages the member incurred.

*****C.R.S. 13-16-104: If any person sues in any court of this state in any action, real, personal, mixed, or upon any statute for any offense or wrong immediately personal to the plaintiff and recovers any debt or damages in such action, then the plaintiff or defendant shall have judgment to recover against the defendant his costs to be taxed; and the same shall be recovered, together with the debt or damages, by execution, except in the cases mentioned in this article. (plaintiff did recover any debt- therefore he should have judgment to recover his costs- not some)

The CA determines that certain records Ordered to be produced at trial now did not exist, and then states that no abuse of discretion exists and there is no contempt. Other records as well according to the CA do not exist, yet the trial court Ordered them to be available. Here the CA has changed the Trial Order in the process of the judicial system. The CA quotes from a case cite but yet turns its cheek on the contents of such cite. When Orders are given, they now are not required to be adhered to. Contempt is found by the Order NOT being fulfilled and with the defense witnesses stating such as they had the ability and records, and refused to produce them for numerous reasoning to include having access to produce them and failed. The contemnor is required to obey and not evade a court order by extricating themselves. Here they have done exactly that.

(APPENDIX D) The CA addresses in letter B. Analysis- page 6 citing from Marriage of Nussbeck but leaves out a very important part:

Well, the court finds that as to orders, there were orders. And the respondent was aware of the orders. So there were some payments that were made. And that does not, in this court's view, absolve the respondent of his duty to pay. And the intent of the court is to get these payments made. And I think you've had ample opportunity to follow through with the orders of the court. And you haven't done

that. And your attempts are, and have been, to dodge the order to not pay, to make it difficult for the petitioner to collect child support. And based on these issues, I find punitive sanction is appropriate. Marriage of Nussbeck, 974 P.2d 493, 499 (Colo. 1999) No. 97SC540- 1 March.

The CA misquotes a C.R.S. in its decision in B. Analysis- page 8 to try to confuse the situation. C.R.S. 7-136-104(3)(a) reads: "The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees to obtain the order". The CA failed to state "shall" and used "may". This word makes a huge difference in its meaning and in the outcome of this case.

Shareholder should not be burdened by corporation's failure to produce records. Beebe v. Star-Stop Inc., 32 Colo. App. 345, 513 P.2d 743 (1973).

This section gives a shareholder a statutory right to inspect corporate records. Rulon v. Silverman, 79 Colo. 525, 246 P. 788 (1926).

The CA eliminates to cast an opinion on the Settlement Offers made by the plaintiff which was a legal admission that was denied to be entered into the record by the trial court. Here the CA's discretion should also now be under scrutiny as the appeal did note this topic but it was left in the dark by the courts although brought into view by the plaintiff.

The CA never alluded to the Expert Witness factor who testified at the costs and contempt hearing. This was a crucial component as this experienced expert witness stated under oath that all costs were reasonable and recoverable.

Expert witness fees are recoverable as costs to the prevailing parties. Graefe & Graefe v. Beaver Mesa Exploration, 695 P.2d 767 (Colo. App. 1984) No. 83CA0725.

Where damages to which plaintiff is entitled can only be estimated at the pleading stage and the defendant is given notice of the various elements of the damage claim, then recovery is not limited to the amount listed in the complaint. Accord, Dupona v. Benny, 130 Vt. 281, 291 A.2d 404.

The trial court failed to use legal standards, even after the CA gave Mandate to the trial court to utilize the lodestar calculation.

Black's Law Dictionary- "mandate": to act in a particular way; a judicial command, a direction that a court has the authority to give and an individual is bound to obey. Mandate rule: The doctrine that, after an appellate court has remanded a case to a lower court, the lower court must follow the decision that the appellate court has made in the case.

In reviewing the record, we conclude that the trials court's findings and award of costs are supported by competent evidence and based upon the correct legal standards as set forth in Cherry Creek School District #5v. Voelker, supra; Cherry Creek v. Voelker, 859 P.2d 805 (Colo. 1993), and American Water Dev. v. City of Almossa, 874 P.2d 352 (Colo. 1994).

