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Clerk of Court
Shawano Co., WI
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STATE OF WISCONSIN
SHAWANO COUNTY

CIRCUIT COURT

VILLAGE OF MATTOON, and
TOWN OF HUTCHINS,

For Official Use:

Plaintiffs,

Case No.
Code No. 30701

v.

UNIFIED SCHOOL DISTRICT OF ANTIGO,

Defendant.

**PLAINTIFFS’ ANSWER AND AFFIRMATIVE DEFENSES
TO DEFENDANT’S AMENDED COUNTERCLAIMS**

NOW COME Plaintiffs, Village of Mattoon (the “Village”) and Town of Hutchins (the “Town”) (collectively, “Plaintiffs”), by their attorneys, Husch Blackwell LLP, and as and for their response to the Amended Counterclaims of Defendant Unified School District of Antigo (“Defendant” or the “Antigo School District”) states as follows:

COUNTERCLAIMS

Declaratory Judgment

1. Defendant School District of Antigo is a Wisconsin school district organized under the laws of the State of Wisconsin as an agency of the State and is located within Langlade County, Wisconsin. The School District of Antigo’s main district office is located at 120 South Dorr Street, Antigo, Wisconsin 54409.

ANSWER: Answering paragraph 1 of Defendant’s Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs admit the allegations set forth therein.

2. Plaintiff Village of Mattoon is a Wisconsin village organized under the laws of the State of Wisconsin and located within Shawano County, Wisconsin. The Village of Mattoon Village Hall is located at 310 Slate Avenue, Mattoon, Wisconsin 54450.

ANSWER: Answering paragraph 2 of Defendant's Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

3. Plaintiff Town of Hutchins is a Wisconsin town organized under the laws of the State of Wisconsin. The Town of Hutchins Town Hall is located at W15698 Red River Road, Birnamwood, Wisconsin 54414.

ANSWER: Answering paragraph 3 of Defendant's Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

4. This matter pertains to a dispute as to ownership of the former Mattoon Elementary School located at 507 Stone Avenue, Mattoon, Wisconsin 54450 and legally described as follows (the "Property"):

Parcel One:

Lot One (1) in Block Twenty-five (25) of the Plat of Mattoon, being a subdivision of the East Half (E ½) of the Southeast Quarter (SE ¼) of Section Nine (9) and the West Half (W ½) of the Southwest Quarter (SW ¼) of Section Ten (10), Township Twenty-nine (29) North, of Range Twelve (12) East.

(Village of Mattoon, Shawano County, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Two:

Lots Two (2) and Three (3) in Block Twenty-five (25) of the Village of Mattoon.

(Village of Mattoon, Shawano County, Wisconsin)

Tax Key 151 70050 0740 (subject premise and other land)

Parcel Three:

Lots number Four (4) and Five (5) in Block Twenty-five (25) of the Plat of the Village of Mattoon, Shawano County, Wisconsin.

(Village of Mattoon, Shawano County, Wisconsin)

Tax Key 151 70050 0750 (subject premise and other land)

ANSWER: Answering paragraph 4 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein make a general statement regarding the nature of this case to which no response is required; if a response is deemed necessary, Plaintiffs admit the allegations set forth therein.

5. The Property sits within the physical boundaries of the Village of Mattoon.

ANSWER: Answering paragraph 5 of Defendant's Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

