

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Harry R. Welty, Laurence J. Burda,
Dean Davidson, Robert D. Sershon,
and Art Johnston,

Court File No. 69DU-CV-09-758

Plaintiffs,

**DEFENDANT ISD #709's RESPONSE
TO MOTION FOR JUDGMENT
ON THE PLEADINGS**

vs.

Independent School District #709
and Johnson Controls, Inc.,

Defendants.

STANDARD OF REVIEW

The Plaintiffs are seeking Judgment on the Pleadings pursuant to Minn. R. Civ. P.

12.03. That Rule states:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Minn. R. Civ. P. 12.03 (emphasis added).

When considering a motion for judgment on the pleadings, “[a]ll facts alleged in the [non-moving parties pleading] must be taken as true and all reasonable inferences drawn in favor of the nonmoving party.” *Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org.*, 694 N.W.2d 92, 95 (Minn. App. 2005); *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 740, n. 9 (Minn. 2000) (when considering a motion for

judgment on the pleadings the court must accept the allegations in the pleadings as true and draw all inferences in favor of the non-moving party).

The Minnesota Court of Appeals has stated:

A motion for judgment on the pleadings should only be granted if the pleadings create no fact issues; the court must give all benefit of doubt to the nonmoving party. . . . This type of a motion is generally not favored and will not be upheld if liberal construction of the pleadings would be sufficient to sustain the action.

Honan v. County of Cottonwood, 2005WL 2077277 (Minn. App. 2005) (unpublished opinion)(citations omitted). Judgment on the pleadings cannot be granted where material allegations of complaint are denied by the answer, or when the answer alleges proper affirmative defenses. See *Chilson v. Travelers' Ins. Co.*, 230 N.W. 118 (Minn. 1930); see also *Austad v. U.S.*, 386 F.2d 147, 148(9th Cir. 1967) (stating motion for judgment on the pleadings should not have been granted if the defendants' amended answer raised a defense which, if proved, would have defeated the plaintiffs' claim).

I. The District has Asserted Several Affirmative Defenses That Warrant Dismissal of the Plaintiffs' Claims.

The District will make a Motion to Dismiss the Plaintiffs' Complaint. In its Motion the District will set forth a number of reasons that the Plaintiffs' claims should be dismissed. The Plaintiffs have failed to state a claim upon which relief may be granted, and they have failed to bring a proper and timely challenge to the District's actions. The Plaintiffs are not entitled to Judgment on the Pleadings under Rule 12.03 when their claims are subject to dismissal Rule 12.02.

The affirmative defenses raised by the District in this matter are fatal to the Plaintiffs' motion. First, there is a serious question as to whether the Plaintiffs have asserted any cognizable cause of action against the District. Their purported claim of

“unlawful contract” is not founded in statute or common law. Second, to the extent the Plaintiffs have asserted any type of recognized cause of action (i.e., challenging the authority of the School Board’s actions), they have neglected to properly and timely challenge the School Board’s actions by writ of certiorari. Finally, even if the Court permits the Plaintiffs to proceed in their present cause of action, their assertions cannot be determined on the pleadings.

II. Material Issues of Fact Preclude the Plaintiffs’ Motion for Judgment on the Pleadings.

The Plaintiffs’ Motion for Judgment on the Pleadings and their Amended Complaint of March 19, 2009 allege that the District “violated its competitive bidding policies”; “prejudiced the taxpayers” and engaged in an “unreasonable and arbitrary exercise of the School Board’s discretion.” The Plaintiffs essentially argue in their Motion for Judgment on the Pleadings that these far-reaching claims should be sustained based solely upon several “exhibits” incorporated by reference into their Complaint.¹ However, the Plaintiffs fail to acknowledge that the District has denied numerous factual and legal assertions found in the Complaint. The Plaintiffs have also failed to even allege any facts that support their ultimate claims that the School Board acted in an unreasonable or arbitrary fashion or that taxpayers were prejudiced by the School Board’s actions.

The District has denied most of the averments in the Amended Complaint. Most significantly, the District denies that it violated any board policy or regulation or that it

¹ It should be noted that the Plaintiffs submitted “corrected exhibits” with their second Amended Complaint dated 4/8/2009. However, without first being granted leave to amend their pleadings, the Plaintiffs cannot on their own accord “correct” (i.e., amend) their Amended Complaint. It is also important to note that the District in its Answer to the Amended Complaint specifically denied the authenticity of the “exhibits” attached to the Amended Complaint. In other words, there is a factual dispute as to the authenticity of the documents that the Plaintiffs must rely upon to support the present Motion for Judgment on the Pleadings.

acted in an unreasonable or arbitrary fashion when it selected and contracted with JCI. Whether the District acted reasonably is not a question of law. If the reasonableness of Board action is reviewed, extensive factual analysis may be required.

The Plaintiffs argue that their wide ranging claims against the District can be decided by the Court simply by looking at a few documents. The proffered documents are a fraction of the factual basis of the extensive and thoughtful School Board deliberations related to the LRFP. Furthermore, the Plaintiffs make conclusory statements that the School Board's actions "prejudiced taxpayers." However, the allegation that taxpayers were harmed or prejudiced in any manner is specifically denied by the District and is unsupported by the Plaintiffs' Complaint and supporting exhibits.

The District's denial of most of the material allegations in the Amended Complaint and the Plaintiffs' failure to make allegations sufficient to sustain any cognizable cause of action, requires that the Plaintiffs' Motion for Judgment on the Pleadings be denied.

III. The Plaintiffs Have Brought Inconsistent Motions.

The Plaintiffs in this case have filed irreconcilable motions. On the one hand, they have requested leave of the Court to amend their Complaint. In other words, they are essentially seeking leave of the Court to prevent the *close* of the pleadings. On the other hand, they are seeking judgment on the pleadings and in order to avail themselves of such a motion they must argue that the pleadings were *closed* after the District answered their first Amended Complaint. Minn. R. Civ. P. 12.03 Not surprisingly, neither the civil rules nor case law seem to anticipate such peculiar civil practice.

In this case, if the Court grants the Plaintiffs' Motion to Amend the Pleadings, the pleadings will not be closed. The District will be permitted the opportunity to provide another responsive pleading. Under these circumstances, it cannot be denied that the present Motion for Judgment on the Pleadings is, at best, premature.

CONCLUSION

The Motion for Judgment on the Pleadings should be denied.

Respectfully submitted,

KENNEDY & GRAVEN, CHARTERED

Dated: May 13, 2009

By



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