

# Recent and Ongoing Litigation Under the Management of Wolfersberger, LLC

## Reunion Metro District, Commerce City, CO

### Reunion Metro. Dist. v. North Range Metro. Dist. No. 1 et al., 2022CV31644, Adams County District Court

- **Dec 22, 2022:** Complaint filed with the Court seeking a declaration that “...the North Range Metropolitan District No. 1 and the Board of Directors of North Range Metropolitan District No. 1 (collectively **"NRI"**) and the North Range Metropolitan District No. 2 and the Board of Directors of North Range Metropolitan District No. 2 (collectively **"NR2"**) cannot simply refuse to take legally required action to pay their debts incurred to fund tens of millions of dollars of public improvements installed within the boundaries of NRI and NR2 (the **"Public Improvements"**). NR1 and NR2 are in violation of certain agreements between the parties as well as in violation of the Supplemental Public Securities Act, C.R.S. §11-57-201 et seq. To preserve the Public Improvements and to ensure compliance with the pertinent securities, Reunion asks the Court to declare that the agreements are valid, issue a preliminary and permanent injunction, issue a writ of mandamus, and to impose the equitable remedy of a receiver.”
- **May 9, 2023:** The Court ordered a Preliminary Injunction and Appointed a Receiver. The districts “...shall perform all obligations under the Mill Levy Equalization Pledge Agreement....” NR1 must pay \$387,915.79 and NR2 must pay \$125,344.84.

## Amber Creek Metro District, Thornton

### Case 1: Lennar Colorado, LLC; Stratus Amber Creek v. Amber Creek Metropolitan District 2021CV30392

- **March 29, 2021** Complaint filed with the Court seeking “...enforcement of their rights under the agreements and recover the amounts owed.” “The District agreed under certain agreements to reimburse Lennar and Stratus for the costs Lennar and Stratus incurred in constructing public infrastructure improvements for the Amber Creek subdivision, and to pay Lennar and Stratus the fees the District collected from residential property permits and non-residential property permits. Despite these clear contractual obligations, the District has refused to reimburse Lennar and Stratus millions of dollars in construction costs and fees.”

- **April 30, 2021** Amber Creek Metropolitan District filed a Counter-Suit seeking “...to recover all funds improperly obtained by the Cross-Defendants; void or declare void all unlawful and self-interested contracts and transactions between Amber Creek and the Cross-Defendants; and provide relief to the property owners who are currently repaying millions of dollars in unnecessary debt through ad valorem property taxes extending through 2057.”
- **Dec 9, 2022** The Adams County Court dismissed the Cross-Complaint’s claims “...(causes of action 1, 2, 3, 4, 6, and 7) are DISMISSED with prejudice based on a lack of jurisdiction for failure to comply with the notice requirements under the CGIA. Derivative claims against the corporate Cross-Defendants (causes of action 4, 5, and 7) are, likewise, DISMISSED with prejudice.”
- **January 25, 2023** Amber Creek Metropolitan District appealed.
- **August 18, 2023**, Amber Creek Metro District entered into an agreement to pay Lennar \$1.125M and Stratus \$1.125 M. In exchange, Lennar agreed to cancel the C bonds Amber Creek issued to Lennar.

## **Case 2: UMB Bank National Ass’n v. Amber Creek Metro. Dist., 2023CV030168**

- **Feb. 3, 2023**, Amber Creek Metro District was sued by UMB Bank and was seeking a requirement for “...the District to properly apply taxes to payment of its bonds and pay all damages for its failure to do so in the past. The Trustee also seeks the appointment of a receiver during the pendency of this action to ensure that no future tax revenues are diverted from payment to the Trustee and to provide an accounting of the tax revenues diverted by the District.”
- **May 2, 2023**: Order Concerning Motion for Appointment of Receiver. “The Court finds that it is appropriate to appoint a Receiver.” “However, the Court understands that a receivership is an extraordinary remedy and should be exercised with the gravest of caution.”
- **Aug 26, 2023**: Order on Verified Motion for Forthwith Appointment of Receiver. “The Order empowers the Receiver to take immediate control, custody, and/or physical possession of and protect receivership property (as defined below), wherever located or found, to the exclusion of the District and all persons acting in concert and participation with the District.

