

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY PENNSYLVANIA –  
CIVIL DIVISION

ALLEGHENY COUNTY SPORTSMEN'S  
LEAGUE, et al.,

Plaintiffs,

v.

CITY OF PITTSBURGH,

Defendant.

CASE NO. GD-94-001499

**MOTION FOR LEAVE TO FILE  
SURREPLY IN FURTHER  
SUPPORT OF DEFENDANT'S  
RESPONSE TO PETITION FOR  
CONTEMPT**

Filed on behalf of all Defendants

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**Defendant's Motion for Leave to File Surreply**

Defendant City of Pittsburgh (the "City") respectfully moves for leave to file a Surreply in Further Support of its Response to Plaintiff's Petition for Contempt. In support of this Motion, the City states as follows:

1. On April 10, 2019, Plaintiff Allegheny County Sportsmen's League filed a Petition for Contempt against the City (the "Petition"). *See* Dkt. 16.
2. On May 20, 2019, the Court issued a scheduling order, ordering that Defendants file a brief in response to Plaintiff's Petition. *See* Dkt. 25.
3. On July 15, 2019, the City submitted its Response to Plaintiff's Petition for Contempt.
4. On July 30, 2019, Plaintiff filed a 28-page Reply Brief in Support of Petition for Contempt (the "Reply"). *See* Dkt. 37.
5. Plaintiffs Reply contains three new arguments never before raised by Plaintiff; namely, that the City is barred from arguing that the Stipulation cannot form the basis of a contempt order due to (1) laches or the "public reliance" doctrine, Reply at 1-3; (2) equitable or


judicial estoppel, Reply at 3-5; and/or (3) the fact that the city voluntarily entered into the Stipulation and therefore Plaintiff should “receive the benefit of its bargain,” Reply at 5-11 (the “New Arguments”).

6. As the City has not had an opportunity to respond to the New Arguments, the City respectfully requests permission to file a concise 5-page Surreply (attached as Exhibit A) to briefly respond to the New Arguments and assist the Court in resolving Plaintiff’s Petition.

7. The City further requests that the Court deem Exhibit A as filed.

Dated: August 5, 2019

Respectfully submitted,

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**[Proposed] Order**

AND NOW, to wit, on this \_\_\_\_ day of \_\_\_\_ 2019, it is hereby ORDERED, that Defendants motion for leave to file a surreply is GRANTED and its Surreply in Further Support of its Response to Plaintiff's Petition for Contempt (attached as Exhibit A to its Motion for Leave to File a Surreply) is deemed filed.

By the Court

\_\_\_\_\_  
Judge Joseph James

# Exhibit A

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

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CIVIL DIVISION  
No. GD-94-001499

**DEFENDANT'S SURREPLY IN FURTHER  
SUPPORT OF ITS RESPONSE TO  
PLAINTIFF'S PETITION FOR  
CONTEMPT**

Filed on Behalf of Defendant:  
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The City of Pittsburgh respectfully submits this Surreply to respond to three new arguments raised by Plaintiff.

**I. Neither Laches Nor the “Public Reliance” Doctrine Apply Here**

As stated in *Stilp v. Hafer*, the case Plaintiff heavily relies on, “[l]aches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another.” 553 Pa. 128, 132 (Pa. 1998) (emphasis added) (citing *Sprague v. Casey*, 520 Pa. 38, 45 (1988)). Plaintiff thus misses the mark with its laches argument because the City here has instituted no action—Plaintiff has—and thus there is no “delay” by the City, a defendant, for the purposes of laches. See *Del-Val Elec. Insp. Service, Inc. v. Stroudsburg-East Stroudsburg Zoning & Codes Office*, 100 Pa. Cmwlth. 429, 434 (Pa. Commw. Ct. 1986) (in determining whether laches applies, question of delay is when action was instituted). Rather, as Defendant, the City argues that the Stipulation cannot form the basis of a contempt order due to its overly broad, non-specific “obey the law” text, as courts have consistently held for decades. See Response to Contempt Petition (“City Response”) at 12-15.

