

19-895

No. _____

ORIGINAL

In The
Supreme Court of the United States

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REED MCDONALD,

Petitioner,

v.

BELLCO CREDIT UNION,

Respondent.

**On Petition For Writ Of Certiorari To The
Colorado Supreme Court / Court Of Appeals**

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED FOR REVIEW

The specific question presented is: Whether a State judge can fabricate a lie into the Record attempting to prevent removal of a state case to federal court pursuant to 28 U.S.C. § 1441-1446.

RECEIVED

U.S. DEPT. OF JUSTICE

WASHINGTON, D.C.

RELATED CASES

McDonald v. Eagle County, Colorado &
Belco Credit Union
U.S. District Court for the District of
Colorado 2018cv105
The Magistrate's opinion was reversed on
03/06/2019 by Article III Judge Christine M. Arguello.
Docket 81, Note #1.

McDonald v. Eagle County, Colorado &
Belco Credit Union
10th Circuit Court of Appeals Case 19-1101
Active Appeal

McDonald v. Arapahoe County, Colorado
Supreme Court of the United States
Petition for Cert. denied June 3, 2019, 18-1290

McDonald v. Zions First National Bank et al.
Eagle County District Court, Colorado Case # 2009cv604
Case is ongoing because Eagle County refuses
to obey the Colorado Court of Appeals

McDonald v. Eagle County District Court
Colorado Court of Appeals Case 2011ca1537
Mr. McDonald prevailed on appeal against
Eagle County, Colorado Judgment issued on
October 5, and November 2, 2011

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PETITION FOR WRIT OF CERTIORARI

I, Reed McDonald, respectfully petition for a writ of certiorari to review the judgment of the Colorado Supreme Court.

OPINIONS BELOW

The Colorado Supreme Court opinion is reported at 2019sc475. The opinion of the Colorado Court of Appeals is reported at 2018ca689. The Arapahoe County District Court opinion is reported at 2017cv162.

STATEMENT OF JURISDICTION

The judgment of the Colorado Supreme Court was entered on September 23, 2019. A petition for rehearing was denied on October 17, 2019. Thus, 28 U.S.C. § 1257(a) confers jurisdiction on this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Due Process Clause of the Fourteenth Amendment provides that no State shall “deprive any person of life, liberty, or property without due process of law.”

The equal protection of the law of the Fourteenth Amendment provides that no State shall “any State

deny to any person within its jurisdiction the equal protection of the laws.”

28 U.S.C. § 1446(a) provides that a defendant can remove any civil action from a state court to federal court.

28 U.S.C. § 1446(d) provides “the State court shall proceed no further unless and until the case is remanded.”

Judges of the State of Colorado take an oath to uphold the Constitution and abide by Colorado Code of Judicial Conduct. Judicial lying to preserve jurisdiction is not a part of the Colorado Code of judicial conduct.

◆

STATEMENT OF THE CASE

I. BRIEF FACTUAL BACKGROUND

The facts alleged and material evidence in the Federal/State courts record establishes, Colorado, Arapahoe County’s judge lied in and on the record to prevent Mr. McDonald’s removal on January 25, 2018. The State judge making the false representation, “Mr. McDonald did not file for removal” in State case 2017cv162 on January 24, 2018.

Material evidence in the federal/State record establishes, notice of removal for the subject State case and federal court was filed, stamped and recorded in the State Clerk’s office on January 24, 2018.

The Colorado Supreme Court knowledgeable in the material fact its State judged willfully lied on the record with the intent to prevent removal and to harm Mr. McDonald, refused to address the judge's criminal behavior.

The State case removed to federal court, and effectuated. Bellco did not request remand, nor did the federal court remand the case back to State court.

The State's jurisdiction lost to federal court, the state judge continued holding proceedings without Mr. McDonalds knowledge and or presence, and granted summary judgment to Bellco while it was without jurisdiction. ("The law is clear, removal to federal court divested the state court of jurisdiction.")

II. RELEVANT PROCEEDINGS BELOW

Currently, the State case is in federal court before the District of Colorado and the 10th Circuit Court of Appeals. Those cases are cited as 2018cv105 and 19-1101.

III. ADDITIONAL FACTS

District of Colorado Article III Judge, the Honorable Christine M. Arguello ruled Eagle County, Colorado is violating Mr. McDonald's civil rights, and refusing to conclude Mr. McDonald's case in state court since 2011.



ARGUMENT

I. THE COLORADO SUPREME COURT REFUSES TO UPHOLD AND ENFORCE AND HONOR THE CONSTITUTION AND FEDERAL REMOVAL LAW 28 § U.S.C. 1446

Mr. McDonald filed notice of removal in both State and federal courts on January 24, 2018. Appendix Document p. 19. Thereby, combining Bellco Credit Union's case with existing federal case 2018cv105 because the cases are intertwined. In the federal case Bellco and the national banks refused to obey the Colorado Court of Appeals Order and Judgement issued since 2011.

Thereafter, the State judge attempted to prevent removal by falsely representing (lying) in the State court's record. The State judge making the false statement "Mr. McDonald did not file notice of removal in the clerk of court's office" (record). Appendix Document p. 41.

The material evidence in this case is indisputable; the State clerk of the court received Mr. McDonald's notice of removal which was filed and stamped in the clerk's office on January 24, 2018. Appendix Document p. 19.

After Mr. McDonald's removal was effectuated to federal court, Bellco did not file for remand, nor did the federal court remand the case back to State court. See District of Colorado Case 2018cv105; currently at the 10th Circuit Court of Appeals, case 19-1101.

In federal case 2018cv105, Eagle County, Colorado and Bellco refused to obey the Colorado Court of Appeals

restoring Mr. McDonald's rights secured under Constitution since 2011. In that federal case, the Article III Judge, the Honorable Christine M. Arguello ruled Eagle County, Colorado is violating Mr. McDonald's civil rights by refusing to conclude his case since 2011. In addition, in the subject federal case the national banks and Belco have admitted they violated Mr. McDonald's rights secured under federal Truth in Lending Act, Real Estate Settlement Procedures Act, Colorado law and the Constitution. Belco has admitted they trespassed Mr. McDonald's gated property conducting illegal search on multiple dates and refused to obey Colorado's Supreme Court Black letter rules.

Simply, the State case was timely removed to federal court on January 24, 2018. *See Anderson v. State Farm Mutual Insurance Co.*, 917 F.3d 1126 (9th Cir. 2019).

Thereafter, the State court continued proceedings without jurisdiction. The State judge lied on the record attempting to prevent removal, in violation of federal law and the Constitution. A judicial lie on the record is a criminal act. *See Appendix Document p. 19.*

II. THE COLORADO COURT OF APPEALS REFUSES TO ADDRESS JUDICIAL LYING AND SEEKS TO OVERTURN THIS COURT'S BLACK LETTER OPINIONS AND FEDERAL PRECEDENT

The Colorado Court of Appeals seeks to prevent Mr. McDonald from removing his State case to federal

court because the State court seeks to harm Mr. McDonald. The appellate court allowed the State judge to make false representations in the court's record, falsely stating Mr. McDonald did not file for removal in the clerk's office on January 24, 2018.

Unfortunately, for the appellate court, the facts of the case do not support their false representation nor their refusal to discipline a judge for lying. The copy of Mr. McDonald's notice of removal, filed on January 24, 2018, is in evidence, is stamped, and was filed in the clerk's office on January 24, 2018; there is no dispute Mr. McDonald removed Bellco's case to federal court on January 24, 2018. *See* Appendix Document p. 19.