Petitioner has given all evidence in support of its costs and even the CA alluded to this and the trial court and CA's discretion has been compromised.

(APPENDIX G)- (case # 2014CV4) District Court Trial- County of Custer Order and Judgment, Findings of Fact and Conclusions of Law dated 27 October 2014.

C.R.S. 38-33.3-317 (2014)- gives a detailed list of records required to be produced and maintained by the declaration, covenants, bylaws, articles, rules and regulations, and also alludes to C.R.S. 38-33.3-209.4(2) for other detailed information that shall be available to unit owners.

C.R.S. 7-136-102 (2014)- gives inspection of corporate records to members and a member is entitled to inspect and copy any records of the non-profit corporation

described in C.R.S. 7-136-101(5)- shall keep a copy of each of the listed records at the principal office.

Citing; **Glenwright v. St. James Place Condominium Ass'n.**, 197 P.3d 264 (Colo. App. 2008.- in part: accordingly, we conclude that genuine factual issues exist here..... .

ORDER- the defendant shall make the following records available to the plaintiff. A list of records were given to be produced. An order that was Never fulfilled.

(APPENDIX F)- (case 2014CV4) District Court issued a "CONTEMPT CITATION" filed on 19 February 2015. Stating that Defendant has failed to comply with the Court's Order of October 27, 2014 as to providing certain records of Defendant to the Plaintiff despite repeated inquires and demands.

(APPENDIX E)- (case 2014CV4) District Court- County of Custer: Costs and Contempt Order; Findings of Fact and Conclusions of Law dated 16 April 2015. The court gave its opinion: Hearing took place on 14 April 2014. The plaintiff is the prevailing party in this case.

Section 13-16-122(1)(h) C.R.S. (2014), and Section 7-136-104(3)(a) C.R.S. (2014) was utilized in that the court legal fees that were reasonable were \$1500.00 as recoverable of over \$7,157.50 submitted with documentation and admitted into the record.

In Section 13-16-122, C.R.S. (2014) the court stated that only \$1291.72 in costs were reasonable. This was out of \$6,953.01 submitted with documentation and admitted

into the record along with expert testimony. A total of over \$14,110.51 in costs, not to include the costs that are still being accrued to date to satisfy the Orders. "All costs" submitted to recover were proper, fair, reasonable and legal. Transcripts also were recoverable but were not mentioned or awarded as costs.

*****C.R.S. 7-136-104(3)(a) - The court shall also order the nonprofit corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order. (b)- The court may order the nonprofit corporation to pay for any damages incurred.

(THE ORDERS HAVE NOT BEEN OBTAINED YET) Costs will continue.

C.R.S. 38-33.3-123(c)- In any civil action to enforce or defend the provisions of this article or of the declaration, bylaws, articles, or rules and regulations, the court shall award reasonable attorney fees, costs, and costs of collection to the prevailing party.

Plaintiff asked the court to "impose appropriate sanctions".

Association records so Ordered were NEVER produced and the association defense witnesses gave sworn testimony that they vividly remembered about certain Board meetings taking place and the contents of said meetings; some records were missing; they were at the homes of certain witnesses; were still awaiting the reply from those who had the records ordered; they had the records, and there were meetings/sessions/ and recordings of the meetings, and they didn't have time to do the minutes. At one point the association attorney stated he refused to produce certain records and that the records could have been purposely lost or destroyed. At the hearing, the defense tried to dismiss the contempt citation and the court denied the request.

The court told the defendant that there were two meetings and no minutes to include an executive board meeting with no minutes as well. The court never demanded production or compliance as the statutes require this.

C.R.S. 38-33.3-317(1)(a)(c)(g)(p). In part; the association must maintain the following for production to owners..... receipts and expenditures, minutes of all meetings, financial statements, written communication to all unit owners, etc.

An “expert witness” who was granted by the court to attend testified for the costs and fees aspect and stated all costs and fees were reasonable/recoverable. Evidence was submitted on the costs and fees incurred as documentation.

