

FILED Document – District Court
2009CV100
CO Weld County District Court 19th JD
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DISTRICT COURT, LARIMER COUNTY, COLORADO
915 10th Avenue
Greeley, Colorado 80631

IN RE SEARCH OF AMALIA'S TRANSLATION AND TAX SERVICE; and AMALIA CERRILLO, LUIS NORIEGA, on behalf of himself and as class representative, JOHN DOE, on behalf of himself and as class representative, FRANK DOE, on behalf of himself and as class representative, and ROBERT DOE, on behalf of himself and as class representative,

Plaintiffs,

v.

KENNETH BUCK, in his official capacity as District Attorney for the Nineteenth Judicial District; and JOHN COOKE, in his official capacity as Weld County Sheriff,

Defendants.

Case No.: 09 CV 100

Courtroom/Div.: 1

ORDER RE MOTION FOR JUDGMENT ON THE PLEADINGS

This matter comes before the court on Plaintiffs' Motion for Judgment on the Pleadings, Defendants' response and Plaintiffs' reply. The court being fully advised makes the following findings, conclusions and orders:

1. This court entered an order on August 23, 2010, denying Defendants' motion to dismiss this action as moot and granting Plaintiffs' motion to lift the stay of further proceedings in this case. On September 8, 2010, Defendants filed an Answer. On September 27, 2010, this court entered a Case Management and Scheduling Order pursuant to C.R.C.P. 16. On October 8, this court adopted the stipulated order of the parties for a Modified Case Management Order. Simply stated, that order provided that the case would not be set for trial, there would be no Rule 26(a)(1) or (2) disclosures

and no discovery, and that Plaintiffs would file a Motion for Judgment on the Pleadings or a Motion for Summary Judgment by October 25, 2010. Plaintiffs did file the motion now before the court for judgment on the pleadings on that date.

2. Judgment on the pleadings is appropriate if, from the pleadings, the moving party is entitled to judgment as a matter of law. Both parties agree that there are no significant material factual disputes. Both parties also agree that judgment should be rendered on the pleadings, effectively both being movants. Plaintiffs argue that the judgment should be a declaratory judgment that that Plaintiff's rights were violated by an unconstitutional search and that there should be entry of a permanent injunction. Defendants argue that the judgment should be dismissal of the action.

3. In most respects the parties have made the same arguments that they made in their pleadings related to the Motions to Dismiss and to Lift Stay. This court in paragraph 5 of the Order Re Motions to Dismiss and to Lift Stay stated what the undisputed facts are in this case. Those will not be repeated here. Defendants' Answer in this case has not changed the court's findings in that regard. Simply stated, Defendants illegally searched and seized property of Plaintiffs in this action. The Colorado Supreme Court so ruled in the criminal case of Ramon Gutierrez, a client of Plaintiff, Amalia's Translation and Tax Service. People v. Gutierrez, 222 P.3d 925 (Colo. 2009). As noted by Plaintiffs in their reply Defendants have essentially in their response to Plaintiffs' motion for judgment on the pleadings simply reargued their motion to dismiss. Defendants argue that judgment should be rendered on the pleadings that this action is moot and therefore should be dismissed due to the ruling in Gutierrez and by Defendants' return of property seized and their representation that they will not use any information from the property seized in any future criminal proceedings. Plaintiffs argue that since there are no further factual disputes this court's previous Order Re Motions to Dismiss and to Lift Stay effectively resolved the issues now before the court in their favor. This court agrees.

4. Again, it is not necessary to restate the entire previous order. In summary, the holding in Gutierrez applies to Ramon Gutierrez and defines the rights of similarly

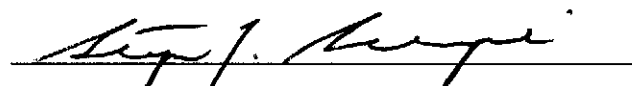
situated criminal defendants. However, it does not address the broader privacy issues of Amalia Cerillo, her business and her clients and it is not a binding declaration of the rights of Plaintiffs in relation to the Defendants in this case. Further, the Gutierrez decision does not fully protect the Plaintiffs from use by Defendants of the wrongfully seized property of Plaintiffs. Accordingly, this court concludes that Plaintiffs are entitled as a matter of law to judgment on the pleadings as they have requested. Williams v. Kaufman County, 352 F.3d 994 (5th Cir. 2003); Doe v. U.S. Air Force, 812 F.2d 738 (D.C. Cir. 1987); University of Colorado v. Derdeyn, 863 P.2d 929 (Colo. 1993).

5. The court therefore orders and declares that the Defendants' search of Amalia's Translation and Tax Service and the search and seizure of the taxpayers' files violated Plaintiffs' rights under the Colorado and United States constitutions.

6. The court further orders that the preliminary injunction entered on April 20, 2009, is converted into a permanent injunction in the form proposed by Plaintiffs. The court has signed that Permanent Injunction on this date. The Clerk of Court and Defendants shall comply with the provisions of that Permanent Injunction.

Dated this 21st day of December, 2010.

BY THE COURT



Stephen J. Schapanski
District Court Judge