Nor can Plaintiff “show harm or prejudice resulting from delay,” the second requirement for laches. *Jackson v Com. State Real Estate Com’n*, 456 A.2d 1169, 1170 (Com. Ct. 1983). Plaintiff argues that the “prejudice” it suffered was the “time and resources seeking compliance with and enforcement of the Stipulation and Order,” including sending two letters in protest of the proposed 2019 Ordinances and filing this Petition. (Reply at 2). Even if a lawyer’s pre-litigation letters and the filing of a contempt petition could constitute some form of “prejudice” (and it cannot),<sup>1</sup> that purported prejudice was not a result of any delay; it was the “result” of the

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<sup>1</sup> See, e.g., *Class of Two Hundred Admin. Faculty Members of State Colleges in Com., by Reeser v. Scanlon*, 466 A.2d 103, 106 (1983) (laches did not apply where only alleged prejudice was “potential payment of back wages... The Commonwealth has not asserted that witnesses have



new ordinances being enacted in 2019. Laches simply does not apply.<sup>2</sup>

Also inapposite is *Sernovitz v. Dershaw*, 127 A.3d 783, 792 (Pa. 2015), which Plaintiff argues established a “doctrine of public reliance.” Reply at 2. *Sernovitz* reversed the lower court for striking down legislation challenged on process grounds twenty-two years after its enactment because, *inter alia*, “the criminal cases handled by Pennsylvania courts pursuant to [the statute] number in the thousands... [and] [i]nvalidating all of these provisions retroactive to 1988 would be unduly disruptive to the orderly administration of justice in Pennsylvania.” *Id.* at 793. Here, however, the City does not seek to strike down legislation after a decades-long delay and denying the Petition will cause no “disruption to society and orderly governance.” *Id.* at 792.

## II. Estoppel Does Not Apply

As Plaintiff points out, “[e]quitable estoppel applies to prevent a party from assuming a position or asserting a right to another’s disadvantage inconsistent with a position previously taken.” Plaintiff cites *Blofsen v. Cutair*, 460 Pa. 411, 417 (1975), but that case rejects a claim of estoppel where the party asserting it failed to sustain its burden of proving reliance. Here, plaintiff cannot even get to the reliance issue because the City has taken no inconsistent position. In 1995, the City agreed that it would “abide by and adhere to Pennsylvania law.” The City takes the same position now – as with all persons and governmental entities in the State, it

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died, evidence has been lost or that it has significantly altered its position as a result of the alleged delay in filing suit in the Commonwealth Court.”).

<sup>2</sup> Plaintiff also misses the mark in suggesting in passing that the City “did not even raise its argument” that the Stipulation cannot form the basis of a contempt order “in its Answer or New Matters... [and] the argument should be deemed waived.” (Reply at 2). The City need not raise an affirmative defense as to this issue, *see* Pa. R.C.P. 1030; it is Plaintiff’s burden to prove contempt. *See Lachat v. Hinchcliffe*, 769 A.2d 481, 487 (Pa. Super. 2001). In any event, the City explicitly stated in its New Matter that “Plaintiff’s Petition fails to support a claim for contempt” (*see* Answer, at p. 16) and Plaintiff has not been prejudiced by any alleged omission.

remains under an obligation to abide by Pennsylvania law.

The City’s legal argument here, which it has never had cause to raise before, is that the Stipulation cannot form the basis of a *contempt* order, at least with respect to the new and distinctive 2019 ordinances, because the Stipulation does not meet longstanding Pennsylvania requirements that the underlying order be “definite, clear and specific.” *Marian Shop, Inc.*, 670 A.2d at 673. Plaintiff fails entirely to respond to this fatal flaw in its Petition.<sup>3</sup>

The same holds true for judicial estoppel, which may be applied when a party “(1) assume[s] an inconsistent position in an earlier action, and (2) [that position] was successfully maintained in that action.” *Marazas v. W.C.A.B. (Vitas Healthcare Corp.)*, 97 A.3d 854, 859 (Pa. Commw. 2014). In contrast here, the issue before the Court—whether the Stipulation can form the basis of a contempt order under Pennsylvania law, particularly as applied to the new and distinctive ordinances—was not raised by Plaintiff’s 1996 Motion to Enforce.<sup>4</sup>

Finally, to the extent the City took any position at all regarding the Stipulation in the 1996 litigation, its position remains consistent to this day. The City argued in 1996: “The stipulation in question dealt specifically with a prior ordinance which was enacted by the legislative body of the City of Pittsburgh which attempted to ban certain assault weapons. Such stipulation has no applicability to the project here in question . . . .” *See City Response, Ex. D*

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<sup>3</sup> Nor, as with its failure to show prejudice resulting from delay required for laches, can Plaintiff show any reliance to its detriment on the basis of the City’s position, another requirement for equitable estoppel. *See Blofsen*, 460 Pa. at 418.

<sup>4</sup> Motions to enforce, unlike petitions for contempt, are governed by general principles of contract law, rather than the high textual standards applied here. *See Nationwide Ins. Enterprise v. Moustakidis*, 830 A.2d 1288, 1292 (Pa. Super. 2003). Thus, when this Court ruled on Plaintiff’s Motion to Enforce in 1996, it had no cause to apply the “definite, clear and specific” contempt standard at issue here.