Distractions from the defense confused the magistrate as he even stated “chaotic”. during one part of the hearing, the court stated that a defense witness was in contempt and let him ride off into the sunset unweighted down. Sanctions were requested and the court let this go to past. The court had numerous remedies but failed to put them to use. The court has hollowed out at the core of our most precious gift, to comply with Order(s) and to demand fair rights and equal justice.

A court abuses its discretion when its decision rests on a misunderstanding or misapplication of law or when its decision is manifestly arbitrary, unreasonable, or unfair. Sinclair Transp. Co. v. Sandberg, 2014 COA 75, No. 13CA0958.

(Here is where the courts wisdom/discretion should be under the magnifying glass).

Announcing a more expansive view of a trials court's ability to award costs. The court held while C.R.S. 13-16-122(I) is a detailed listing, the legislature intended the list of recoverable items to be illustrative, rather than exclusive. But have also allowed trial courts to award miscellaneous expenses. In such cases, the trial court is in the best position to determine which party is the prevailing party by evaluating the relative strengths and weaknesses of each party's claims, the significance of each party's successes in the context of the overall course of

litigation. Archer v. Farmer Bros. Co., 90 P.3d 231 (Colo. 2004) No. 02SC583 and ID; Hall, 190 P.3d at 867.

The award of reasonable costs to the prevailing party is mandatory. Hall v. Frankel, 190 P.3d 852, 866 (Colo. App. 2008).

The phrase “reasonable attorney fees” has generally been interpreted to require use of the prevailing market rate in calculating a fee award. Palm v. 2800 Lake Shore Drive Condominium Association, No. 110505, Supreme Court of Illinois (April 25, 2013). See Wisconsin v. Hotline Industries, Inc., 236 F.3d 363, 366 (7th Cir. 2000).

Black's Law Dictionary- online legal dictionary- 2nd Edition definition of “reasonable costs”- is a price that is consistent with what a reasonable person would pay in the same circumstances for the same business or for the same or similar item.

Reasonable litigation costs include and is based upon the prevailing market rates for the kind of quality of services furnished. Reasonable expenses of expert witnesses shall be compensated at the rate in excess of the highest rate compensation for expert witnesses paid by the United States. 26 U.S. Code-7430 (awarding of costs and certain fees).

The successful plaintiff is entitled to recover all costs. Wallace Plumbing Co. v. Dillon, 73 Colo. 10, 213 P. 130 (1992). (C.R.S. 13-16-104).

Successful plaintiff in error may recover cost of transcript of record. Antero Lost Park Reservoir Co. v. Lowe, 70 Colo. 467, 203 P. 265 (1921).

*Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. See Davis v. County of Los Angeles, *supra*, at 5049. Litigants in good faith may raise alternate legal grounds for a desired outcome, and the court's rejection of a failure to reach certain grounds is not sufficient reasons for reducing a fee. The result is what matters. 11(461 U.S. 424, 436) Hensley v. Eckerhart, 461 U.S. 424, 425 (1983) No. 81-1244.*

A court that did not take account of additional elements in evaluating a claim for attorney fees would entirely fail to perform the task that Congress has entrusted to

it, a task that Congress- I think- has deemed crucial to vindication of individual rights in a society where access to justice often requires the service of a lawyer.

C.R.C.P. 41(d)- costs of previously dismissed action: in part- If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed..... .

C.R.C.P. 54(c)- demand for judgment: in part- Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such in his pleadings.(Emphasis supplied) *DeCicco v. Trinidad Area Health Ass'n*, 40 Colo. App. 63, 573 P.2d 559 (1977). No. 76-307

The discretion of the trial court to award costs to a prevailing party is not limited to specific claims which the party prevailed, thus even if the prevailing party's expert witness were incurred solely in connection with a claim that was dismissed by the court, the award of those fees is proper. Mackall v. Jalisco Int'l, Inc., 28 P.3d 975 (Colo. App. 2001).

C.R.C.P. 69(g)- in part; Any party or person who disobeys an order made under the provision of this Rule may be punished for contempt.

