

University of Colorado Law School

Colorado Law Scholarly Commons

Colorado Supreme Court Records and Briefs Collection

12-10-1979

Barker v. District Court In and For Larimer County

Follow this and additional works at: <https://scholar.law.colorado.edu/colorado-supreme-court-briefs>

Recommended Citation

"Barker v. District Court In and For Larimer County" (1979). *Colorado Supreme Court Records and Briefs Collection*. 2913.

<https://scholar.law.colorado.edu/colorado-supreme-court-briefs/2913>

This Brief is brought to you for free and open access by Colorado Law Scholarly Commons. It has been accepted for inclusion in Colorado Supreme Court Records and Briefs Collection by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

IN THE SUPREME COURT
FOR THE STATE OF COLORADO

No. **79SA552**

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
DEC 10 1979

David W. Buzia

SAMUEL BARKER,

Petitioner

vs.

WILLIAM F. DRESSEL, A Larimer
County District Judge, Eighth
Judicial District, State of
Colorado,

Respondent

PETITION FOR RELIEF
PURSUANT TO C.A.R. 21

PETITION FOR RELIEF PURSUANT TO C.A.R. 21

G. William Beardslee #1960
Suite 505, First National Tower
215 West Oak Street
Fort Collins, Colorado 80521
Telephone: 221-4000

IN THE SUPREME COURT
FOR THE STATE OF COLORADO

No. _____

SAMUEL BARKER,

Petitioner

vs.

WILLIAM F. DRESSEL, A Larimer
County District Judge, Eighth
Judicial District, State of
Colorado,

Respondent

PETITION FOR RELIEF
PURSUANT TO C.A.R. 21

COMES NOW Samuel Barker, an aggrieved or injured party in Civil Action Number 79 CV 695, Larimer County District Court, Eighth Judicial District, State of Colorado and petitions the Colorado Supreme Court for relief pursuant to C.A.R. 21. As grounds therefor, Petitioner states and alleges as follows:

I. STATEMENT OF THE PARTIES

Samuel Barker is an unnamed defendant in Civil Action Number 79 CV 695 in Larimer County District Court and will be referred to as Barker or Petitioner. William F. Dressel is a District Court Judge in the Eighth Judicial District and is the District Judge to whom this case has been assigned.

II. STATEMENT OF THE CASE

On August 9, 1979 the District Attorney for the Eighth Judicial District, Larimer County, State of Colorado, initiated an action pursuant to 1973 C.R.S. 16-13-301 et seq. As plaintiff in that action, the District Attorney in the name of the People, requested that the defendant (a building located at 426 Link Lane, Fort Collins, Colorado) be determined a Class I Public Nuisance. Plaintiff also requested that the subject property be confiscated, sold and that 426 Link Lane be forcibly vacated.

On August 14, 1979 the District Attorney obtained an Order of Court entitled "Temporary Restraining Order" and proceeded to serve the defendant building.

Shortly thereafter, Samuel Barker, an aggrieved person by the Court's Order of August 14, filed a Motion to Dismiss and a Motion for an evidentiary hearing pursuant to the terms of 1973 C.R.S. 16-13-308. On August 24, 1979 a hearing was held before respondent herein. Due to time limitations, only the Motion to Dismiss was heard. On August 28, 1979 Respondent issued his rulings and orders which, in effect, ruled that Respondent's Court had jurisdiction despite the innumerable procedural and substantive errors noted. No hearing was held pursuant to 1973 C.R.S. 16-13-308.

Immediately thereafter, Petitioner herein initiated an action in the Supreme Court for the State of Colorado entitled Petition for relief pursuant to C.A.R. 21. On September 14, 1979 the Colorado Supreme Court issued a Rule to Show Cause to the Respondent herein to determine why a hearing had not been held pursuant to statute.

On September 14, 1979 Respondent herein vacated his order of August 14, 1979 and set aside the Temporary Restraining Order.

On October 4, 1979 the Supreme Court discharged the original Rule to Show Cause, as the Temporary Restraining Order had been vacated and the matter was now moot.

Subsequent to that date the Plaintiff initiated a second Motion for Temporary Restraining Order, however in this circumstance, the Court never signed the Temporary Restraining Order on an ex parte basis.

On October 31, 1979 the Court held a hearing and shortly thereafter, on November 5, 1979 an Order was signed which, in effect, seized and closed the building located at 426 Link Lane, Fort Collins, Colorado. It was also ordered that the building shall be closed and the property and fixtures located therein be in the custody of the Court as of October 31, 1979 until further order of the Court.

A certified copy of the record and transcript is filed contemporaneously with this Petition. It is referred to herein and expressly incorporated by reference. Said record contains pleadings prepared by the District Attorney,

returns of service, the original petition for relief pursuant to C.A.R., memorandum brief, rules to discharge order, orders vacating temporary restraining order and other assorted pleadings and documents prepared by the parties.

A certified copy of the reporter's transcript of the October 31, 1979 hearing is also included for this Court's consideration.