Federal precedent:

As a matter of federal statute, and Colorado legal precedent, removal of an action to federal court divests a state-court of jurisdiction while the removal petition is pending in federal court. *See, e.g., Loctite Corp. v. Dist. Court*, 718 P.2d 252, 253 (Colo. 1986); *Blazer Elec. Supply Co. v. Bertrand*, 952 P.2d 857, 858 (Colo. App. 1998).

Defendant/plaintiff Mr. McDonald removed Bellco's state-case to federal court on January 24, 2018 for Constitutional questions and efficiency. Thus, the state-court lost jurisdiction on January 24, 2018 and the federal court held jurisdiction on January 24, 2018.

The federal court's record does not reflect remand, or that Bellco filed for remand. Thus, the State-court

lacked jurisdiction to enter any order after notice of removal was executed and effectuated on January 24, 2018.

Bellco's case is intertwined with Mr. McDonald's federal case because Bellco in willful contradiction of the Colorado Court of Appeals Order dated October 5, and November 2, 2011 colluded with two national banks by filing secret and concealed writs seizing Mr. McDonalds bank accounts. See Colorado Court of Appeals Order dated October 5, and November 2, 2011 in case 2011ca1537.

Secret and concealed writs are without authority as they violate Supreme Court precedent. See *Lugar v. Edmondson Oil Company, Inc.*, 457 U.S. 922 (1982).

Bellco and the national banks clearly aware of Colorado's Court of Appeals decisions in 2011ca1537 against Eagle County, none-the-less seized Mr. McDonalds accounts in violation of the Court of Appeals order, the Constitution and Colorado law preventing him from fulfilling his obligations.

Furthermore, Bellco after the statute of limitations had run, in year 7, filed a civil action against Mr. McDonald; the facts of the case are undisputed and are substantiated by Bellco's own workflow documents in the record; Bellco filed its civil action in year 7 after the statute of limitations had run.

Pursuant to Colorado law, a person seeking help from the state for an alleged debt must file within 6 years. See § 13-80-103.5 C.R.S (2012). Simply, Bellco

was estopped by the doctrine of laches and Colorado law from filing its civil action in year 7.

The intent of federal law 28 U.S.C.A. § 1446 is to prevent state and federal courts from sharing jurisdiction over a case and thus avoid jurisdictional conflicts. *Motton v. Lockheed Martin Corp.*, 692 So.2d 6, 8 (La.Ct.App. 1997).

Thus, as a federal rule, removal of an action divests a state court from its jurisdiction over the dispute while the removal petition is pending in federal court. *See South Carolina v. Moore*, 447 F.2d 1067, 1073 (4th Cir. 1971); *see also Loctite Corp.*, 718 P.2d at 253 (“The law is clear that the removal to federal court divested the state court of jurisdiction.”)

The federal court did not remand the state-case, nor did Bellco file for remand. Thus, Mr. McDonald’s removal was effectuated and the State-court acted without jurisdiction after January 24, 2018.

Therefore, any state-court proceedings without jurisdiction and authority lie nullity. The 10th Circuit has adjudged, courts that act without personam jurisdiction, result in nullity. *Misco Leasing, Inc. v. Vaughn*, 450 F.2d 257, 260 (10th Cir. 1971); *Taft v. Donellan Jerome, Inc.*, 407 F.2d 807, 808 (7th Cir. 1969).

III. COLORADO’S HISTORY OF PREJUDICE AGAINST THIS PRO SE PARTY

The Colorado legal system has a history of prejudice against pro se party, Mr. McDonald. In Eagle

County case 2009cv604 five (5) judges of Eagle County, Colorado (Eagle) refuse to obey the Colorado Court of Appeals order and judgment in Appellate Case 2011ca1537 judgment issued on October 5, and November 2, 2011. Thus, they have been removed. Therefore, this case has been removed to federal court.

The Colorado Appellate Court ruled in 2011ca1537 Eagle County was violating Mr. McDonald's civil rights and willfully and with intent to defraud was refusing to serve court orders and other documents to Mr. McDonald during the case. Eagle ordered to restore Mr. McDonald rights secured under Constitution; refused and continues to refuse to restore Mr. McDonald civil rights. Currently, that case is before the District of Colorado and the 10th Circuit Court of Appeals. 19-1101

In Arapahoe County, Colorado (Arapahoe), case 2012cv158 the judge in the subject case violated Mr. McDonald's right secured under constitution and refused to uphold and enforce federal consumer protection law. *See* Supreme Court of the United States Case 18-1290. Since that time the sitting judge from Arapahoe County has been removed for violating Colorado law, the Constitution and Mr. McDonald's rights secured under Constitution; that case is currently on its way to the Colorado Supreme Court.

In this Case, the Arapahoe County Judge lied on the record attempting to prevent removal of the State-case to federal court. Simply, The State of Colorado has lost control of its elected judges.

IV. THIS CASE IS ABOUT JURISDICTION

Judicial lying:

The salient facts of this case are; the State judge attempted to prevent Mr. McDonald's removal by making intentional false representations (lies) into the record. The State judge falsely stating on January 25, 2018, Mr. McDonald did not file for removal in State-court.

The undisputed facts of the case are, Mr. McDonald did file for removal, and that motion for removal was filed in both the state and federal court on January 24, 2018. Therefore, the removal of State case 2017cv162 was effectuated and removed to federal court pursuant to § 1446.

Thereafter, on January 24, 2018 the United States District Court for the District of Colorado accepted the removal and the state-court lost jurisdiction. *See* District of Colorado Case 2018cv105.

V. CONGRESSIONAL INTENT

Congress in promulgating § 1446 intended to prevent jurisdictional questions. The plain language of the statute provides that once removal is filed in state/federal courts, that case is removed. Thereafter, the subject state court is without jurisdiction unless the case is remanded; the subject case was never remanded.



REASONS FOR GRANTING THE PETITION

Judicial lying should not be tolerated. The State judge to dissuade and obstruct removal made false representations into the court's record. After the State judge's false statement, the state court then continued proceedings without jurisdiction, without my knowledge, and without my presence. Thus, the state court and its judge violated black letter federal law 28 U.S.C. § 1446(d) which provides in part "the State court shall proceed no further unless and until the case is remanded."

Therefore, the State court exceeded its jurisdiction and violated my rights secured under federal law and the United States Constitution.

If state-judges are allowed to lie so they can obstruct justice and federal law, then the entire judicial system is valueless and provisions granted to congress under Constitution are useless.

CONCLUSION

Simply, Mr. McDonald removed the state-case because that case was intertwined with an existing federal case and the case involved Constitutional questions. In addition, the state-judge was violating Mr. McDonald civil rights.

Once removal was effectuated on January 24, 2018, the State judge lied on and into the official record on January 25, 2018 that Mr. McDonald had not filed the notice of removal in State-court.

As the stamped notice of removal clearly provides, the State-judge lied, as the notice of removal is stamped with the removal date of January 24, 2018.

Once the state case was removed to federal court, the federal court did not remand, nor did Belco file for remand at any time.

This case concerns the State-court's refusal to recognize the supremacy clause of the Constitution and establishes the State-judge was willing to lie to get her way. The State judge willfully lied without fearing any recourse from any state agency because she knew there would be no response, as it's well accepted that a Colorado judge can lie in a court case to achieve the results she wanted, although that was illegal.

This Court must stand to confront the State judges' illegal activities regardless of her intent, as it is criminal behavior.

THEREFORE, I ask this Court to reverse and remand the state of Colorado case, as that court was without jurisdiction because jurisdiction was lost to the federal courts on January 24, 2018. As a result, any action by the state court after January 24, 2018 lie nullity as it was without jurisdiction.