6. The Property consists of three parcels identified in paragraph 4 above. The records of Shawano County Register of Deeds maintain the following three records of conveyance as the present records of conveyance for the Property (the "Deeds"): (a) as to Parcel One, Indenture made by Mattoon Manufacturing Company of Sheboygan Wisconsin a corporation, grantor, to School district number six (6) Town of Hutchins, Shawano County Wisconsin, grantee, dated December 5, 1894, recorded January 8, 1895, as Document No. 36050 with the Shawano County Register of Deeds; (b) as to Parcel Two, vesting deed made by the County Clerk of Shawano County (tax deed made pursuant to public auction) on November 17, 1939, to Jt. School District No. 6 of the Village of Mattoon, recorded November 17, 1939 as Document Number 193103 with the Shawano County Register of Deeds; and (c) as to Parcel Three, Indenture made by Madeline Ramsey, grantor, to Joint School Dist #6 Village of Mattoon, Town of Hutchins, Shawano County, Wisconsin, grantee, April 17, 1959, recorded April 27, 1959, as Document Number 262553 with Shawano County Register of Deeds. Pursuant to the Deeds, title to the Property is held in the name of "School District number six (6) Town of Hutchins, Shawano County" (as to Parcel One), "Jt. School District No. 6 of Village of Mattoon" (as to Parcel 2), and "Joint School Dist #6 Village of Mattoon, Town of Hutchins,

Shawano County, Wisconsin” (as to Parcel Three) (collectively, the “Mattoon School District”), and that the referenced school districts eventually became known as the Joint School District No. 6, Village of Mattoon and Town of Hutchins, Shawano County. True and correct copies of the deeds are attached to Plaintiff’s complaint and marked as Exhibit A.

ANSWER: Answering paragraph 6 of Defendant’s Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

7. The Mattoon School District was dissolved pursuant to Order Number 34-61 (the “Order”), dated May 24, 1962, signed by the Shawano County School Committee, the Langlade County School Committee, and the Marathon County School Committee, effective June 30, 1962. According to the Order, the territory comprising the Mattoon School District was attached to “School District Number Joint 1, City of Antigo, and Town of Antigo and Langlade County; Village of Aniwa and Town of Aniwa, Shawano County; Town of Plover, Marathon County, Wisconsin, for all school purposes” (which is now known as the “Antigo School District”). A true and correct copy of the Order is attached to Plaintiff’s complaint and marked as Exhibit B.

ANSWER: Answering paragraph 7 of Defendant’s Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

8. An excerpt of historical data from the Wisconsin Department of Public Instruction (“DPI”) summarizing attachments to and detachments from the Joint School District No. 6, Village of Mattoon and Town of Hutchins, Shawano County indicates that, effective June 30, 1962, “Jt. SD No. 6, Village of Mattoon and Town of Hutchins, Shawano County” (a/k/a, the Mattoon School District) was dissolved. A true and correct copy of the historical data is attached to Plaintiff’s complaint and marked as Exhibit C.

ANSWER: Answering paragraph 8 of Defendant’s Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

9. An excerpt of historical data from the DPI summarizing attachments to and detachments from the School District of Antigo, Langlade County indicates that, effective June 30, 1962, the territory of the Mattoon School District was attached to the “City of Antigo et al Unified SD, Langlade County.” A true and correct copy of this historical data is attached to Plaintiff’s complaint and marked as Exhibit D.

ANSWER: Answering paragraph 9 of Defendant’s Amended Counterclaims, Plaintiffs admit the allegations set forth therein.

10. The Joint School District No. 6 Village of Mattoon and Town of Hutchins, Shawano County (a/k/a Mattoon School District) was a distinct and separate municipality from the Village of Mattoon and from the Town of Hutchins as that term was defined in Section 66.03 Wis. Stats which was in effect at the time of the dissolution.

ANSWER: Answering paragraph 10 of Defendant’s Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

11. Order No. 34-61 dated May 24, 1962 was signed by the Shawano County School Committee, the Langlade County School Committee, and the Mattoon County School Committee and was valid as of June 30, 1962. This was also effectively an agreement to transfer ownership of real estate since the municipality known as the Mattoon School District was dissolving and could no longer legally own real estate.

ANSWER: Answering paragraph 11 of Defendant’s Amended Counterclaims, Plaintiffs admit that Order No. 34-61 (attached the Plaintiffs’ Complaint for Declaratory Judgment as Exhibit B) was signed by the Shawano County School Committee, the Langlade County School Committee, and the Marathon County School Committee, deny that it was signed by the Mattoon County School Committee, admit that it was valid effective June 30, 1962, and

deny that this Order was effectively an agreement to transfer ownership of real estate. Further answering paragraph 11, Plaintiffs deny the remaining allegations set forth therein.

