

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: June 3, 2022
Original Proceeding District Court, Denver County, 2018CV30611	
<p><b>In Re:</b></p> <p><b>Plaintiff:</b></p> <p>DIA Brewing Co., LLC,</p> <p>v.</p> <p><b>Defendants:</b></p> <p>MCE-DIA, LLC, a Michigan Limited Liability Company;          Midfield Concessions Enterprises, Inc., a Michigan Company;          Andrea Hachem, individually; Nouredine "Dean" Hachem,          individually a/k/a Dean Hachem; Samir Mashni, individually;          Simrae Solutions, LLC, a Colorado Limited Liability          Company; Sudan I. Muhammad, individually; Pangea          Concessions Group, LLC, a Florida Limited Liability          Company; Rohit Patel, individually; Richard E. Schaden,          individually; and Mukesh "Mookie" Patel;</p> <p><b>and</b></p> <p><b>Intervenor:</b></p> <p>City and County of Denver.</p>	Supreme Court Case No: 2022SA122
ORDER OF COURT	

Upon consideration of Petitioner's Petition Pursuant to C.A.R. 21, the responses filed by the District Court, the MCE-DIA Respondents, and Respondent Richard E. Schaden, and Petitioner's reply brief, and being sufficiently advised in the premises,

IT IS HEREBY ORDERED as follows:

1. The Rule to Show Cause, issued by this Court on May 6, 2022, is made ABSOLUTE, and this case is remanded to the District Court for further proceedings consistent with this Order.
2. In *Schaden v. DIA Brewing Co.*, 2021 CO 4M, ¶¶ 51–52, 478 P.3d 1264, 1273–74, after deciding that Petitioner did not have the right to file its amended complaint as a matter of course, this court went on to consider the viability of Petitioner’s amended complaint. The court did so in the interests of judicial economy and specifically to avoid further appellate delay. *Id.* at ¶ 52, 478 P.3d at 1274.
3. The court ultimately concluded, “Here, we have little difficulty concluding that [Petitioner’s] amended complaint pleaded fraud with the requisite particularity,” noting that the amended complaint “detailed every aspect of the alleged bid-rigging conspiracy.” *Id.* at ¶ 59, 478 P.3d at 1275. Indeed, the court observed, “[I]t is difficult to perceive what else [Petitioner] could have alleged here, particularly given that many of the facts at issue are in the exclusive possession of [Respondents] and people associated with [them].” *Id.* The court thus determined that the amended complaint “properly alleges . . . the claims set forth in that complaint,” and the court remanded this case with directions that the case be returned to the District Court with instructions that that court accept the

amended complaint for filing, after which Respondents could respond in the ordinary course. *Id.* at ¶¶ 60–61, 478 P.3d at 1276.

4. Although this court believed that its mandate was clear, on remand, notwithstanding this court’s conclusion that the amended complaint properly stated viable claims, several Respondents filed further motions to dismiss, principally contending that the allegations of the amended complaint were conclusory and failed to state claims for relief under C.R.C.P. 12(b)(5) and the plausibility standard set forth in *Warne v. Hall*, 2016 CO 50, ¶ 24, 373 P.3d 588, 595.

5. This court need not address—and does not determine—whether a complaint that satisfies C.R.C.P. 9(b)’s requirement of pleading fraud with particularity necessarily states a viable claim for relief under C.R.C.P. 12(b)(5) and *Warne*. In the specific circumstances presented here, it is sufficient to observe that, when this court has ruled that the amended complaint stated its claims with the requisite particularity and properly alleged such claims, this court’s ruling disposed of Respondents’ contentions as to the purported conclusory nature of Petitioner’s allegations and the amended complaint’s viability.

6. Accordingly, the court agrees with Petitioner that the District Court’s May 1, 2022 Omnibus Order was inconsistent with this court’s prior mandate.

7. The court thus vacates the District Court's Omnibus Order and remands this case with instructions that that court require Respondents to file answers to the amended complaint, so that the case may proceed to discovery.

8. The court again expresses no opinion on the ultimate merits of Petitioner's claims, as the merits will turn on the development of the evidence as discovery proceeds in this case.

BY THE COURT, EN BANC, JUNE 3, 2022.