Respectfully submitted,

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App. 1

18CA0689 Bellco v McDonald 04-25-2019

COLORADO COURT OF APPEALS DATE FILED:
April 25, 2019

Court of Appeals No. 18CA0689
Arapahoe County District Court No. 17CV162
Honorable Elizabeth Beebe Volz, Judge

Bellco Credit Union,

Plaintiff-Appellee,

v.

R. Kirk McDonald,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division IV

Opinion by JUDGE HAWTHORNE

Fox and Harris, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced April 25, 2019

Nelson & Kennard, David A. Bauer, Amanda Riggs,
Lakewood, Colorado, for Plaintiff-Appellee

R. Kirk McDonald, Pro Se

R. Kirk McDonald appeals the district court's
grant of summary judgment in favor of Bellco Credit
Union. We affirm.

I. Facts and Procedural History

McDonald received a loan, secured by a vehicle, from Bellco in December 2009. He made full monthly payments until December 16, 2010.¹ Bellco sued McDonald for the loan's outstanding balance on December 14, 2016, in county court.²

McDonald denied Bellco's claim, asserting that it was barred by the statute of limitations and that because Bellco "wrote off" the debt, he shouldn't have to pay. He also asserted numerous counterclaims against Bellco and brought third-party claims against Bellco's attorney, the attorney's law firm, and Eagle County. The case was removed to district court at McDonald's request. Eagle County asked the district court to dismiss McDonald's claims against it because his allegations involved a different party in an unrelated prior case. Bellco asked the court to enter judgment on the pleadings, as did its attorney and law firm.

The court dismissed McDonald's counterclaims against Bellco, and all third-party claims against Bellco's attorney, the law firm, and Eagle County, because McDonald failed to state any claims or to allege sufficient facts warranting relief. The court also noted that joining Eagle County in this case was inappropriate because it found "no association between the alleged

¹ He made one further partial payment not relevant to our resolution.

² The complaint isn't in the record, but we may take judicial notice of court records in a related proceeding under CRE 201 and do so here. *Harriman v. Cabela's Inc.*, 2016 COA 43, ¶ 64.

App. 3

events occurring in Eagle County and the auto loan at issue in this case.” The court also rejected McDonald’s statute of limitations defense because Belco filed the complaint within six years from McDonald’s last full payment on December 16, 2010, and the statute of limitations would only begin to run when any other payments became delinquent after that date. But the court didn’t dismiss McDonald’s argument that Belco “wrote off” the loan, construing the claim as a detrimental reliance defense and allowing McDonald an opportunity to present supporting evidence. Only Belco’s claim to recover the debt and McDonald’s detrimental reliance defense remained in the case.

Months later, Belco moved for summary judgment, arguing that McDonald hadn’t produced any evidence supporting his detrimental reliance defense. Before responding to Belco, McDonald filed a notice of removal to federal court with the district court and asked the district court to vacate further proceedings because it lost jurisdiction after he filed the removal notice. At a scheduled hearing the next day, at which McDonald didn’t appear, the court found that the removal was untimely and the case didn’t present a colorable question of federal law and refused to stay the case.

McDonald answered Belco’s summary judgment request but failed to address Belco’s arguments. Instead, he asserted that the district court didn’t have jurisdiction over the case because he removed the case to federal court and reasserted his statute of limitations claim. He also argued that Belco’s attempts to

locate the vehicle securing the loan were improper, and re-alleged his dismissed third-party claims against Eagle County. McDonald didn't dispute that he obtained the loan from Belco or the unpaid amount.

The court granted Belco's motion for summary judgment, finding that there were no outstanding material fact issues. It found that McDonald presented no evidence that he detrimentally relied on Belco's alleged loan write off. Specifically, the court found McDonald "failed to present any evidence that he was even aware" of the alleged "write off" before Belco filed the lawsuit. So, the court found that estoppel or detrimental reliance defenses weren't applicable and entered judgment for Belco.

II. McDonald's Removal Wasn't Effective Because he Didn't Raise a Colorable Claim

McDonald contends that because he removed the case to federal court and filed the removal notice with the district court, it didn't have jurisdiction over the case and any later entered judgments were void. We disagree.

A. Standard of Review and Applicable Law

We review de novo whether the district court had jurisdiction and its construction and application of federal removal statutes. *People v. Vargas-Reyes*, 2018 COA 181, ¶ 9; *McDonald v. Zions First Nat'l Bank*, 2015 COA 29, ¶ 17.

App. 5

Generally, a case's removal to federal court divests the state court of jurisdiction while the removal petition is pending in federal court. *McDonald*, ¶ 15. Under the federal civil removal statute, "any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction, may be removed by [defendant(s)] to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a) (2018). Removal becomes effective when the defendant files a notice of removal with the federal court, files a copy of the notice with the state court, and gives written notice to all adverse parties. 28 U.S.C. § 1446(d) (2018). Then, "the [s]tate court shall proceed no further unless and until the case is remanded." *Id.* This is to prevent shared state and federal jurisdiction over a case. *McDonald*, ¶ 19.

But Colorado has recognized an exception to this rule that maintains a state court's jurisdiction "where a party's notice of removal to a federal court indicates, on its face and as a matter of law, that the party's attempt to remove the case was without the slightest color of right or merit." *Id.* at ¶ 26.

B. Analysis

Because McDonald filed his removal notice before the district court entered its summary judgment order and the record doesn't reflect that the federal court issued a remand order, normally this would deprive the district court of jurisdiction. *Id.* at ¶ 15. But,

because McDonald's attempted removal was without "the slightest color of right or merit," the district court didn't lose jurisdiction. *Id.* at ¶ 26.

McDonald's removal notice asserted that removal was appropriate under federal question jurisdiction, section 1441(c). Specifically, he argued that his constitutional rights were violated by Belco and since-dismissed third-party defendants, and that they violated federal statutory laws—the Fair Debt Collections Practices Act and the Fair Credit Reporting Act.

But whether federal question jurisdiction exists in this case depends solely on Belco's complaint. The United States Supreme Court has "long held that '[t]he presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint.'" *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)); see *Vaden v. Discover Bank*, 556 U.S. 49, 60 (2009). This rule applies equally to the federal courts' removal jurisdiction. *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 10 (1983). Thus, to remove a case from state court to federal court under federal question jurisdiction, the plaintiff's complaint in state court must "arise under" federal law. *Vaden*, 556 U.S. at 60-61. Belco's complaint didn't arise under federal law and didn't present a federal question.

McDonald's numerous federal claims can't make up for this deficit. A defendant can't remove a case under federal question jurisdiction based on a counterclaim, whether "actual or anticipated." *Id.* at 60; *Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002). "Similarly, [a] defendant's third-party claim alleging a federal question does not come within the purview of § 1441 removability. The third-party claim . . . is a pleading by the defendant [and] does not change the character of the plaintiff's complaint." *Metro Ford Truck Sales, Inc. v. Ford Motor Co.*, 145 F.3d 320, 327 (5th Cir. 1998) (footnote omitted). Thus, McDonald's attempt to remove the case by asserting counterclaims and third-party claims couldn't be the basis for federal question removal jurisdiction.

McDonald's current removal attempt echoes his prior unsuccessful attempt in *McDonald v. Zions First Nat'l Bank*. There, the division concluded that because McDonald was the plaintiff in the state case, "he had no ability to remove this case to federal court," so his attempted removal was meritless and the state court retained jurisdiction. *McDonald*, ¶¶ 27-29. While McDonald is the defendant this time, we again conclude "that [his] attempted removal was without the slightest color of right or merit and did not deprive the [district] court of jurisdiction to [enter] summary judgment[.]" *Id.* at ¶ 29.

