

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-02533-NYW

4455 JASON ST, LLC,
THE DENVER BEER COMPANY, LLC,

Plaintiffs,

v.

MCKESSON CORPORATION,

Defendant.

**MCKESSON CORPORATION'S MOTION TO DISMISS 4455 JASON ST, LLC AND
DENVER BEER COMPANY'S CLAIM FOR COMMON LAW TRESPASS**

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Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant McKesson Corporation (“McKesson”) moves to dismiss the single pendant state law claim for common law trespass alleged by Plaintiffs 4455 Jason St, LLC (“Jason St.”) and The Denver Beer Company (“DBC”) (collectively, “Plaintiffs”).

Pursuant to NYW Civ. Practice Standard 7.1(a) which incorporates D.C.COLO.LCivR 7.1(b), there is no duty to confer as this motion is brought under Fed. R. Civ. P. 12.

I. INTRODUCTION

Jason St. currently owns property located at 4455 Jason St., Denver, Colorado 80211 (the “Property”), has owned it since 2016, and leases it to DBC. In addition to the federal law claims asserted by Plaintiffs, they assert a claim for common law trespass against McKesson – former owner of the Property (through its legal predecessors) – for contamination allegedly tied to operations during the time of McKesson’s prior ownership of the Property (alleged to have been between 1947-1972).

The basis for this motion is the legal authority set forth below. D.C.COLO.LCivR 7.1(d): The Colorado Supreme Court defines common law trespass in the State of Colorado as “a physical intrusion upon the property *of another* without the proper permission from the person legally entitled to possession of that property.” *Hoery v. United States*, 64 P.3d 214, 217 (Colo. S. Ct. 2003) (emphasis added). This motion asks whether Plaintiffs can bring a claim for common law trespass against *a prior owner of the same property?* The answer is “no.”

While there is no definitive Colorado state court decision, federal and state courts around the United States, including the U.S. Court of Appeals for the Tenth Circuit, consistently have held that plaintiffs cannot sue a prior landowner for common law trespass, finding that such claims can only be brought by *neighboring*, not successor, landowners.

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