Receivership property is defined in the Order as follows:

a) All revenue to be collected by Adams County from the date of this Order forward pursuant to the District's property tax of 57.266 mills levied "for the purpose of meeting all debt retirement expenses of the District during the 2023 budget year," under the Amber Creek Metropolitan District Resolution to Adopt 2023 Budget, adopted on November 22, 2022, and certified to Adams County as a mill levy for the Limited Tax G.O. Refunding and Improvement Bonds, Series 2017, net of Adams County's costs of collecting the same.

b) All revenue to be collected by Adams County from the date of this Order forward pursuant to the District's property tax that will be levied for the purpose of meeting all debt retirement expenses of the District during the 2024 budget year, net of Adams County's costs of collecting the same.

c) All other Pledged Revenue collected by Adams County or the District from the date of this Order forward, as defined in Section 1.01 of the Senior Indenture, including all Senior Property Tax Revenues, all Senior Specific Ownership Tax Revenues, all Senior PILOT Revenues, and all Capital Fees, net of Adams County's costs of collecting the same, and excluding revenue previously transferred to the Trustee."

- **April 17, 2024:** The Receiver filed his accounting of Pledged Revenue to quantify the amount of pledged revenue diverted by the District from 2018 through 2023. "Total Pledged Revenue was calculated to be \$3,679,259.24. Total transfers were calculated to be \$2,668,903.19. **Thus, the total Pledged Revenue Diverted was determined to be \$1,010,356.05.**"
- **September 23, 2024:** Receivers Final Periodic Report (Jan 1, 2024-September 18, 2024). Reporting payment of the total the **District had to repay** to the Trustee (for the bond holders) as \$1,010,356.05.

## Base Village Metro District, Aspen, CO

### Base Village Metro. Dist. No. 2 v. The Related Cos. LP et al., 2017CV030137, Pitkin County District Court

- In 2004, the Aspen Skiing Co. and fellow developer Intrawest organized two special metro districts on 30 acres in Snowmass, which was expected to host approximately one million square feet of residential, commercial and retail space.
- It was anticipated that Metro District No. 1 would own and operate revenue-generating properties, such as an aqua center, parking facilities, a performing arts center and a conference center, and the second district would oversee financing, including bond obligations and other debt.
- On elections held on November 2, 2004, November 7, 2006 and November 6, 2007, the voters of the two districts, Districts 1 and 2, voted to authorize debt and levy taxes in the districts.
- On June 25, 2008, the District 2 Board of Directors voted to authorize the issuance of \$15.2 million Series A Limited Tax Variable Rate Senior Bonds and \$32.55 in Series B Limited Tax Variable Rate Junior Bonds. The bonds were to be serviced by District 2 levying an ad valorem tax on all its taxable property, which would go into a revenue fund to service the debt.
- In 2018, Plaintiff Base Village Metropolitan District No. 2 filed a civil complaint against former Snowmass Base Village and developer Related Cos. and 14 other associated defendants in Pitkin County District Court.
- Base Village alleged racketeering, securities fraud, breach of fiduciary duty, conspiracy, unjust enrichment, etc.
- **Status: Judge Seldin found in favor of the Defendants and granted the summary judgment motion in 2022. In the transcript, Judge Seldin said:**
  - It's common knowledge that metro districts are often formed by developers and dominated by developers in their early stages. And so, I can't assume that the Legislature was ignorant of that reality when it adopted part 13 of Article 1 of Title 32. To the contrary, it seems only reasonable to assume that the legislature knew exactly what it was doing."

- “. . . the idea that a refinancing conducted by a district dominated by a developer-appointed board would be voidable is contrary to the language of 1306.”
- “In order to prevail, plaintiffs . . . have to do more than simply show that the board was dominated by a developer at the time. Instead, they have to come forward with admissible evidence to show a . . . disputed issue of material fact” as to fraud or gross abuse of discretion.
- The Judge notes that **Base Village is essentially suing itself** and uses the example of the Biden Administration and the Trump Administration. If the Biden Administration determined that Trump really messed up by issuing some treasure bonds at a point in time when the interest rates were unfavorable to the U.S., they can’t go to court and say we want to sue all the investment banks that acted as broker/dealer and they defrauded us by making us pay a higher rate.
- You can’t have governments going back and trying to throw out agreements because they don’t like the way the prior board did things.