*III. Bellco Filed the Complaint Within the
Applicable Statute of Limitations*

McDonald contends that Bellco filed the complaint on March 23, 2017, beyond the six-year statute of limitations period. We disagree.

We judicially notice the county court records in this case. *See Harriman*, ¶ 64. Bellco filed the complaint on December 14, 2016.

Even if we didn't take judicial notice, we would assume that the district court's finding that the complaint was filed then is proper. Where facts don't appear in the record, "an appellate court presumes that material portions omitted from the record would support" the district court's judgment. *In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006). The appealing party carries the burden "to provide a record justifying reversal, and absent such a record, we presume the regularity of the trial court proceedings." *Alessi v. Hogue*, 689 P.2d 649, 650 (Colo. App. 1984). That McDonald is self-represented doesn't excuse him from following these rules. *See, e.g., Finegold v. Clarke*, 713 P.2d 401, 403 (Colo. App. 1985). McDonald is a seasoned appellant in this court, and prior divisions have repeatedly admonished him for his failure to follow our rules. *See CitiBank v. McDonald*, (Colo. App. No. 16CA0652, Apr. 27, 2017) (not published pursuant to C.A.R. 35(e)) (dismissing appeal for failure to comply with C.A.R. 28); *CitiBank v. McDonald*, (Colo. App. Nos. 14CA0759 & 14CA1359, Oct. 15, 2015) (not published pursuant to C.A.R. 35(f)) (same).

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Because Bellco filed the lawsuit on December 14, 2016, McDonald's statute of limitations defense fails. The filing date is less than six years from McDonald's last full payment made on December 16, 2010, after which any further delinquent payments would trigger a six-year statute of limitations. *See* §§ 13-80-103.5(1)(a), -108(4), C.R.S. 2018 (debt collection actions must commence within six years after such debt, obligation, or money owed becomes due); *Hassler v. Account Brokers of Larimer Cty., Inc.*, 2012 CO 24, ¶ 22 (“[A] separate cause of action arises on each installment, and the statute of limitations runs separately against each.” (quoting 31 Richard A. Lord, *Williston on Contracts* § 79:17 (4th ed. updated 2011))).

We decline to address any remaining contentions in McDonald's opening brief because either (1) McDonald didn't raise them during the summary judgment proceedings; (2) McDonald fails to provide any legal support or record citations for them; or (3) the claims allege errors that prior divisions of this court have already ruled on. *See McDonald v. Zions First Nat'l Bank*, (Colo. App. No. 12CA1706, July 25, 2013) (not published pursuant to C.A.R. 35(f)).

IV. Conclusion

The district court's judgment is affirmed.

JUDGE FOX and JUDGE HARRIS concur.

DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 South Potomac Street Centennial, Colorado 80112	DATE FILED: March 14, 2018 ▲ COURT USE ONLY ▲ <hr/> Case Number: 2017CV162 Div. 202
Plaintiff: BELLCO CREDIT UNION v. Defendant: R KIRK MCDONALD	
<p align="center">ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT</p>	

THIS MATTER comes before the Court on Plaintiff Bellco Credit Union's ("Bellco") Motion For Summary Judgment ("MSJ") seeking judgment on an outstanding debt. The Court, having reviewed the pleadings, file and applicable law finds that there are no material factual issues in dispute concerning whether a debt exists and the amount of the debt. Therefore, for the reasons set out more fully below, summary judgment in favor of Bellco is GRANTED.

INTRODUCTION/BACKGROUND

1. This matter arises from a matter commenced by Bellco to collect on an “extension of credit which remains unpaid,” in the amount of \$14,664.09, originally set out in a County Court Complaint. *Co. Cmplt.* ¶’s 3 & 4.

2. In the County Court Complaint, Bellco set forth the amount of the debt (\$14,664.09), stating that “demand for payment has been made” on Defendant R. Kirk McDonald (“McDonald”), and that Defendant has “fail[ed] and refus[ed] to make payment of the sums which are now due and payable in full.” *Co. Cmplt.* ¶’s 5.

3. In his initial response to the County Court Complaint, McDonald made a general denial of the claim. *Co.Ct.Ans.*, ¶2. McDonald asserted various counterclaims against Bellco, third-party claims against Eagle County, and sought removal to the District Court. In his Counterclaims, McDonald made the following allegations:

¶22 Bellco wrote off the alleged debt . . . on October 30, 2010.

¶24 [The applicable] statute of limitations . . . [of] six years . . . [means the] litigation is ‘Out-of-Time’.

Co.Ct.Ans., ¶’s 22 & 24.

4. McDonald also asserted Third-Party claims against Eagle County, as well as the attorney and law firm representing Bellco, generally setting forth

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extensive details involving unrelated litigation in Eagle County.

5. The matter was transferred to the District Court on May 2, 2017.

6. On May 10, 2017 and June 23, 2017 Plaintiff filed motions for Judgment on the Pleadings.

7. On July 11, 2017 Eagle County filed a Motion to Dismiss.

8. On September 7, 2017 the Court entered an Order dismissing “Defendant’s Third Party Complaint in its entirety.” *9/7/17 Order*, ¶15.

9. Additionally, the Court determined that the matter was not barred by the applicable statute of limitations. *9/7/17 Order*, ¶s 11-13.

10. The Court’s September 7, 2017 Order left Bellco’s original claim for a debt in the amount of \$14,664.09 as the sole claim to be decided. The sole defense remaining on behalf of McDonald was whether Bellco had “written off” the debt and to what extent, if any, McDonald relied to his detriment on any such alleged “write off.” *9/7/17 Order*, ¶17.

11. The matter was then set for trial to commence on April 2, 2018.

12. On December 27, 2017 Bellco filed the within MSJ. The motion included evidence of a Credit Request dated 12/04/09 signed by McDonald (*Mtn. Exhibit 1a*), payment history on the loan from 1/1/10 through 6/22/11 (*Mtn. Exhibit 2*), Right to Cure Default Letter

dated 11/16/10 addressed to McDonald (*Mtn. Exhibit 4*), along with additional correspondence advising McDonald that his payments on the debt were past due, dated from 11/26/10 through 3/19/11 (*Mtn. Exhibits 5, 6, 7 and 8*).

13. Bellco further related that despite the Court's ruling on Bellco's motion for judgment on the pleadings, and McDonald's asserted defense of a write-off of the debt, McDonald had not produced any disclosures of any claimed detrimental reliance on such alleged write-off. *MSJ*, ¶10.

14. After granting several requests for additional time to file a response, McDonald filed his response to the MSJ on March 5, 2018. In this response, McDonald does not dispute that he obtained a loan from Bellco stating that "Defendant took a loan to pay COBAR attorney Miles Gersh." *MSJ Rsp*, p.3 Neither does he dispute that there remains an amount due on the loan. Instead, McDonald reasserts his argument that the statute of limitations bars the lawsuit, and raises claims concerning the service of summons and other alleged improper actions by Bellco, such as attempts to locate a vehicle securing the loan. *MSJ Rsp*. p.4. None of these assertions addresses the underlying issue before the Court, i.e. Bellco's debt and whether such debt remains due and owing.

15. With regard to McDonald's assertion that Bellco wrote off the debt, he alleges that Bellco "waived its right to litigate starting on August 12, 2011 . . . [when according to] . . . its workflow record 'they did

not believe the case worth pursuing as the Vehicle was salvage.” *MSJ Rsp*, p.4. Even if this statement accurately reflects Belco’s intentions, McDonald does not put forth any evidence that he was aware of such statement prior to this lawsuit being filed, and more importantly, does not explain or identify any action he took based on this alleged write off which is detrimental to him in regard to this debt.

