

DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) EVERGREEN ALLIANCE GOLF LTD LP	DATE FILED: January 24, 2019 3:30 PM CASE NUMBER: 2018CV31475
v.	
Defendant(s) CLAYTON EARLY LEARNING AS TRUSTEE OF GEO	
△ COURT USE ONLY △	
Case Number: 2018CV31475 Division: 275 Courtroom:	
Order: (Proposed) Case Management Order (also filed on behalf of Defendant Clayton Early Learning)	

The motion/proposed order attached hereto: GRANTED WITH AMENDMENTS.

THIS MATTER comes before the Court on the Parties' Proposed Case Management Order. The Court, having reviewed the Proposed Case Management Order, the court file, and being otherwise fully informed in the premises, HEREBY ORDERS as follows:

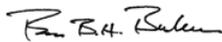
The attached Proposed Case Management Order is ADOPTED as an Order of the Court with the following amendments:

Regarding paragraph 11, Plaintiff shall disclose the categories and types of damages sought and a preliminary calculation by February 25, 2019, subject to supplementation and amendment as discovery proceeds.

Regarding paragraph 12, each side may disclose up to two (2) experts, retained or non-retained, without further leave of Court. The Court may consider additional experts for good cause shown.

The Case Management Conference set to commence on January 25, 2019 is HEREBY VACATED.

Issue Date: 1/24/2019



ROSS B BUCHANAN
District Court Judge

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202 (720) 865-8301</p>	
<p>Plaintiff: EVERGREEN ALLIANCE GOLF LIMITED, L.P., d/b/a ARCIS GOLF; v. Defendant: CLAYTON EARLY LEARNING, AS TRUSTEE OF THE GEORGE W. CLAYTON TRUST, a Colorado Trust.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Plaintiff and Third-Party Defendant:</i> Frank W. Visciano, #7274 Devin N. Visciano, #45216 SENN VISCIANO CANGES P.C. 1700 Lincoln Street, Suite 4300 Denver, CO 80203 Telephone: (303) 298-1122 Facsimile: (303) 296-9101 FVisciano@sennlaw.com; DVisciano@sennlaw.com</p> <p><i>Attorneys for Defendants:</i> Jonathan G. Pray, Esq. # 36576 David B. Meschke, Esq. # 47728 Brownstein Hyatt Farber Schreck, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202 jpray@bhfs.com dmeschke@bhfs.com</p>	<p>Case Number: 2018CV031475 Division/Courtroom: 275</p>
<p>[PROPOSED] CASE MANAGEMENT ORDER</p>	

Plaintiff Evergreen Alliance Golf Limited, L.P., d/b/a/ Arcis Golf (“Arcis Golf”), and Defendant Clayton Early Learning, as Trustee of the George W. Clayton Trust (“Clayton”), by their respective attorneys, submit the following Proposed Case Management Order.

- 1. The “at issue date” is:** December 7, 2018

2. Responsible attorneys' names, address, phone number and email address:

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3. The lead counsel for each party, Frank Visciano and Jonathan Pray, conferred by phone concerning scheduling this case management conference on **December 19, 2018**, to discuss this Proposed Order and each of the issues listed in Rule 16(b)(3)(A) through (E).

4. Brief description of the case and identification of the issues to be tried (not more than one page, double-spaced, for each side):

a. Arcis Golf's statement of the case:

Defendant Clayton owns the Park Hill Golf Course (the "Golf Course"), and entered into the Original Lease with the original tenant in 1998. Since December 2008, Arcis Golf has been the tenant and Golf Course operator under the Lease (as amended). Over the past ten years, Arcis Golf's investments in the Lease and Golf Course have been substantial.

Article 24 of the Lease grants Arcis Golf a valuable right of first refusal ("ROFR") to purchase Clayton's fee interest in the Golf Course. The City of Denver ("City") began discussing a possible purchase of the Golf Course with Clayton sometime in late 2016 or early 2017. In 2017, Clayton received a substantial offer from the City to purchase the Golf Course. The accepted offer evolved into what the City publicly announced as an "agreement", memorialized {00593310.DOCX / 1}

in a detailed written purchase and sale agreement in September 2017, which was reviewed by certain members of the Denver City Council at a meeting on October 3, 2017. Upon learning of the sale through public announcements, Arcis Golf delivered to Clayton a letter, on November 28, 2017, demanding that Clayton comply with Article 24 of the Lease, deliver to Arcis Golf written notice of the terms and conditions of the City's offer, and provide to Arcis Golf the thirty day period to agree to purchase the Golf Course in accordance with the City's offer. Clayton has denied Arcis Golf's right of first refusal under Article 24 of the Lease to purchase the Golf Course on the same terms as had been offered to the City.

