

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT JERSEY COUNTY, ILLINOIS

JEFFERY D. FERGUSON, RON FLOYD, WOOD GOFORTH, HAROLD KALLAL, GARY KRUEGER, ROBERT RULAND, LELAND SYNDERS, and MARILYN J. WOOLSEY, INDIVIDUALLY AND AS TAXPAYERS OF JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS,

Plaintiffs

v.

Case No. 06-CH-52

LINDA J. CROTCHETT and DEBRA BANGHART, IN THEIR OFFICIAL CAPACITY AS THE DULY ELECTED AND ACTING COUNTY CLERKS OF JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS, AND THE COMMUNITY UNIT SCHOOL DISTRICT #100, A SCHOOL DISTRICT IN JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS,

Defendants.

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on the 13th day of September, 2006, I filed with the Circuit Court of the Seventh Judicial Circuit, 201 W. Pearl Street, Jerseyville, Illinois our REPLY IN SUPPORT OF MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(a)(9), copies of which are attached and hereby served upon you.

By: Maria E. Mazza One of the Attorneys for Defendant Community Unit School District #100

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STATE OF ILLINOIS)
) SS
COUNTY OF JERSEY)

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 (1999), I certify that the statements set forth herein are true and correct. The undersigned, on oath, states that he/she served the persons named on the attached Service List with this notice and with pleading(s) referred to thereon, by depositing said documents in the United States mail at 20 N. Clark Street, Chicago, by 5:00 p.m. on the 13th day of September, 2006.

By: *Maria E. Mazza*

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JEFFERY D. FERGUSON, RON FLOYD, WOOD GOFORTH, HAROLD KALLAL, GARY KRUEGER, ROBERT RULAND, LELAND SYNDERS, and MARILYN J. WOOLSEY, INDIVIDUALLY AND AS TAXPAYERS OF JERSEY AND GREENE COUNTIES, STATE OF ILLINOIS,

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Defendants.

REPLY IN SUPPORT OF MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619(a)(9)

Defendant, Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois (the "District"), by and through its attorneys, Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd., hereby set forth its Reply in support of its Motion to Dismiss pursuant to 735 ILCS 5/2-619(a)(9) ("Motion") against Plaintiffs, Jeffery D. Ferguson, Ron Floyd, Wood Goforth, Harold Kallal, Gary Krueger, Robert Ruland, Leland Synders, and Marilyn J. Woolsey, Individually and as Taxpayers of Jersey and Greene Counties, State of Illinois (collectively, "Plaintiffs") and, in support thereof, states as follows:

INTRODUCTION

Plaintiffs allege in their Complaint that the District should be permanently enjoined from extending any tax levies and/or collecting real estate taxes to pay for fire prevention and safety bonds issued for the purposes of building a new high school and a new elementary school (collectively, the "Schools") because the bonds were allegedly issued contrary to the provisions of 105 ILCS 5/17-2.11. As the District argued in its Motion, Plaintiffs' Complaint is barred under the doctrine of laches because Plaintiffs were aware of the subject bond issuance since at least 2003, but, until now, have failed to take any action to enforce their alleged rights. Plaintiffs' Response does not contradict this fact and, in fact, one of the affidavits submitted by Plaintiffs confirms that Plaintiffs were aware of the bond issuance since no later than 2003.¹ Therefore, Plaintiffs' Complaint is barred by laches and must be dismissed pursuant to 735 ILCS 5/2-619(a)(9).

ARGUMENT

- 1. Since Plaintiffs' Cause of Action is Barred by the Doctrine of Laches, This Court Must Dismiss Plaintiffs' Complaint Pursuant to 735 ILCS 5/2-619(a)(9).**

As noted in the District's Motion, laches bars relief to a party whose unreasonable delay in bringing an action for relief prejudices the rights of the other party. *People ex rel. Daley v. Strayhorn*, 121 Ill.2d 470, 482, 521 N.E.2d 864, 869 (1988). The doctrine of

¹ Furthermore, Plaintiffs' argument in their Response that the exhibits attached to the District's Motion should have been accompanied by an affidavit should be rejected. Section 2-619 only requires affidavits when the grounds for dismissal do not appear on the face of the pleading being attacked. *In re Bajonski*, 129 Ill.App.3d 361, 366, 472 N.E.2d 809 (1st Dist. 1985). Here, the grounds for dismissal-- laches based upon Plaintiffs' knowledge of the bond issuance since no later than 2003 is evident from the Complaint. (See ¶¶ 47-50, Complaint). Thus, no affidavit is necessary.

laches is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party. *In re Marriage of Smith*, 347 Ill.App.3d 395, 401, 806 N.E.2d 727 (2nd Dist. 2004).