## **Flying Horse Metro Districts, Colorado Springs, CO**

### **In the Matter of Flying Horse Metro District No. 1 04CV3802**

- The Flying Horse Metro Districts (District No. 1, No. 2 and No. 3) were formed in 2004 as part of a high high-end, mixed used community located in the northern part of Colorado Springs, Colorado.
- Under the service plan’s terms, District 1 is the “Service District,” responsible for managing the design, construction, operation and maintenance of public facilities and improvements that serve the Districts.
- Districts 2 and 3 were created as “Financing Districts,” responsible for providing funding to support costs related to the services and improvements.
- As the overall assessed valuation of Districts 2 and 3 increased, they were to issue bonds to generate revenue to pay for infrastructure and impose taxes to pay debt service on the bonds, and to generate revenue to pay the operations and maintenance expenses of all three Districts. This coordinated, multiple district structure was intended to ensure delivery of public services as efficiently as possible.

- The Districts entered into an Intergovernmental Agreement in 2004 that stated:
  - District 1 constructs, owns, operates, and maintains public improvements benefitting the Districts. All services are provided by District 1, including coordinated administrative services, avoiding duplication of services for each of the Districts.
  - Districts 2 and 3 contribute bond and/or tax revenue to pay the costs. Districts 2 and 3 are required to transfer tax revenues pledged to District 1 without delay, including revenues related to Operations and Maintenance. Districts 2 and 3 do not own real property or operate or maintain public improvements.
- Since 2004, several million dollars of public improvements were installed, and there are thousands of residences, commercial uses, parks, trails, open spaces and other community amenities, including an athletic club, a golf course and a clubhouse.
- Residents began moving into Districts 2 and 3 in 2005. Not until May of 2022 did a resident run for a board of director seat. In May of 2022 a resident was elected to the District 2 board, and two residents were elected to the District 3 board.
- Beginning in May, 2022 there were significant tensions between the board of directors. One of the board members challenged reimbursements to the developer.
- Additional residents began to run for District 2 and 3 boards. Their animosity toward the Developer was also apparent, according to the judge.
- On March 6, 2023, a number of these candidates filed a self-represented petition seeking to remove allegedly ineligible electors associated with the Developer.
- On March 9, 2023, the same group filed a motion for preliminary injunction or stay. The Court denied the motion on March 10, 2023.
- The last significant remaining portion of the metro districts yet to be developed is an area referred to as Downtown Flying Horse, which was within the boundaries of Districts 2 and 3. The new area was planned for residential, office, hotel, retail and park uses. It is expected to be valued at \$1 billion.
- On April 29, 2023, counsel for the Districts filed motions for orders of exclusion of the property for Districts 2 and 3 and inclusion for District 1 in this case, which were voted on and approved by the three boards.
- After a new board took over in May of 2023. District 3 filed a motion to revoke the exclusion.

- **December 19, 2023: Conclusions of Facts and Findings Order: Motion to Revoke Denied.** The court found that District 3's "developer board" vs. "homeowner board" distinction to be legally irrelevant.

*The law does not differentiate between developer-affiliated boards and resident boards. If a new board's disagreement with an old board's decision could be the basis for relief from judgment, it would undermine the finality of government actions and could lead to a proliferation of lengthy and costly hearings," the judge wrote.*

## **BNC Metro District No. 2, Commerce City, CO**

### **UMB Bank v BNC Metropolitan District No. 2 2023CV31448**

- **October 20, 2023:** Plaintiff, UMB Bank, National Association, filed suit against Defendant BNC Metropolitan District No. 2 ("BNC2"). UMB sought to recover bond payments that BNC2 had diverted to pay its own operational expenses, as well as a permanent injunction prohibiting BNC2 from diverting bond payments in the future.
- **December 16, 2024:** The case proceeded to a jury trial.
- **December 20, 2024: Jury Verdict & Permanent Injunction** Following a week-long trial, an Adams County jury concluded that BNC2 had breached the bond contract and ordered BNC to repay the diverted bond payments. The presiding judge, Judge Arturo Hernandez, also entered a permanent injunction prohibiting BNC2 from diverting bond payments in the future. Judge Hernandez found that a permanent injunction was in the public interest because BNC2's improper practices harmed BNC2's taxpayers.
- **April 27, 2025, Amended Judgement and Order Re Trustees Bill of Costs:** In the BNC2 matter, Judge Hernandez ordered that the taxpayers of the BNC2 Metro District pay \$356,292.35 in jury awards, court costs, and pre-judgment interest, as well as additional interest accruing at 8%. It is believed that these expenses will be paid through a court-ordered mill levy increase of approximately 10 mills on properties in the district. Additionally, taxpayers in the district will have to repay approximately \$800k- \$1M in bond surplus funds spent on legal fees to litigate the case. ***In total, taxpayers are estimated to be on the hook for an additional \$3.5M.***
- ***"What this does is it basically lengthens the time period to pay the principal on those notes, and, obviously, what that does is it prolongs the time in which the bondholder is repaid. It increases interest that is being paid...and that is a specific harm not only to the bondholder, but, frankly, to the taxpayers...."*** – District Court Judge Arturo Hernandez