C.R.C.P. 70- in part; If a judgment directs a party to execute conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party The court may also in proper cases adjudge the party in contempt.

C.R.C.P. 107(a)(1)(4)(5)- in part; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court Sanctions imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform.

Colorado courts have long held that Article II of the Colorado Constitution does not prohibit punishment of contempt for refusing to obey lawful orders or degrees one has the ability to meet. In re Popeboy, 26 Colo. 32, 36, 55 P. 1083, 1085 (1899).

The absence of willfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of

noncompliance. United States v. United Mine Workers, 330 U.S. 258, 303-304. (1947).

Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act. The decree was not fashioned so as to grant or withhold its benefits dependent on the state of mind of respondents. It laid upon them a duty to obey specific provisions of the statute. Union Tool Co. v. Wilson, 259 U.S. 107, 111-112. (15 May 1922).

They undertook to make their own determination of what the decree meant. They knew they acted at their peril. And so a whole series of wrongs is perpetrated and a decree of enforcement goes for naught. The defendant took a calculated risk when under the threat of contempt. If the court is powerless to require the prescribed payments be made, it has lost the most effective sanction for its decree and a premium has been placed on violations. McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949).

In contrast, remedial sanctions are civil in nature and are intended "to force compliance with a lawful order or to compel performance of an act within the persons power or present ability to perform". Because the purpose is remedial, and for the benefit of another, it does not matter what the contemnor intended when he or she refused to comply. Marriage of Cyr and Kay, 186 P.3d 88 (Colo. App. 2008) No. 06CA1444.

Officers denying shareholder access to records properly held liable with the corporation. Beebe v. Star Stop Inc., 32 Colo. App. 345, 513 P.2d 743 (1973).

(APPENDIX H)- (case # 2013C19) Custer County Court Mediation Order dated 11 October 2013. Court gives its authority under C.R.S. 38-33.3-317(2) (2013)- all records maintained by the association must be available for examination and copying and; Section 38-33.3-209.5(1)(a)(V) (2013)- association shall, maintain accurate and complete accounting records, and inspection and copying of records to unit owners. An "ORDER" Never adhered to by the Association.

REASONS WHY CERTIORARI SHOULD BE GRANTED

- I. Review is warranted because as an abiding pro se litigant and United States Citizen who has followed the Rule of Laws concisely and within the confines of the association documents, and statutes but has been burdened throughout this case on all aspects. As a prevailing party in the case on having the association required to produce certain ORDERED records and the petitioner has been sent out to greener pastures on the rights the Constitution demands through its 14th amendment. The due process that has not been followed by the state courts has not been in lieu of their own writings. Courts are not bound by the same laws of the land or rule of law but falter, but yet they wish litigants and citizens to be who sought the judicial system for guidance and then became the victim.
Laws/statutes/rules/citing's are written different then courts seem to obey.
They are misinterpreted and abused in the judicial process. Courts insert their own take outside the boundaries, veer off course and do not follow trial courts orders that are substantiated by documented evidence of Record at trial.
- II. The District Court has abused its discretion by misapplying applicable laws and in doing so has gave unfair and unreasonable decisions to a

party in the case. The district court did not give reasonable calculation of an award to a prevailing party. This unreasonable application was also Ordered by the Court of Appeals through its Order and Mandate to apply the lodestar method and the lower court has failed miserably.

- III. The Court of Appeals also misapplied applicable laws when it did not require the trial courts order to be carried out in full compliance, especially when all evidence was submitted and on the Record. Even through their own admission in their opinion, they stated that records did not exist. And no reasoning was given for why not? And they failed to read the transcripts that would have alluded that the witnesses for the defendants did have knowledge and the ability to produce records in the Order and some even had them at their homes and remembered them vividly and stated such during the hearings. Records that to date have Never been produced through two court orders. The CA lacked in its discretion and failed to make the Contempt Citation Charge stay intact even after it noted that said records were never brought forward contained in the order. The disobedient party was now set free.
- IV. The CA failed to take into consideration that ALL “costs” and “fees” are part of the process and that it lacked/abused its discretion to send back to District Court all that is required by law in itself. The CA even

noted that the petitioner gave all documentation to support its claims in this matter. Costs that were reasonable and demanded to be awarded By Law.