In order to prove laches, a party must show that there was an unreasonable delay in bringing an action and that the delay materially prejudiced the party. *Hannigan v. Hoffmeister*, 240 Ill.App.3d 1065, 1074, 608 N.E.2d 396, 403 (1st Dist. 1992). As noted in the District's Motion, Plaintiffs should be charged with having actual knowledge of the bond issuance since at least 2003. (See ¶¶ 47-50, Complaint; See Exhibits "O" through "R" attached to the District's Motion). The affidavit of Jeffrey D. Ferguson, attached to Plaintiffs' Response, confirms that the plaintiffs were aware of the bond issuance since at least 2003. (See ¶¶ 2-3, Ferguson Affidavit). In addition, Plaintiffs' delay has materially prejudiced the District, as the District has proceeded in issuing 25 million dollars in bonds to hundreds, if not thousands, of investors and entered into multi-million dollar construction contracts. Furthermore, as a result of such delay, it is nearly insurmountable for Plaintiffs to obtain any relief, as the bond issuance and the construction of the Schools cannot be undone.

In their Response, Plaintiffs completely ignore the District's argument that it has been prejudiced by proceeding with the construction of the Schools and by incurring millions of dollars of contractual obligations in connection with the construction of the Schools and the bond issuance. Instead, without any supporting legal authority, Plaintiffs argue that the District could not have been prejudiced because the bond issuance allegedly did not comply with all of the necessary requirements. Because the District's 2-619 Motion

does not address the merits of the case, the District will not refute Plaintiffs' erroneous claims unless required by this Court by a denial of the District's Motion. It is well settled that a motion to dismiss a complaint pursuant to 2-619 admits the legal sufficiency of the complaint and raises certain defects or affirmative defenses which act to defeat the plaintiff's claims. *Murcia v. Textron, Inc.*, 342 Ill.App.3d 433, 436, 795 N.E.2d 773 (1st Dist. 2003). Thus, for the purposes of this Motion, the legal sufficiency of the complaint is not at issue and Plaintiffs' arguments in their Response concerning the same are irrelevant in the context of the instant Motion. The only issue raised by the Motion is whether an affirmative matter – laches – bars Plaintiffs' claims. As discussed, above Plaintiffs have failed to refute the prejudice suffered by the District as a result of Plaintiffs' delay and, instead, have established that Plaintiffs were aware of the subject bond issuance since 2003.

Furthermore, Plaintiffs have failed to set forth any convincing legal authority to support their argument that laches does not bar Plaintiffs' claims. The case of *Fruhling v. Champaign County*, 95 Ill.App.3d 409, 412, 420 N.E.2d 1066 (4th Dist. 1981), cited by Plaintiffs is completely distinguishable from the instant case and, thus, is inapplicable. In *Fruhling*, the plaintiff was a terminated deputy sheriff who brought a declaratory judgment action for recovery of back pay and for reinstatement. *Id.* at 411. The court found that laches did not bar the plaintiff's claim because the plaintiff had been in constant litigation concerning the employment action taken by the defendant almost immediately following the plaintiff's suspension. *Id.* at 416. In contrast, as discussed above, Plaintiffs here were aware of the bond issuance for several years prior to filing suit. Thus, *Fruhling* is

inapplicable to the instant case. Furthermore, the other case law Plaintiffs cite are from other jurisdictions and, thus, this Court is not bound by such case law.

In summary, Plaintiffs have not contradicted the District's argument that Plaintiffs were aware of the bond issuance at the latest since 2003 nor have Plaintiffs contradicted the prejudice the District has faced as a result of Plaintiffs' delay. Therefore, this Court must dismiss Plaintiffs' Complaint under the doctrine of laches pursuant to 735 ILCS 5/2-619(a)(9).

CONCLUSION

For all of the foregoing reasons, Defendant, Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois, requests that this Court dismiss Plaintiffs' Complaint pursuant to 735 ILCS 5/2-619(a)(9).

Respectfully submitted,

Community Unit School District #100, a School District in Jersey and Greene Counties, State of Illinois,

By:



One of the Defendant's Attorneys

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