

GARY ST. FLEUR, et al.

PLAINTIFFS

v.

THE CITY OF SCRANTON, et al.

DEFENDANTS

IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

2017-CV-1403

PLAINTIFFS' ANSWER TO DEFENDANTS' NEW MATTER

Now comes, the Plaintiffs, by and through their attorney, John J. McGovern, Jr., Esquire and in response to Defendants' New Matter aver as follows:

1. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
2. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
3. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.
4. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, Act 511 contains two separate and distinct caps – one for rates and one for an aggregate statutory cap. The Home Rule Charter and Optional Plans Law only relieves a municipality from the rate cap - not the aggregate statutory cap.

MAURICE J. KELLY
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION
LACKAWANNA COUNTY
2017 SEP 19 10:30 AM

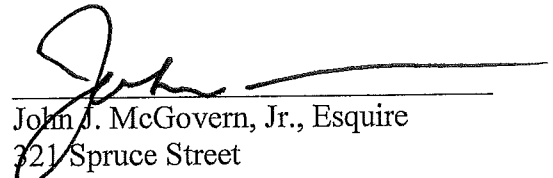
5. Admitted.
6. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded. By way of further answer, Act 511 contains two separate and distinct caps – one for rates and one for an aggregate statutory cap. The Home Rule Charter and Optional Plans Law only relieves a municipality from the rate cap - not the aggregate statutory cap.
7. Denied. The corresponding paragraph refers to a writing that speaks for itself. Strict proof is demanded. By way of further answer, Act 511 contains two separate and distinct caps – one for rates and one for an aggregate statutory cap. The Home Rule Charter and Optional Plans Law only relieves a municipality from the rate cap - not the aggregate statutory cap.
8. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, Act 511 contains two separate and distinct caps – one for rates and one for an aggregate statutory cap. The Home Rule Charter and Optional Plans Law only relieves a municipality from the rate cap - not the aggregate statutory cap. Additionally, the statutory language Defendants are emphasizing is the *remedy* when the aggregate statutory cap is violated.
9. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded.

10. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the income tax at issue is a tax levied under the authority of Act 511.
11. Defendants omitted Paragraph 11 in its pleading. If a response is deemed necessary, said paragraph is specifically denied and strict proof is demanded.
12. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the Local Services Tax at issue is a tax levied under the authority of Act 511. “After a municipality has adopted a plan under Subchapter C or C.1 of Chapter 2 and with the approval of the court, it may adopt an ordinance imposing the following: A local services tax pursuant to Chapter 3 of the *act of December 31, 1965, known as the The Local Tax Enabling Act*, at a rate not to exceed \$156.” 53 P.S. § 11701.123(d)(1) (emphasis added).
13. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, Plaintiffs are not alleging the Defendants have violated any rate cap; they are alleging Defendants have exceeded the statutory cap on aggregate taxes collected as set forth under Act 511.

14. Denied. The corresponding paragraph contains conclusions of law and/or ultimate facts to which no response is required; however, if a response is deemed necessary, the corresponding paragraph is specifically denied and strict proof thereof is demanded. By way of further answer, the Defendants misstate the test for reviewing Act 511. The appropriate test under The Home Rule Charter and Optional Plans Law is whether the statute is applicable in every part of the Commonwealth - not whether the statute is applicable in every political subdivision. As such, Plaintiffs submit that Act 511 is applicable in every part of the Commonwealth

WHEREFORE, Plaintiffs respectfully request that this Honorable Court dismiss Defendants' New Matter.

Respectfully Submitted:


John J. McGovern, Jr., Esquire
321 Spruce Street
Suite 201
Scranton, PA 18503

CERTIFICATE OF SERVICE

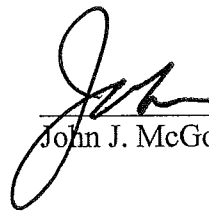
I, John J. McGovern, Jr., Esquire, hereby certify that on September 6, 2017, a copy of the foregoing was served:

Via hand delivery on the following:

The Honorable James A. Gibbons
200 North Washington Avenue
Scranton, PA 18503

Via First Class Mail, postage prepaid (or email), on the following:

Kevin M. Conaboy, Esquire
1006 Pittston Avenue
Scranton, PA 18505

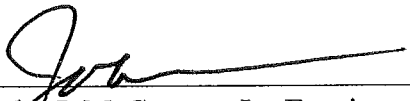


John J. McGovern, Jr., Esquire

MAURIN B. KELLY
LACKAWANNA COUNTY
2017 SEP -5 P 3:02
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

VERIFICATION

I, John J. McGovern, Jr., Esquire, hereby verify that the facts set forth in the foregoing are true and correct to the best of my knowledge, information, and belief, and it is based upon my discussions and conferences with the Plaintiffs. It is hereby further verified that the Plaintiffs are unavailable for signature within the time allowed for the filing of this pleading.



John J. McGovern, Jr., Esquire
Attorney for Plaintiffs