LEGAL ANALYSIS

Pursuant to C.R.C.P. 56, parties may move the court for entry of summary judgment on some or all of the issues presented in a case. *C.R.C.P. 56(a) & (b)*. Summary judgment is appropriate where there are no genuine issues as to any material facts of the case and the moving party is entitled to a judgment as a matter of law. *C.R.C.P. 56(c)*. As the United States Supreme Court stated in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986), “[b]y its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment, the requirement is that there be no *genuine* issue of *material* fact.” (*Emphasis in original*) *Anderson, Id.*

While there may be disputed issues concerning whether or not Belco improperly attempted to repossess or otherwise take possession of the vehicle securing the loan, or whether Belco surreptitiously gained access to the gated community where McDonald was

living, or whether Bellco previously failed to properly perfect service of summons' on McDonald, none of these are matters that are *material* to the issue before the court.

"Summary judgment is a useful procedural tool because it enables a court to test whether there is an actual basis for relief or defense. [citation omitted] If there is no real basis for relief or defense, then a trial is unnecessary because the court can decide the case 'strictly as a matter of law.' [citation omitted] *People In Interest of S.N. v. S.N.*, 329 P3d 276, 281 (Colo. 2014). In this case, Bellco has established that it provided credit to McDonald and that McDonald has failed to repay the loan according to its terms. While the Court, in considering Bellco's motion for summary judgment, must give McDonald "all favorable inferences that can be drawn from the record . . . reliance upon allegations or denials in the pleadings will not suffice when faced with an affidavit affirmatively showing the absence of a triable issue of material fact." [citation omitted] *In re S.N.*, *Id.* at 282. Although McDonald made a general denial of the debt in his original Answer, he does not provide any factual basis, or even argument, that the debt does not exist. In fact, the only argument McDonald raises is that Bellco "wrote off" the debt some time ago and therefore is precluded from collecting on the debt.

First, McDonald does not provide any evidence that Bellco "wrote off" the debt, other than a sentence contained in the transaction history of the debt, which seems to relate to the fact that the vehicle used to secure the debt is only worth salvage and therefore not

worth continued efforts to locate. However, even if the quoted language from the transaction history does indicate a decision to “write off” the debt, this does not provide a defense to McDonald. Only if the actions of Belco caused McDonald to act in a way that is detrimental to his ability to defend this action, thereby asserting a defense of estoppel, would the asserted “write off” have any bearing on this case.

The application of the “doctrine of estoppel [as a defense] requires more than mere delay. Estoppel requires ‘(1) full knowledge of the facts; (2) unreasonable delay in the assertion of available remedy; and (3) intervening reliance by and prejudice to another.’” [citation omitted] *Bijou Irr. Dist. V. Empire Club*, 804 P2d 175, 186 (Colo. 1991). The Colorado Supreme Court adopted the principles of promissory estoppel as set forth in *Restatement (Second) of Contract §90(1)* (1981) as follows:

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. *Kiely v. St. Germain*, 670 P2d 764, 767 (Colo. 1983)

The court in *Kiely* went on to explain that the doctrine “discourages conduct which unreasonably causes foreseeable economic loss because of action or inaction induced by a specific promise. Justifiable reliance on the representations of another is the gist of this action.” *Kiely, Id. at 767*. McDonald has failed to present any

evidence that he was even aware of the language in the transaction history prior to this lawsuit. He has also failed to articulate, let alone support, any basis that he relied on Belco's statements in the transaction history. Finally, McDonald cannot demonstrate that he has been damaged by possible reliance on the transaction history statement. There is no basis for the Court to conclude that the doctrine of estoppel, or detrimental reliance applies in this case.

CONCLUSION

Belco has demonstrated that there are no genuine issues of material fact concerning McDonald's debt to Belco, in dispute in this case. McDonald has not raised any disputed facts concerning the existence of the debt or the amount of the debt, nor has he established any basis for application of the doctrine of estoppel as a defense to the debt. Therefore, Belco's motion for entry of summary judgment in its favor is GRANTED.

Judgment is entered in favor of Plaintiff Belco in the amount of \$14,664.09.

Interest at the statutory rate of 8% per annum until paid is also awarded.

Plaintiff may submit a Bill of Costs and Motion and Affidavit for attorneys' fees within 14 days of today's Order.

Defendant may file any objection to the costs and fees sought by Defendant within 14 days after Plaintiff files for costs and fees.

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SO ORDERED THIS March 14, 2018.

BY THE COURT:

/s/ Elizabeth B. Volz [SEAL]
Elizabeth Beebe Volz
District Court Judge

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ARAPAHOE DISTRICT COURT Court Address: 7325 South Potomac Street Centennial, Colorado 80112	Filed JAN 24 2018 Clerk of the Combined Court Arapahoe County, Colorado
Bellco Credit Union Plaintiff/ Third Party Defendant v. R. KIRK MCDONALD Defendant/ Third Party Plaintiff	^ COURT USE ONLY ^ <u>2017cv162</u>
----- <i>Counsel for Defendant</i> R. Kirk McDonald <i>private</i> <i>attorney general - pro se</i> 5856 S. Lowell Blvd. Suite 32-163 Littleton, Colorado 80123 kirkmcdonald56@gmail.com	
DEFENDANT/THIRD PARTY PLAINTIFF'S NOTICE FOR REMOVAL OF CASE TO THE UNITED DISTRICT COURT FOR THE DISTRICT OF COLORADO	

COMES NOW, Third-Party Plaintiff/Defendant
Reed Kirk McDonald, hereafter (Defendant) provides
notice to this Court for removal of Arapahoe County
Case No. 2017cv162 to the United States District

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Court for the District of Colorado as of January 24, 2018.

Provided for the Court is a complimentary and service of the "Notice of Removal" to the federal courts filed in this Court January 24, 2018 and in the District of Colorado on January 24, 2018.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Dist. of Colorado case No. 18cv105

REED KIRK MCDONALD

Plaintiff,

v.

EAGLE COUNTY, a quasimunicipal corporation
and political subdivision of the State of Colorado

Defendant.

**NOTICE OF REMOVAL OF ARPAHOE
COUNTY CASE NO. 2017cv162 PURSUANT
TO 28 U.S.C. § 1441(A) & c(1)(A) COMPLAINT
AND JURY DEMAND**

Defendant, Reed K. McDonald as pro se counsel and Private Attorney General, hereby removes Case Number 2017cv162 from Colorado, Arapahoe County District Court, to the United States District Court for

the District of Colorado pursuant to 28 U.S.C. § 1441(a) and c(1)(A).

This civil action is intertwined with District of Colorado Case No. 18cv105 currently before this Court. Reed Kirk McDonald asserts the following in his motion for removal of Arapahoe County Case No. 2017cv162 and states as follows:

I. CONSTITUTIONAL CLAIM & STATEMENT OF REMOVAL.

1. This removal action is brought after Arapahoe County colluded with Belco Credit Union ("Belco") to prevent Reed Kirk McDonald ("Mr. McDonald") from presenting an affirmative Defense in the on-going case by violating his civil rights. As pled in Dist. Of Colo. Case No. 18cv105; Mr. McDonald took a loan to pay COBAR attorney Miles Gersh after Eagle County, Colorado violated his civil rights. Mr. McDonald prevailed at the Colorado Court of Appeals against Eagle County with the help of Mr. Gersh during 2011. Mr. Gersh then died. Thereafter, Eagle County disobeyed orders of the Court of Appeals. Eagle County in violation of Court of Appeals issued secret writ, seizing Mr. McDonalds' Belco Credit Union and Public Service accounts; in violation of Court of Appeals order. Thus, Mr. McDonald was prevented from paying off of his Belco loan; Belco was informed of Eagle Counties misconduct.

