

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 19-cv-02039-RM-NYW

THE TRAVELERS INDEMNITY COMPANY OF AMERICA, et al.,

Plaintiffs,

v.

LUNA GOURMET COFFEE & TEA COMPANY, LLC, et al.

Defendants.

ORDER

This matter is before the Court to address the remaining issue in this case: whether Defendants’ counterclaim for breach of contract (ECF No. 26) was effectively resolved by the Court’s Order of April 7, 2021 (the “MSJ Order”) (ECF No. 47) on the parties’ cross-motions for summary judgment. In the MSJ order, the Court granted summary judgment in favor of Plaintiffs on their claim for declaratory relief, finding they had no duty to defend or indemnify Defendants in the *Kona Consumers Action* or the *Kona Farmers Action*.¹ Concomitantly, the Court denied Defendants’ motion for summary judgment. This left only Defendants’ counterclaim unresolved. The Court, however, *sua sponte* raised whether summary judgment in favor of Plaintiffs was appropriate on Defendants’ counterclaim in light of the MSJ Order. *See Johnson v. Weld Cty., Colo.*, 594 F.3d 1202, 1214 (10th Cir. 2010) (discussing granting summary judgment *sua sponte*). As provided for under Fed. R. Civ. P. 56(f), the Court gave Defendants notice and allowed them a reasonable time to respond to this issue. Defendants have done so. (ECF No. 48.)

¹ As those terms are defined in the MSJ Order.

Defendants' response states that the MSJ Order in favor of Plaintiffs effectively resolved the counterclaim and that no further briefing or action was necessary. Accordingly, based on the MSJ Order, the Court finds that summary judgment on Defendants' counterclaim for breach of contract should be granted in favor of Plaintiffs and against Defendants. Accordingly, the Court **ORDERS** as follows:

- (1) That summary judgment is granted in favor of Plaintiffs and against Defendants on Defendants' counterclaim for breach of contract;
- (2) That the Clerk of the Court shall enter JUDGMENT in favor of Plaintiffs and against Defendants in accordance with this Order and the Order of April 7, 2021 (ECF No. 47);
- (3) That Plaintiffs are awarded costs and shall within 14 days of the date of this Order file a bill of costs, in accordance with the procedures under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1, which shall be taxed by the Clerk of the Court; and
- (4) That the Clerk of the Court shall close this case.

DATED this 29th day of April, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Raymond P. Moore', written over a horizontal line.

RAYMOND P. MOORE
United States District Judge