

DISTRICT COURT
PITKIN COUNTY
STATE OF COLORADO
506 EAST MAIN STREET, SUITE 300
ASPEN, CO 81611

MARILYN MARKS,
Plaintiff,

^FOR COURT USE
ONLY^

v.

KATHRYN KOCH,
Defendant.

Case No. 09 CV 294

Division No. C

For Plaintiff:
By: Robert A. McGuire, Esquire
Law Office of Robert A.
McGuire, LLC
1624 Market Street, Suite 202
Denver, Colorado
80202

For Defendant:
John P. Worcester, City Attorney
City of Aspen
City Hall
130 S. Galena Street, Second Floor
Aspen, Colorado
81611

The matter came on for hearing on Thursday,
January 28, 2010, before the HONORABLE
JAMES B. BOYD, Judge of the District Court,
and the following proceedings were had.

(The parties are present through counsel.)

EXHIBIT "B"

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1 MORNING SESSION, THURSDAY, JANUARY 28, 2010

2 (Whereupon the following proceedings were
3 conducted in open court:)

4 THE COURT: Good morning, everybody. This is
5 Pitkin case 09 CV 294, Marilyn Marks is the plaintiff, City
6 Clerk of Aspen, the defendant. Mr. McGuire is present here in
7 the courtroom in Glenwood Springs. For the City Clerk, Mr.
8 Worcester on the phone?

9 MR. WORCESTER: Yes, sir.

10 THE COURT: And Mr. True?

11 MR. TRUE: Yes, Your Honor.

12 THE COURT: Anybody else on the phone at the
13 moment? All right.

14 We set this over for a case management conference
15 after we continued the originally set hearing so the parties
16 could engage some additional -- in some additional preparation
17 work. There's also, of course, a pending motion to dismiss.
18 I'm going to have to take another handful of days, at least
19 through the weekend, to get the motion to dismiss completed,
20 or my Order on it. So I'm not prepared to rule on that right
21 now.

22 But it appears to me perhaps we should be talking
23 about resetting the hearing, but Mr. McGuire, where are we
24 from your point of view?

25 MR. MCGUIRE: Your Honor, we're first of all,

1 ready to reset the hearing. On the two things that we had
2 discussed last time, we've discussed that we had requested to
3 depose TrueBallot because we thought that TrueBallot had some
4 facts that would be material and relevant to making Ms. Marks'
5 case.

6 As you recall from the last time we talked, the --
7 TrueBallot had been willing to testify but they had then
8 changed their mind. We requested to depose them and the City
9 opposed it at the last conference. We settled on a compromise
10 which was to attempt to stipulate to the facts that we thought
11 we needed from TrueBallot and that would spare all of the
12 parties the expense of a deposition.

13 We attempted to do that since the last conference.
14 The City -- First of all, TrueBallot was not cooperative.
15 And second of all, we proposed 54 facts that we wanted to
16 stipulate which we thought some of them were foundational,
17 some of them were directly relevant to the issues before the
18 Court. The City was only able to stipulate to one of them and
19 so we feel like that was not an adequate solution for us and
20 we would like to be given the opportunity to depose
21 TrueBallot. That's our first issue.

22 THE COURT: All right. Mr. Worcester, anything
23 you'd like to say about that?

24 MR. WORCESTER: It's true, Your Honor, that
25 TrueBallot was unable to assist in our -- in the 54 different

1 statements. We were not able to stipulate to more than just
2 one simply because we don't believe -- some of the facts are
3 true. Others, we don't know if they're true or not with
4 TrueBallot's input.

5 And finally, most of the facts are not relevant to
6 any of the issues before the Court. We feel that they're just
7 an attempt to seek an admission from the City in matters that
8 are unrelated to the case.

9 THE COURT: All right. Well, I can't say exactly
10 how that will play out. It is a case where some discovery is
11 appropriate. At least based on -- and I -- I'm not trying to
12 invite further pleading wars or delays, but nevertheless, I
13 think given what I've heard right now I'm simply going to
14 authorize the deposition to go forward. If that triggers a
15 motion for some kind of Protective Order, I guess I'll have to
16 let that motion get plead and I'll resolve it once it's fully
17 before the Court.

18 MR. WORCESTER: That's fine, Your Honor. We think
19 we probably will oppose it and we can do it in our pleadings.

20 THE COURT: All right. Recognizing that issue it
21 out there, Mr. McGuire, from your point of view, how far out
22 do you think we should be looking to set a hearing?

23 MR. MCGUIRE: Well, I guess if they're going to
24 file a Protective -- a Motion for Protective Order and we're
25 going to oppose that, I guess it really depends on the Court's