The CA failed to mention and recognize that an Expert Witness was allowed to testify during the hearing and this witness stated that all costs and fees were reasonable as presented by the prevailing party. This cost was not allowed by the District Court to be part of the award to the prevailing party. A Settlement Offer was underway between the parties and this was not brought forward by the CA in its opinion. This was an authorized procedure and should have been noted in the CA's opinion as there are rules of procedures allowing this, costs are due in this process, and case citing's as well.

- V. Decisions are coming out of the courts in conflict and contrary with their own colleagues, other courts in their own jurisdiction, other state courts, and This Court in particular.
- VI. The judicial system is very confusing, expensive, drawn out, and unfair mainly towards pro-se litigants. Laws, statutes, rules of procedures have to be examined on the fairness they are to represent. Courts should be required to follow such completely and not deviate from the meanings thereof. For an ordinary, law abiding citizen that

has to stay within the territory of them, then so does the judicial process. Uniformity of the laws should be understood and courts should be bound by them, and not travel on a personal vendetta. Procedures are not written with a novice litigant in mind. An ordinary common citizen is not savvy enough to understand the legality or comprehension ability needed to fight for his/her rights and comes into the arena against experience legal experts with a disadvantage.

Justice is to be fair and equal to all and herein it was not.

ORDERS are to be compelled and have not.

CONCLUSION

Nowhere in sight is anything other than petitioner has a right to inspect/copy records of a corporation and “an ORDER is an ORDER”, and the Association had the ability to produce those Ordered records and has failed and refused to do so. There is “no” citing that proclaims anything other than what is contained herein.

To solve this case without any further ado and prevent this case being any further burdensome towards the prevailing party; towards members of the association through their assessments being spent needlessly and against their covenants; and towards the tax payers, This Court should ask the corporation to be supplied all the

records in the ORDER of 27 October 2014 in case 2014CV4 (APPENDIX H). This will end any controversy involved and proof that the prevailing party is entitled to all costs and fees to “obtain the orders” first and foremost.

Based on the foregoing, the Petitioner respectfully submits and prays that this Petition for Writ of Certiorari be Granted. And to have the court award to the Prevailing Party “all” “costs” and “fees” associated with the claims from both before, during and on Appeals that statutes/rules require as C.R.S. 7-136-104(3)(a) allows this as the ORDER’s have not been obtained yet; and that the Contempt Citation be warranted against the Defendant with sanctions for their failure to obey two Court Orders.

That the Defendants be required to produce all requested and Ordered records contained in the Districts Courts Order of 27 October 2014 within a time limit set by This Court, or sanctions should be imposed until records are produced.

That defense witnesses who perjured themselves in the proceeding that violated the Court Orders, and who refused and had the ability to bring forward said records and knew of the Orders should also be held in Contempt and accountable as a party to the Corporation.

The conflict between courts will deepen without This Court’s intervention.

Courts seem to stall in the proceedings by not adhering to the Rules and Laws they are compelled to enforce by the established definitions. The courts would not be burdened by the process of timely litigation due to faults of their own in the misapplication of laws and misunderstanding of such. Courts are to enforce the laws

as written and not judge them by their own personal intentions. The Trial ORDER of 27 October 2014 were the Orders and have NEVER been produced!

It seems the courts are blinded by the injustice and their own personal reasoning that has now hindered the judicial system in a way that has prejudiced and discriminated against a pro se litigant. Petitioner has had his life and liberty imprisoned for over 6 years seeking justice that the Declaration of Independence and The Constitution demands. A financial burden has also been bestowed upon a citizen and a member of an Association for lawlessness and must be corrected to salvage the Judicial System that is said to be profound and the fairest in the country/world.

“Plain error” has taken place throughout this process.

Respectfully submitted:



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Signed this 6th day of October 2018.