Arcis Golf has asserted two claims for (1) breach of the Lease and the implied covenant of good faith and fair dealing, and (2) declaratory judgment for specific performance. Arcis Golf asserts that Clayton is in breach of the Lease, and the implied covenant of good faith and fair dealing contained therein, due to (among other things) its failure to give notice to Arcis Golf of the City's purchase offer, and its failure to recognize and honor Arcis Golf's ROFR. Arcis Golf seeks declaratory judgment and an Order requiring Clayton's specific performance under Article 24 of the Lease, allowing Arcis Golf to purchase the Golf Course on the same terms as had been offered to the City. Arcis Golf also seeks an award of all damages resulting from the Trust's breach of the Lease. Arcis Golf further seeks an award of its attorneys' fees and costs in accordance with the terms of the Lease.

b. Clayton Early Learning's statement of the case:

Defendant Clayton Early Learning ("Clayton") is a Colorado nonprofit dedicated to advancing early childhood education. It was established as trustee of the George W. Clayton Trust after Mr. Clayton left the majority of his estate to establish the George W. Clayton College, which has since evolved into an early learning institution. In its role as trustee of the George W. Clayton Trust, Clayton is the lessor of real property that is the Park Hill Golf Course.

Clayton's lease with the golf course operator, Plaintiff, was set to expire at the end of 2018. In anticipation of the expiration of the lease and as part of a larger discussion about the future of the property, Clayton entered into discussions with the City of Denver that would allow the City to purchase the entire property. These discussions, however, never materialized into a legal and binding contract.

Plaintiff's claims are based on a faulty reading of its right of first refusal under the parties' lease and a misunderstanding of municipal law. Because Plaintiff's right of first refusal to purchase Defendant's fee interest in the Park Hill Golf Course is triggered only when there is a "bona fide offer," which the lease specifies must "constitute a legal, valid, and binding obligation of the purchaser," Denver's City Council must first approve the offer through ordinance or resolution for an agreement with the City to be a bona fide offer. This never happened, and the lease forbids Clayton from accepting an offer that is not a "bona fide offer." Therefore, no right of first refusal was triggered, which removes the premise of Plaintiff's two claims for relief. Plaintiff's claims fail and it is entitled to no relief.

5. The following motions have been filed and are unresolved:

None at this time.

6. Brief assessment of each party's position on the application of the proportionality factors, including those listed in C.R.C.P. 26(b)(1):

The application of the proportionality factors does not require any limitations on or modifications of the scope and type of discovery as set forth in the Rules of Civil Procedure, except for the expansion of the number of permitted depositions as set forth in Section 12, below.

7. Conferral regarding settlement:

The parties have had initial discussions regarding the general issues needing to be evaluated in connection with any settlement discussions. No settlement has been reached as of this time. The parties may continue to explore the possibility of settlement.

8. Deadlines for:

- a. Amending or supplementing pleadings:** March 22, 2019 (C.R.C.P. 16(b)(8)).
- b. Joinder of additional parties:** March 22, 2019 (C.R.C.P. 16(b)(8)).
- c. Identifying non-parties at fault:** August 7, 2018 (date Complaint filed+105 days).
- d. Alternative dispute resolution:** The parties agree to confer in good faith regarding alternative dispute resolution and whether conducting mediation will further the resolution of this matter.
- e. Dispositive motions:** July 22, 2019

9. Dates of initial disclosures: The parties have agreed to exchange their initial disclosures on or before January 18, 2019.

10. Objections, if any, about their adequacy: As of the date of the submission of this Proposed Order, the parties have not exchanged initial disclosures. In the event an objection arises with regard to their adequacy, the parties will confer in good faith in order to resolve any such objection before submitting the dispute to the Court through its discovery dispute resolution procedure, contained in Section VI of the Court's May 4, 2018 Pre-Trial Order.

11. Statements as to Information Not Disclosed Under C.R.C.P. 26(a)(1)(C):

Plaintiff Arcis Golf's statement:

Because of the commencement of condemnation proceedings on the Golf Course property and the still to be determined impact of such proceedings on its damage claim, Arcis

Golf cannot at this time provide its preliminary calculation of damages; Arcis Golf will need to conduct discovery before providing it. Arcis Golf will later supplement its damages disclosure pursuant to C.R.C.P. 26(e) when its damages under its breach of Lease claim are determined.