2. Thereafter, Belco's collection department did not pursue litigation, waiving its right to litigate. Belco in 2013 fired its collection department on mass

and engaged in a pay-to-play agreement with David A. Bauer of Nelson & Kennard. Bellco, Nelson and Kennard then repeatedly trespassed Mr. McDonalds gated property, 6214 S. Datura St. Littleton, Colorado in violation of C.R.S. §§ 18-4-502, 18-4-503, and 18-4-504. Additionally, Bellco trespassed Mr. McDonalds gated property in violation City of Littleton Ordinance § 6-4-22; § 6-4-41.

3. Bellco admits in Rule 26 disclosures it violated Colorado law and City of Littleton Ordinance repeatedly. Bellco also admits it asked neighbors to spy on Mr. McDonalds activities in violation of the Constitution, Federal Fair Debt Collections Practices Act, Colorado's Fair Debt Collections Practices Act and Colorado Supreme Court precedent. See, *Rugg v. McCarty*, 476 P.2d 753 (Colo.1970).

"We do not attempt to comprehensively define the right of privacy, nor to categorize the character of all invasions which may constitute a violation of such right. We merely observe that considerable precedent exists in the area of oppressive conduct by a creditor in connection with his efforts to collect from his debtor." Santiesteban v. Goodyear Tire and Rubber Co., 5 Cir., 306 F.2d 9; Cunningham v. Securities Invest. Co. of St. Louis, 5 Cir., 278 F.2d 600, reh. denied 5 Cir., 281 F.2d 439; Bowden v. Spiegel, Inc., 96 Cal.App.2d 793, 216 P.2d 571; Brents v. Morgan, 221 Ky. 765, 299 S.W. 967, 55 A.L.R. 964; Booty v. Am. Finance Corp. of Shreveport, 224 So.2d 512 (La.App.); Pack v. Wise, 155 So.2d 909 (La.App.); Biederman's of Springfield, Inc. v. Wright, 322 S.W.2d 892 (Mo.); LaSalle

Extension University v. Fogarty, 126 Neb. 457, 253 N.W. 424, 91 A.L.R. 1491; Housh v. Peth, 165 Ohio St. 35, 133 N.E.2d 340; Tollefson v. Price, 247 Or. 398, 430 P.2d 990. *See also* 138 A.L.R. 91; 168 A.L.R. 462; 14 A.L.R.2d 770; 15 A.L.R.2d 158.

“However, when *unreasonable action* in pursuing a debtor is taken, which foreseeably will probably result in extreme mental anguish, embarrassment, humiliation or mental suffering and injury to a person possessed of *ordinary sensibilities*, under the same or similar circumstances, then such conduct falls within the forbidden area and a claim for invasion of privacy may be asserted.” Reed v. Real Detective Pub. Co., 63 Ariz. 294, 162 P.2d 133; Cason v. Baskin, 155 Fla. 198, 20 So.2d 243; Davis v. General Finance & Thrift Corp., 80 Ga.App. 708, 57 S.E.2d 225; Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606.

4. Nelson and Kennard at the behest of themselves and Belco filed a civil action against Mr. McDonald on March 23, 2017 after Colorado’s statute of Limitations expired (6 years). Belco in its Complaint swayed the Arapahoe County to violate the law by making the following false representation, “Mr. McDonald borrowed money to purchase a car.”

5. After Belco admitted it violated the Constitution and Colorado law invading Mr. McDonalds’ privacy. Belco filed numerous *ex parte* motions to redact its acknowledged and disclosed wrongdoing from the courts Record. Arapahoe County granted Belco’s *ex parte* motion in violation of Colorado Rules of Civil

Procedure (C.R.C.P.) §§ 121(c); 121 1-15(1)(b); 121 1-15(8). Thereafter, Belco refused to participate in Discovery.

6. Colorado's Supreme Court promulgated rules for its lower courts to ensure due process and equal protections under law. These rules are known as Rules of Civil Procedure (C.R.C.P.) See the following rules of civil procedure under Colorado law:

C.R.C.P. § 121(c); Practice Standards,

C.R.C.P. 121 § 1-15(8); The Parties Shall Have a Duty to Confer;

C.R.C.P. 121 § 1-15(9); Designation of Unopposed Motions;

C.R.C.P. 121 § 1-15(1)(b); Time to Respond - 21 Days.

7. While the case resided in Arapahoe County, Belco repeatedly engaged in motion practice without conferring (*ex parte*) with opposing counsel Mr. McDonald. More importantly, Arapahoe County granted multiply Belco *ex parte* motions after Belco refused to confer within a matter of days without notice to Mr. McDonald in violation of C.R.C.P. 121(c); C.R.C.P. 121 § 115(1)(b); and the Constitution.

8. Thus, Arapahoe County granted Belco the right to conceal its wrongdoing. Thereby, violated due process, the equal protection clause of the Constitution, Colorado law and Supreme Court of the United States law.

II. FEDERAL QUESTIONS.

9. Mr. McDonald asserts claims that involve federal questions under the United States Constitution specifically, the 1st, 5th and 14th Amendments requiring due process, prior to the taking of property, equal protection of the law, and the right to privacy for citizens of the United States of America, regardless of political influence and or economic status of the parties.

10. Mr. McDonald asserts claims that involve federal law, 15 U.S.C. § 1692 known as the federal Fair Debt Collections Practices Act ("FDCPA").

11. Further, Mr. McDonald asserts claims that involve federal law, 15 U.S.C. § 1681, known as the federal Fair Credit Reporting Act ("FCRA").

12. Additionally, Mr. McDonald asserts claims that involve Colorado law C.R.S. § 12-14101 *et al.*, known as the Colorado Fair Debt Collection Practices Act ("CFDCPA").

III. PARTIES.

13. Reed Kirk McDonald is a resident of Colorado, Arapahoe County where his principal place of business and residence was 6214 South Datura Street, Littleton, Colorado, 80120. Currently, resides at 4059 West. Hillside Pl., Littleton, Colorado 80123.

14. Bellco Credit Union is a banking institution in the State of Colorado, whose counsel of record is

properly addressed as, Nelson & Kennard 2594 S. Lewis Way, Suite A, Lakewood, Colorado 80227.

IV. JURISDICTION AND VENUE.

15. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331 as the Complaint raises federal questions arising from the Belco's violations of Mr. McDonalds civil rights secured by the United States Constitution under its 1st, 5th and 14th Amendments. Specifically, taking of property without due process; violation of the equal protection clause of the Constitution; false credit reporting; and invasion of privacy.

16. This Court also holds jurisdiction pursuant to 28 U.S.C. § 1441(a) and c(1)(A).

17. Further, this court holds supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

18. Venue is proper in this judicial district under 28 U.S.C. § 1391 as Belco Credit Union, operates and conducts business in Colorado which is the subject of this action in the district.

19. Belco is subject to jurisdiction of the Court pursuant to its violations of 15 U.S.C. § 1692 and 15 U.S.C. § 1681.

20. Belco is subject to Colorado's statute of limitations which prevents litigation after an alleged debt tolled 6 years. C.R.S. § 13-80-101 *et al.*

21.