12. Shortly after the dissolution of the Mattoon School District and attachment to the Unified School District of Antigo, the former high school building of the Mattoon School District was razed. Additionally, the Unified School District of Antigo undertook to remodel the grade school by adding two classrooms, an entryway, storage facility, and a gymnasium all at its expense. The Unified School District of Antigo has maintained the property and has been in uninterrupted possession and control of the school property for over 56 years without any contrary claim of ownership from anyone until now.

ANSWER: Answering paragraph 12 of Defendant's Amended Counterclaims, Plaintiffs deny knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny them.

13. At the time of dissolution of the Mattoon School District and attachment to the Antigo School District, no state statute or any other law referenced any reversion of title of real estate to the municipality in which the territory sits. The claim of plaintiffs in its complaint to that effect is without any basis in the law or in equity.

ANSWER: Answering paragraph 13 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

14. In 2016 the Unified School District of Antigo decided to close the Mattoon School and thereafter, the Village of Mattoon attempted to form a new school district through an extensive process with the Wisconsin Department of Public Instruction (a/k/a DPI). This attempt was ultimately denied by DPI, and during that process, no claim was ever made by the Village of Mattoon or the Town of Hutchins that they owned the school property. It was not until a title

search was done in the summer of 2018 showing the vesting deeds as outlined in paragraph 6 of this counterclaim that any claim of ownership was made by plaintiffs. This title search was done as part of a proposed transaction for the Antigo School District to transfer the property to the Village of Mattoon with the restrictive covenant.

ANSWER: Answering paragraph 14 of Defendant's Amended Counterclaims, Plaintiffs admit that in 2016 the Unified School District of Antigo decided to close the Mattoon School, but deny the remaining allegations set forth therein.

15. The Unified School District of Antigo is the owner of the Property.

ANSWER: Answering paragraph 15 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

Slander of Title

16. Defendant realleges paragraphs 1-15 of its counterclaim and incorporates them by reference.

ANSWER: Answering paragraph 16 of Defendant's Amended Counterclaims, Plaintiffs restate the responses contained in paragraphs 1 through 15 of this Answer to Counterclaim and Affirmative Defenses as if fully set forth herein.

17. On October 19, 2018, the Village of Mattoon and Town of Hutchins recorded an Affidavit of Interest in the Property with the Shawano County Register of Deeds as Document No. 735249. The Affidavit of Interest is attached hereto and marked as Exhibit E.

ANSWER: Answering paragraph 17 of Defendant's Amended Counterclaims, Plaintiffs admit the allegations set forth therei

18. Said Affidavit clouds the defendant's title and ownership of the Property and has prevented the defendant from being able to sell the property all to the detriment of the defendant.

ANSWER: Answering paragraph 18 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein and affirmatively allege that the School District of Antigo has no right to title and ownership of the Property, and thus, no right to sell the Property.

19. After attempts to transfer the property to the Village of Mattoon failed, the Unified School District of Antigo attempted to sell the property on bids, but the Affidavit filed by the Village of Mattoon and the Town of Hutchins prevented the Antigo District from being able to convey clear title.

ANSWER: Answering paragraph 19 of Defendant's Amended Counterclaims, Plaintiffs deny knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny them and put the School District of Antigo to its strict proof thereon.

Common Law Dedication

20. Defendant realleges paragraphs 1-15 of its counterclaim and incorporates them by reference.

ANSWER: Answering paragraph 20 of Defendant's Amended Counterclaims, Plaintiffs restate the responses contained in paragraphs 1 through 19 of this Answer to Defendant's Amended Counterclaim and Affirmative Defenses as if fully set forth herein.