Defendant Clayton Early Learning's statement:

Clayton objects to Plaintiff's statement that it cannot currently comply with Rule 26(a)(1)(C). At minimum, Plaintiff should provide the categories and types of damages sought and a preliminary computation. Plaintiff has had over eight months since filing the suit to at least come up with categories of damages. If more information comes to light, such as information regarding the City's condemnation, Plaintiff may of course supplement its damages disclosure.

12. Proposed limitations on scope of discovery:

a. Number of depositions per party (C.R.C.P. 26(b)(2)(A) limit 1 of adverse party + 2 others + experts per C.R.C.P. 26(b)(4)(A)):

- One (1) of adverse party plus ten (10) others, plus experts, per C.R.C.P. 26(b)(4)(A)

b. Number of interrogatories per party (C.R.C.P. 26(b)(2)(B) limit of 30):

- Thirty (30) per party.

c. Number of requests for production of documents per party (C.R.C.P. 26(b)(2)(D) limit of 20):

- Twenty (20) per party.

d. Number of requests for admission per party (C.R.C.P. 26(b)(2)(E) limit of 20):

- Twenty (20) per party.

e. Any physical or mental examination per C.R.C.P. 35:

- None proposed at this time.

f. Any limitations on awardable costs:

- None proposed.

g. State the justifications for any modifications in the foregoing C.R.C.P.

26(b)(2) limitations:

- During their December 19, 2018 C.R.C.P. 16 conferral, the parties discussed the large number of non-party individuals who have information regarding the claims and defenses in this action, and the transactions that are the basis for the claims. As a result, the parties are in agreement that it is necessary and reasonable to increase the number of depositions to one (1) of each adverse party plus ten (10) others, plus experts, per C.R.C.P. 26(b)(4)(A).

13. Number of experts, subjects for anticipated expert testimony, and whether experts will be under C.R.C.P. 26(a)(2)(B)(I) or (B)(II):

The parties have agreed at this time to a limit of two (2) experts per side plus rebuttal experts as necessary, on subjects to be determined through the course of discovery. As discovery proceeds, the parties will confer if it is determined additional experts are needed given the nature of the claims and defenses asserted.

14. Proposed deadlines for expert witness disclosure if other than those in C.R.C.P.

26(a)(2): Same as C.R.C.P. 26(a)(2), as follows:

a. Production of expert reports:

i. Plaintiff/claimant: June 17, 2019

ii. Defendants/opposing parties: July 15, 2019

b. Production of rebuttal expert reports: August 5, 2019

c. Production of expert witness files: Subject to the limitations provided in C.R.C.P. 26(b)(4)(D), expert witnesses shall be required to produce their files within seven days of disclosure under C.R.C.P. 26(a)(2).

15. Oral Discovery Motions:

Written discovery motions will be accepted only in accordance with Section VI of the Pre-Trial Order.

16. Electronically Stored Information:

The parties have been advised concerning their obligations to preserve documents and information relevant to the dispute. The parties have discussed the scope and nature of this information, and believe it will be identified in their respective initial disclosures or will be produced with supplemental disclosures if subsequently discovered. Unless specified otherwise and agreed to among the parties based on a particular document or category of document, electronically stored information should be produced in hard copy or .pdf format. If possible, email communications should be produced in their native format to preserve attachments and forensic metadata. In the event a party requests information that requires the use of forensic data recovery or other costly methods of retrieval for information, the parties agree to meet and confer about the apportionment of costs associated with any such recovery efforts.

17. Parties' best estimate as to when discovery can be completed: September 2, 2019

Parties' best estimate of the length of the trial: 5 day trial to the Court.

Trial will commence on: October 21, 2019 at 8:30 a.m.

Pretrial conference: TBD.

18. Other appropriate matters for consideration: None at this time.

Dated: January 22, 2019

/s/ Devin N. Visciano

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Attorneys for Defendant

Attachment to Order 2019-01-22 CV31475

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the foregoing, including any modifications made by the Court, is and shall be the Case Management Order in this case.

Dated: _____, 2019

BY THE COURT:

Ross B.H. Buchanan
DISTRICT COURT JUDGE

Attachment to Order - 2018CV31475