**V. GENERAL ALLEGATIONS &
UNDISPUTED FACTS OF THE CASE.**

**A. Bellco filed a civil action after statute
of limitation tolled.**

22. Mr. McDonald did not take a loan to purchase a car, but required a loan to pay COBAR attorney Miles Gersh. With the Help of Mr. Gersh, Mr. McDonald prevailed against Eagle County after the Court of Appeals announced its findings of fact; Court of Appeals ruled on October 5, 2011 and again on November 2, 2011 Eagle County violated Mr. McDonalds civil rights of due process and equal protection under law, and attempted to make an end-run around the final judgment rule among other violations. See, Dist. of Colo. Case No. 18cv105 - Exhibit 1 & Exhibit 2.

23. Eagle County refused to obey Court of Appeals after Mr. Gersh died; then in secret issued writ seizing Mr. McDonalds' Bellco and Public Service bank accounts. Thus, Mr. McDonald could not make expenditures. See Dist. Of Colo. Case No. 18cv105 – Exhibit 6 & Exhibit 7.

24. Bellco informed of Eagle Counties misconduct did not pursue litigation against Mr. McDonald. Thus, Bellco waived their right to litigate the alleged debt.

25. Bellco on October 31, 2012 wrote-off the alleged debt. **Exhibit 1.**

26. Bellco filed a civil action against Mr. McDonald in Arapahoe County after the statute of limitations

tolled in 2017 to recover alleged debt; Bellco's litigation is barred, because the statute of limitations tolled after 6 years. See C.R.S. § 13- 80-101 *et al.*

27. Arapahoe County in violation of Colorado law allowed Bellco to persevere its claims in its 2017 civil action.

B. Bellco Admits They Violated Federal and State Law

28. Bellco on or about December 15th of 2017 supplied its first Rule 26 Disclosures. In that disclosure, Bellco admits for years it had been filing lawsuits in county court against Mr. McDonald. Moreover, for years Bellco had been trespassing Mr. McDonalds gated property but refused to serve their complaints. Thus, Bellco never effectuated any civil action.

29. As a result of these lawsuits Mr. McDonalds insurance policies were canceled by his insurance provider. State Farm, Mr. McDonalds insurance provider cited in their cancelation letter, Mr. McDonald was subject to multiply civil actions. Mr. McDonald was a State Farm customer for 40 years.

30. Mr. McDonalds switched his insurance to Allstate. Allstate canceled Mr. McDonalds insurance because they also stated, he was subject to multiply civil litigations.

31. Mr. McDonalds property 6214 S. Datura St., Littleton, Colorado is a 100% gated property. Bellco

admits in its Rule 26 Disclosures its agents transgressed the gated entrance on multiply occurrences.

32. Bellco admitted in its Rule 26 Disclosures it violated Mr. McDonalds right to privacy by having its agents trespass the gated property.

33. Bellco employee admitted under oath, Bellco provided no training regarding legal or illegal collection procedures.

34. It is a violation of Colorado law to trespass gated properties. See C.R.S. §§ 18-4-502; 18-4-503; 18-4-503.

35. It's also a violation of City of Littleton ordinance to trespass a gated property. See City of Littleton Ordinance; § 6-4-41 and § 6-4-22.

36. On January 30, 2017 Mr. McDonalds' vehicle was stolen from his gated property. Bellco reports it did not repossess the vehicle. Thus, Mr. McDonald attempted to file a stolen vehicle report with the City of Littleton Police; the police refused to take such report. Therefore, Mr. McDonald requested lien holder (Bellco) cosign a stolen vehicle report; Bellco refused.

C. Bellco refuses to obey Colorado's Rules of Civil Procedure.

37. C.R.C.P. 121 § 1-15(8) states that "[m]oving counsel shall confer with opposing counsel before filing a motion."

38. The clear purpose of the Colorado Rule of Civil Procedure 121 is to require parties to identify and attempt to resolve emerging issues before engaging in motion practice. The plain language definition of the word “confer” means “[t]o meet in order to deliberate together or compare views; consult.” See, American Heritage Dictionary of the English Language.

39. Colorado courts interpret the word “shall” in C.R.C.P. 121 § 1-15(8) as creating a mandatory requirement.

40. Movant Belco, in order to satisfy the duty to confer pursuant to Colorado law must speak with opposing counsel Mr. McDonald before engaging in motion practice. See C.R.C.P. § 121(c) and C.R.C.P. 121 § 1-15(8).

41. On or about January 17, 2018 Belco once again engaged in motion practice without conferring. Belco filed motion to redact their admitted wrongdoing from the Arapahoe County Record and to limit Discovery without conferring with Mr. McDonald.

42. Arapahoe County granted Belco’s motion to redact their wrongdoing from the courts Record without Mr. McDonald heard on issue and without notice in violation of the Rules of Civil Procedure; C.R.C.P. § 121(c); C.R.C.P. 121 § 1-15(8); C.R.C.P. 121§ 1-15(9); and C.R.C.P. 121§ 115(1)(b).

43. Arapahoe County also granted Belco’s motion to limit Discovery without Mr. McDonald heard on issue although Belco failed to confer prior to engaging

in motion practice in violation of the Rules of Civil Procedure; C.R.C.P. § 121(c); C.R.C.P. 121 § 1-15(8); C.R.C.P. 121§ 1-15(9); C.R.C.P. 121§ 1-15(1)(b). Belco having Arapahoe County in its pocket refused to participate in Discovery.

VI. CAUSES OF ACTION
A. First Cause of Action (Violation
of the 5th & 14th Amendment of the
United States Constitution)

44. Mr. McDonald hereby fully incorporates each and every allegation contained in paragraphs 1-43 of the Notice of Removal and Complaint.

45. Upon information and belief, Belco knowingly made, used or caused to be made or used false record or statement in contravention of Federal law and State law.

46. Upon information and belief, Belco moved the state court to redact its admitted wrongdoing from in its own Rule 26 Disclosers without conferring with opposing counsel.

47. Upon information and belief, Arapahoe County granted Bellcos' *ex parte* motion to redact its wrongdoing for the courts Record without opposing counsel heard on Bellcos' motion in violation of C.R.C.P. § 121(c); C.R.C.P. 121 § 1-15(8); C.R.C.P. 121 § 1-15(1)(b); and C.R.C.P. 121 § 1-15(9).

48. Upon information and belief, Arapahoe County had actual knowledge of Bellcos' misconduct.

In deliberate ignorance and in reckless disregard of the Constitution and its provisions for equal justice under the law and taking of property without due process Bellco schemed with Arapahoe County to violate Mr. McDonalds due process rights in its proceedings.

49. Upon information and belief, Bellco and Arapahoe County in deliberate ignorance and reckless disregard of violation of C.R.C.P. § Rule 26 limited Mr. McDonalds Discovery to shape and control the outcome of the Arapahoe County case in violation of the Constitution.

50. Upon information and belief, Bellco in its *ex parte* motion moved Arapahoe County to redact its wrongdoing from the courts' record without notice to Mr. McDonald. Arapahoe County in deliberate ignorance and in reckless disregard of due process and in violation of C.R.C.P. § 121(c) and C.R.C.P. 121 § 1-15(1)(b) redacted Bellcos' wrongdoing in Arapahoe County Case No. 2017cv162 without allowing Mr. McDonald to be heard on motion.

51. Bellcos' actions violate the 5th and 14th Amendments to the United States Constitution.

52. Bellcos' actions violate Article II, Bill of Rights, Section 6 and Section 25 of the Colorado Constitution.

53. As a result of Bellcos' violations of the United States Constitution and Colorado Constitution, Bellco with the help of Arapahoe County via *ex parte* motions

concealed years of Bellicos' misconduct in violation of Colorado and Federal law.

54. As a result of Bellicos' actions, Mr. McDonald has suffered irreparable harm, loss of property, loss of income, and loss of his retirement account in amounts to be determined at trial.