21. The Mattoon School District is a common law grantor.

ANSWER: Answering paragraph 21 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

22. The Mattoon School District intended to dedicate the Property to Defendant in 1962 when it agreed to Order Number 34-61. A true and correct copy of the Order is attached to Plaintiff's complaint and marked as Exhibit B.

ANSWER: Answering paragraph 22 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

23. Because the Mattoon School District is a defunct entity, its intent as a grantor must be determined by reference to documents and the actions of Plaintiffs.

ANSWER: Answering paragraph 23 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

24. The Deeds referenced above show a clear intent to grant all assets of the Mattoon School District to Defendant.

ANSWER: Answering paragraph 24 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

25. Plaintiffs actions show that the Mattoon School District's intent was to grant the Property to Defendant. Plaintiffs either accepted or acquiesced to the Mattoon School District's grant of the Property to Defendant by sitting silent as Defendant remodeled the Property and added two classrooms, an entryway, a storage facility, and a gymnasium at its own expense.

ANSWER: Answering paragraph 25 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

26. Plaintiffs further accepted or acquiesced to the Mattoon School District's grant of the Property to Defendant by sitting silent as Defendant operated a school on the Property and paid to operate the Property for over 54 years.

ANSWER: Answering paragraph 26 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

27. Defendant accepted the Mattoon School District's grant of the Property by operating it as a school and paying to operate the Property as a school for over 54 years.

ANSWER: Answering paragraph 27 of Defendant's Amended Counterclaims, Plaintiffs deny the allegations set forth therein.

Equitable Relief Under Wis. Stat. § 706.04

28. Defendant realleges paragraphs 1-15 of its counterclaim and incorporate them by reference.

ANSWER: Answering paragraph 28 of Defendant's Amended Counterclaims, Plaintiffs restate the responses contained in paragraphs 1 through 27 of this Answer to Defendant's Amended Counterclaim and Affirmative Defenses as if fully set forth herein.

29. The Antigo School District took over occupation and, it believed, ownership of the Mattoon School after the Mattoon School District dissolved in 1962. Up until 2016, the Antigo School District has, in good faith belief in ownership, operated and maintained the school and has expended substantial sums of money to do so. Not once during those 54 years did the Village of Mattoon or Town of Hutchins hint at any claim of ownership and instead allowed the Antigo School District to use, maintain, and occupy the same.

ANSWER: Answering paragraph 29 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

30. The Village of Mattoon and Town of Hutchins would be unjustly enriched by a declaration of ownership in their names.

ANSWER: Answering paragraph 30 of Defendant's Amended Counterclaims, Plaintiffs assert that the allegations set forth therein are conclusions of law to which no response is required; if a response is deemed necessary, Plaintiffs deny the allegations set forth therein.

AFFIRMATIVE DEFENSES

1. The School District of Antigo has failed to state a claim upon which relief can be granted.
2. The School District of Antigo's counterclaims are barred by controlling Wisconsin law.
3. There is no instrument demonstrating that the School District of Antigo has any right to possess, control, or sell the Property.
4. The School District of Antigo's counterclaims may be barred in whole or in part under the doctrines of waiver, laches, and/or unclean hands.
5. The Plaintiffs allege all affirmative defenses required to be pled under Wis. Stat. § 802.02(3) for the purposes of avoiding waiver of any such defenses as they may later apply. The Plaintiffs also reserve the right to assert any further affirmative defenses that may become available as a result of future discovery in this lawsuit.

CONCLUSION

WHEREFORE, the Plaintiffs, the Village of Mattoon and the Town of Hutchins, demand judgment dismissing the School District of Antigo's counterclaims against it, on its merits and with prejudice, and an order granting its costs disbursements in defending against such claims, together with such other and further relief as this Court deems just and proper.

Dated this 23rd day of July, 2019.

HUSCH BLACKWELL LLP
Attorneys for Plaintiffs
Village of Mattoon and Town of Hutchins

Electronically signed

By: s/ Timothy H. Posnanski

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