**October 8, 2025:** The BNC2 Board of Directors approves a budget that adds an additional 10 mills to each taxpayer's property taxes to pay for the Court Judgment.

**December 2025,** Mill Levy Tax Reporting Filed with Adams County: Wolfersberg LLC certified to Adams County a new 10 mills to satisfy the 2024 Court Judgment. Taxpayers in the BNC2 metro district will see an increase in the metro district mill levy on their property taxes to 90.48 for the 2025 tax year.

## **BNC Metro District, Commerce City, CO**

**BNC Metro Dist 1 and BNC Metro Dist 2 v. BNC Metro Dist 3 and THEODORE ANTENUCCI, JANIS L. EMANUEL, ROBERT BOL, JULIANNA ANTENUCCI, and PAULINE BOL, in their individual capacity**

- **May 1, 2023** A Complaint was filed "...asserting three claims for relief against Defendants: (1) declaratory relief against Defendant BNC3; (2) breach of contract against Defendant BNC3; and (3) breach of fiduciary duty against Defendants Theodore Antenucci, Janis Emanuel, Robert Bol, Julianna Antenucci and Pauline Bol (collectively, the "Individual Defendants").
- **October 3, 2024** The Court issued an ORDER RE: DEFENDANTS' RULE 12(b)(5) MOTION TO DISMISS: "Based on the foregoing, Defendants' Rule 12(b)(5) **Motion to Dismiss is hereby GRANTED.**"

*"...the Court does not find persuasive Plaintiffs' argument the Agreements are unconscionable because they bind the parties to obligations for which they would not otherwise be legally responsible. Indeed, the very nature of contracts is to bind parties to agreements for which they would not otherwise be legally responsible."*

- **APPEAL FILED**
- **May 25, 2025 Dismissal of Claims Affirmed – Colorado Court of Appeals Opinion Summary:** "...a division of the court of appeals affirms the district court's dismissal of the plaintiff districts' breach of fiduciary duty claim and remands for consideration of attorney fees."
- **October 24, 2025: ORDER RE: INDIVIDUAL DIRECTORS' MOTION FOR APPELLATE ATTORNEY FEES AND COSTS, NOTICE OF CONFESSION OF MOTION FOR ATTORNEYS' FEES AND COSTS, and PLAINTIFFS' MOTION TO STRIKE:** Judgement entered in favor of Defendants. Plaintiffs must pay \$130,430.50 in legal fees.



## Recent Litigation to Extinguish Debt Under Other District Management

### Red Sky Ranch, Wolcott, CO

Red Sky Ranch Metro. Dist. v. Vail Associates, Inc. et al., 2022CV030131, Broomfield County District Court

- **May 23, 2022** A Complaint for Declaratory Judgement was filed seeking a remedy that would, “In the event that Red Sky Ranch Metro District's debt obligations to Holland Creek Metro District pursuant to the District Facilities Construction and Service Agreement are not paid in full within the 30- year time limit required by the voters in Ballot Issue L, November 7, 2000, then such debts are extinguished as of that date and are no longer collectable.”
- **Dec 14, 2022: ORDER** The Courts rejected the lawsuit. The judge determined that they had no power to overturn agreements that Red Sky Ranch’s board signed when it was controlled by Vail Resorts.
- Status: Red Sky Ranch Metro District filed an appeal.
- **May 22, 2025: JUDGMENT AFFIRMED AND CASE REMANDED WITH DIRECTIONS** “The district court’s orders dismissing Red Sky’s claims for declaratory relief and denying Red Sky leave to amend its claims are affirmed. The case is remanded with directions to calculate and award Holland Creek its reasonable attorney fees.”