III. STATEMENT OF FACTS IN SUPPORT OF REQUESTED RELIEF PURSUANT TO C.A.R. 21

1. Petitioner requests the Supreme Court of the State of Colorado to exercise that inherent supervisory jurisdiction over District Courts wherein inferior courts have exceeded their proper exercise of jurisdiction and/or abused their discretion pursuant to C.A.R. 21.

2. Petitioner is the owner of a leasehold interest located at 426 Link Lane, Fort Collins, Colorado and has been evicted from those premises by execution of the Temporary Restraining Order dated October 31, 1979. Petitioner alleges that the closure, confiscation and seizure of his property (leasehold owner) at 426 Link Lane is in excess of the respondent's proper jurisdiction.

3. Petitioner alleges that there is no plain, speedy or adequate remedy. Petitioner's leasehold interest has been confiscated since October 31, 1979 without foreseeable relief at present.

4. The Respondent, Larimer County District Court, Eighth Judicial District is proceeding in excess or for want of jurisdiction. The Supreme Court should exercise supervisory powers pursuant to C.A.R. 21 and the Colorado Constitution, Article Vi, Section 3. Specifically, Petitioner alleges that the District Court of Larimer County is in excess of its jurisdiction because:

A. The Temporary Restraining Order issued by the Respondent is violative of C.R.C.P. 65. Literally none of the precepts applicable to Temporary Restraining Orders have been followed. Within the Complaint and Temporary Restraining Order, the following defects are noted:

1. No statement in Complaint of immediate loss;
2. No statement in Complaint of irreparable injury;
3. No notice to owner;
4. No acknowledgment of attempts to provide notice;
5. No certification in Complaint by attorney that efforts to notify have been undertaken;
6. No definition of injury to be suffered;
7. No statement in Temporary Restraining Order why Temporary Restraining Order is necessary;
8. No reason in Temporary Restraining Order why Temporary Restraining Order has been granted without notice to all parties;
9. No notification in Temporary Restraining Order of expiration of Order within ten (10) days;
10. No description in Temporary Restraining Order of acts to be refrained;
11. No Order granting Temporary Restraining Order.

B. Petitioner alleges that the failure to comply with C.R.C.P. makes the Temporary Restraining Order void and any acts taken by the District Court void.

C. Petitioner alleges that the Cummons, Complaint, Temporary Restraining Order are so replete with procedural errors that the District Court is in violation of its jurisdiction. Petitioner alleges the following defects are so innumerable that no orders are proper:

1. The Summons, Complaint and Temporary Restraining Order are without substance as they do not have a defendant or persons as defendants;
2. The Summons, Complaint and Temporary Restraining Order are without effect as the original Summons and Complaint have been modified, amended and/or otherwise changed subsequent to its filing and service. Petitioner has been served with several Complaints, copies of which are included with the record as certified, none of which meet the requirements of C.R.C.P. 3 and 4.
3. No action has been commenced by plaintiffs below.
3. The Summons, Complaint and Temporary Restraining Order

do not join necessary and indispensable parties. (C.R.C.P. 19)
The plaintiff below knew the defendants and their positions, but voluntarily chose to not include them as defendants. The listing as a defendant of an "operator, or owner" does not confer personal jurisdiction or subject matter jurisdiction upon a court. No action has been commenced nor subject matter jurisdiction created pursuant to C.R.C.P. 3 and 4.

D. The District Court has abused its discretion in its issuance of a Temporary Restraining Order based upon the testimony and affidavit filed by the Plaintiff below, to-wit:

1. The testimony and affidavit do not set forth sufficient facts which support the issuance of a Class I public nuisance, temporary restraining order pursuant to 1973 C.R.S. 16-13-308.

2. The affidavit only indicates that, at best, a solitation occurred. Solitations are not Class I nuisances, but are Class II nuisances. Class II nuisances are not subject to temporary restraining Orders.

WHEREFORE, Petitioner prays for an Order of Court directing the Respondent to show cause pursuant to C.A.R. 21 and for an immediate Order staying the proceedings and orders in Civil Action 79 CV 695, Larimer County District Court, Eighth Judicial District.

G. William Beardslee
G. WILLIAM BEARDSLEE #1960
Suite 505, First National Tower
215 West Oak Street
Fort Collins, Colorado 80521
Telephone: 221-4000

STATE OF COLORADO)
) ss.: V E R I F I C A T I O N
County of Larimer)

I, Samuel Barker, the Petitioner herein, being sworn upon oath depose and state: that I am the Petitioner in the above captioned action, that I have read the foregoing Petition for Relief pursuant to C.A.R. 21 and know the contents thereof, that the same are true of my own knowledge, except as to matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

Samuel B. Barker
SAMUEL BARKER, Petitioner

SUBSCRIBED AND SWORN to before me, a notary public this 7th day of December, 1979.

My Commission Expires: 2-8-82

(S E A L)

Frederick J. Wheeler
Notary Public