**B. Second Cause of Action
(Violation of the 1st Amendment of the
United States Constitution)**

55. Mr. McDonald hereby fully incorporates each and every allegation contained in paragraphs 1-43 of the Notice of Removal and Complaint.

56. Upon information and belief, Bellco knowingly made, used or caused to be made or used false record or statement in contravention of Federal law and State law.

57. Upon information and belief, Bellco knowingly violated Mr. McDonalds right to privacy by having its agents trespass the gated property where he resided. In deliberate ignorance and in reckless disregard of the Constitution, Colorado law, and City of Littleton ordinance, Bellco and its employees and or agents willfully trespassed the gated property to harass Mr. McDonald.

58. Upon information and belief, Bellco recruited neighbors to spy on Mr. McDonalds activities. Bellco in reckless disregard of the Constitution took unreasonable action in pursuing an alleged debt, causing Mr.

McDonald extreme mental anguish, embarrassment, humiliation and mental suffering.

59. Upon information and belief, Belco waived its right to litigate the alleged debt after it was informed of the Eagle Counties misconduct and acted upon the illegal writ seizing Mr. McDonalds accounts.

60. Belcos actions violate the 1st Amendment to the Constitution, Colorado law and City of Littleton Ordinance.

61. As a result of Belcos' violations of the United States Constitution, Colorado law and City of Littleton Ordinance, Belco caused a disharmony in the neighborhood creating a false belief Mr. McDonald was a criminal. Which resulted in his neighbors looking upon him with suspicion and rejection.

62. As a result of Belcos' actions, Mr. McDonald has suffered irreparable harm, loss of property, loss of income, loss of his retirement account and extreme mental anguish in amounts to be determined at trial.

C. Third Cause of Action
**(Violation of 15 U.S.C. § 1692 – FDCPA/
15 U.S.C. § 1681 – FCRA)**

63. Mr. McDonald hereby fully incorporates each and every allegation contained in paragraphs 1-43 of the Notice of Removal and Complaint.

64. Upon information and belief, Belco knowingly made, used or caused to be made or used false

record or statement in contravention of Federal law and State law.

65. Upon information and belief, Bellco knowingly filed a civil action for an alleged debt after the statute of limitations tolled.

66. Upon information and belief, Bellco failed in its obligation to obey laws passed by the people for the State of Colorado, barring litigation of an alleged debt.

67. Upon information and belief, Bellco had actual knowledge the statute of limitations had tolled. Bellco to sway Arapahoe County into allowing the civil action made the false representation in their Complaint, Mr. McDonald acquired a loan to purchase a car.

68. Upon information and belief, Bellco repeatedly filed numerous complaints in Arapahoe County which led to Mr. McDonalds insurance providers canceling his insurance.

69. Upon information and belief, Bellco with intent to defraud the court utilized old case numbers in a scheme making an end-run around Colorado's statute of Limitations.

70. Bellcos' actions violate FDCPA 15 U.S.C § 1692d(1); 15 U.S.C 1692d(2) and (5); 15 U.S.C. § 1692d(6); 15 U.S.C. 1692c(c); 15 U.S.C. § 1692b.

71. As a result of Bellcos' violations of the federal Fair Debt Collection Practices Act 15 U.S.C. § 1692 *et al.*, Mr. McDonald has spent countless hours and time

away from business defending himself in a civil action where Bellco is without standing.

72. As a result of Bellcos' actions, Mr. McDonald has suffered irreparable harm, loss of property, loss of income, loss of his retirement account in amounts, and extreme mental anguish to be determined at trial.

**D. Fourth Cause of Action
(Violation of 12 C.R.S. § 12-14-101 CFDCPA)**

73. Mr. McDonald hereby fully incorporates each and every allegation contained in paragraphs 1-43 of the Notice of Removal and Complaint.

74. Upon information and belief, Bellco knowingly made, used or caused to be made or used false record or statement in contravention of Federal law and State law.

75. Upon information and belief, Bellco with intent to defraud the court utilized old case numbers in a scheme making an end-run around Colorado's statute of Limitations.

76. Upon information and belief, Bellco used deceptive forms to create a false belief that Mr. McDonald had purchased a car via a loan from Bellco.

77. Upon information and belief, Bellco used false or misleading representations as a means for the collection of an alleged debt.

78. Bellcos' actions violate CFDCPA specifically, C.R.S. § 12-14-107(1) & (1)(b)(I) & (1)(e); C.R.S. § 12-14-108(1).

79. As a result of Bellcos' violations of the Colorado Fair Debt Collection Practices Act, C.R.S. § 12-14-101 *et al.*, Mr. McDonald has spent countless hours and time away from business defending himself in a civil action where Belco is without standing.

80. As a result of Bellcos' actions, Mr. McDonald has suffered irreparable harm, loss of property, loss of income, loss of his retirement account, and extreme mental anguish in amounts to be determined at trial.

VII. Memo to The Court.

Mr. McDonald has requested and paid for a digital copy of the Arapahoe County Record. As soon as the digital Record is completed by Arapahoe Counties, a copy of the Record will be filed in this Court.

Respectfully submitted this 24th day of January, 2017,
Kirk McDonald/ Pro se/ Private Attorney General

Date _____ Signatutre _____

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: November 13, 2017
Certiorari to the Court of Appeals, 2016CA652 District Court, Arapahoe County, 2014CV200074	
Petitioner: Kirk McDonald, v. Respondent: CitiBank N.A., as Trustee for Chase Funding Mortgage Loan Asset-Backed Certifi- cates, Series 2002-4.	Supreme Court Case No: 2017SC465
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, NOVEMBER 13, 2017.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: September 23, 2019
Certiorari to the Court of Appeals, 2018CA689 District Court, Arapahoe County, 2014CV162	
Petitioner: R. Kirk McDonald, v. Respondent: Bellco Credit Union.	Supreme Court Case No: 2019SC475
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, SEPTEMBER 23,
2019.

JUSTICE BOATRIGHT does not participate.

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 17, 2019
Certiorari to the Court of Appeals, 2018CA689 District Court, Arapahoe County, 2017CV162	
Petitioner: R. Kirk McDonald, v. Respondent: Bellco Credit Union.	Supreme Court Case No: 2019SC475
ORDER OF COURT	

Upon consideration of the Motion for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, DENIED Pursuant to C.A.R. 40(c)(3). NO Petition for rehearing may be filed after issuance of an order denying a Petition for Writ of Certiorari.

BY THE COURT, OCTOBER 17, 2019.

App. 41

RID:D0032017CV000162-000154

Print Minute Orders 1/25/18 10:32 AM

Status: District Court, Arapahoe County
Case #: 2017 CV 000162 Div/Room: 202 Type: Money
BELLCO CREDIT UNION, vs. MCDONALD, R KIRK

FILE DATE EVENT/FILING/PROCEEDING

1/25/2018 Minute Order (print)

DATE FILED: January 25, 2018

JUDGE: EBV CLERK: REPORTER:

STATUS CONFERENCE

JUDGE: VOLZ CLERK: DJB DIV. 202

FTR: 10:02 AM

CSL DAVID BAUER AND RYAN STEVENS APPEAR
FOR PLAINTIFF

DEFENDANT R. KIRK MCDONALD DOES NOT
APPEAR

THE COURT RECEIVED TODAY VIA EMAIL DEF'S
PETITION FOR REMOVAL TO FEDERAL COURT
AND REQUEST TO VACATE TODAY'S HEARING.
THE DOCUMENTS HAVE NOT BEEN FILED WITH
THE CLERK'S OFFICE.

* * *