(City’s 1996 Answer to Motion to Enforce) at ¶ 16. Estoppel cannot apply where the City has consistently argued that the Stipulation has no application beyond resolving the 1993 Ordinance.

### **III. Plaintiff’s “Contractual Interpretation” is Incorrect**

Plaintiff also errs in arguing if its Petition is dismissed, it will not have received the “benefit of the bargain agreed upon.” Reply at 5-11. Plaintiff in fact did receive the benefit of its bargain, because the 1993 Ordinance was never enforced. For context, after Plaintiff brought this suit, Section 6120 was amended by the General Assembly in order to preempt the 1993 Ordinance, as the Commonwealth Court stated in *Ortiz v. Commonwealth*, 655 A.2d 194, 198 (Pa. Commw. 1995), *aff’d* 545 Pa. 279 (Pa. 1996). As a result, the original lawsuit in this case was *rendered moot*; despite this lack of live controversy, the City agreed not to enforce—and never has enforced—the 1993 Ordinance. *See* Stipulation.

Plaintiff now argues that “the sole benefit or consideration received by [it] was the City’s agreement ‘to abide by and adhere to Pennsylvania law,’ which it could, thereafter, enforce through contempt proceedings.” Reply at 7. Unfortunately for Plaintiff, it cannot enforce such an order as a matter of contempt under settled law—unchallenged by Plaintiff—that orders underlying contempt proceedings be “definite, clear, and specific,” *see Marian Shop, Inc.*, 670 A.2d at 673, and that “obey the law” provisions do not satisfy this requirement as a matter of law. *See* City Response at 12-19. Plaintiff cannot be heard to complain now, twenty-four years later, that it is unhappy with the bargain it struck.<sup>5</sup>

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<sup>5</sup> Plaintiff incorrectly argues that in its original Complaint, it sought an injunction preventing the City “from enacting or in any way regulating the ownership, possession, transportation, or transfer of firearms and other weapons in contravention of the Pennsylvania Uniform Firearms Act.” Reply at 9. In fact, it was only an individual (Preston Covey), who is not a party to the contempt proceeding now before this Court, who sought such relief; while Plaintiff Allegheny County Sportsmen’s League “incorporated” Covey’s prior allegations from the Complaint, it did not expressly incorporate the requests for relief, and instead, expressly requested only that the

Plaintiff additionally argues that the City should not be “relieve[d] of [its] contractual obligations because of the questionable wisdom of the bargain.” Reply at 6. But the City does not (and cannot) request that it be relieved of its “obligations” here, because that obligation is to abide by Pennsylvania law. Unlike the cases relied upon by Plaintiff, which involve parties seeking to escape various financial requirements of contracts they had entered into, the City does not seek to evade its obligation to obey the law; rather, the City argues (and relies on overwhelming and uncontradicted legal support) that such a provision cannot form the basis of an order for contempt. *See* Response at 12-19.

Finally, the fact that the City voluntarily entered into the Stipulation has no effect on this analysis. No reasonable person would have considered that by executing the Stipulation, settling a moot lawsuit, with its boilerplate provision that the City and Plaintiff agree to obey the law, it handed to Plaintiff the right to haul it into court for contempt proceedings in perpetuity for any violation of Pennsylvania law, or even of Section 6120. Furthermore, Plaintiff fails entirely to respond to the overwhelming body of case law cited by the City in its Response holding unenforceable “obey the law” provisions in court orders that were also agreed to by the parties. *See* Response at 15, fn. 5 (citing *S.E.C. v. Smyth*, 420 F.3d 1225, 1233 n.14 (11th Cir. 2005) (despite defendant’s stipulation to order to “obey the law,” provision was “unenforceable”); *FTC v. Garden of Life, Inc.*, 845 F. Supp. 2d 1328, 1335-36 (S.D. Fla. 2012) (though parties entered into stipulation, “[a] court cannot enforce an injunction that merely requires someone to obey the law”), *aff’d in part, vacated in part on other grounds*, 516 F. App’x 852 (11th Cir. 2013)).

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Court declare the Ordinance void and enjoin its enforcement (*See* City Response, Ex. D at 16-17). The Stipulation therefore confirmed that Plaintiff Allegheny Sportsmen’s League had effectively received all the relief that it (as opposed to Mr. Covey) specifically asked for.

Date: August 5, 2019

Respectfully Submitted

By: Wendy Kobee / RHC

s/ Yvonne S. Hilton

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CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing to be served, as indicated, upon the following:

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DATED this 5<sup>th</sup> day of August, 2019.

  
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Ryan Gerber