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 ICC CHY. Wyland
 BRIAN K. ST...
 PROTHONOTARY & C...

SANDY TOWNSHIP, Plaintiff	: : : : : : : : : :	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA DOCKET NO. 2023-0749-CD CIVIL ACTION – LAW
v. CITY OF DUBOIS, Defendant		

**PLAINTIFF’S ANSWER IN OPPOSITION TO DEFENDANT’S PRELIMINARY
 OBJECTIONS TO PLAINTIFF’S COMPLAINT**

Plaintiff the Township of Sandy (the “Township”), by and through its counsel Salzmann Hughes, P.C., hereby files an Answer in Opposition to Defendant’s Preliminary Objections (“Preliminary Objections”) to Plaintiff’s Complaint (“Complaint”), and respectfully requests that this Court overrule the Preliminary Objections in their entirety. In support thereof, the Township answers as follows:

**COUNT I
 PRELIMINARY OBJECTION PURUSANT TO Pa. R.C.P. 1028(a)(1)
 FOR LACK OF SUBJECT MATTER JURISDICTION**

1. Denied. The Complaint is a document in writing that speaks for itself. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written document, such averments are specifically denied, and strict proof thereof is demanded at trial. By way of further response, the Township properly filed this action with this Court

pursuant to this Court's original jurisdiction under Section 931(a) of the Judicial Code, which grants Pennsylvania courts of common pleas with "unlimited original jurisdiction [over] all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas," except as otherwise provided by law. 42 Pa.C.S. § 931(a); *see also* Pa. Const. Art. V, § 5 (providing that the courts of common pleas shall "hav[e] unlimited original jurisdiction in all cases except as may otherwise be provided by law"). Complaint at ¶ 12.

2. Denied. The Complaint and "ballot question" referred to in this Paragraph are documents in writing that speak for themselves. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written documents, such averments are specifically denied, and strict proof thereof is demanded at trial.

3. Denied in part; admitted in part. It is admitted only that Paragraph 26 of the Complaint states that "[t]he result of the Consolidation Referendum was certified on November 18, 2021," and that the Complaint was filed on June 1, 2023. The remaining averments of this Paragraph are specifically denied. By way of further response, the Complaint is a document in writing that speaks for itself. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written document, such averments are specifically denied, and strict proof thereof is demanded at trial.

4. Denied. The averments of this Paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, the averments of this Paragraph are specifically denied and strict proof thereof is demanded at trial.

5. Denied. The averments of this Paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, the averments of this Paragraph are specifically denied and strict proof thereof is demanded at trial. By way of further response,

Defendant's preliminary objection based on alleged lack of subject matter jurisdiction fails as a matter of law. The Pennsylvania Supreme Court has explained that "the test for determining whether a court has jurisdiction of the subject matter is the competency of the court to determine controversies of the general class to which the case presented for its consideration belongs, and the controlling question is whether the court had power to enter upon the inquiry, not whether it might ultimately decide that it was unable to grant the relief sought in the particular case." *Strank v. Mercy Hosp. of Johnstown*, 102 A.2d 170, 172 (Pa. 1954). The Township properly filed this action pursuant to this Court's original jurisdiction under Section 931(a) of the Judicial Code, which grants Pennsylvania courts of common pleas with "unlimited original jurisdiction [over] all actions and proceedings, including all actions and proceedings heretofore cognizable by law or usage in the courts of common pleas," except as otherwise provided by law. 42 Pa.C.S. § 931(a); *see also* Pa. Const. Art. V, § 5 (providing that the courts of common pleas shall "hav[e] unlimited original jurisdiction in all cases except as may otherwise be provided by law"). Complaint at ¶ 12. The Pennsylvania Supreme Court has explained that Section 931(a) constitutes a "sweeping statutory grant of jurisdiction" to the courts of common pleas over all actions and proceedings "not exclusively vested elsewhere" by statute. *In re Administrative Order No. 1-MD-2003*, 936 A.2d 1, 6 (Pa. 2007).

Defendant's assertion that this Court lacks subject matter jurisdiction because "equity has no jurisdiction to intervene in this matter" once the referendum question was approved by electors based on the provisions of the Municipal Consolidation or Merger Act, 53 Pa.C.S. §§ 731-41 (the "Consolidation Act"), is wrong. Only where there is an adequate statutory remedy will a statute bar the court from exercising equity jurisdiction because the failure to pursue an adequate statutory remedy creates a jurisdictional defect. *Maryland Cas. Co. v. Odyssey Contracting Corp.*, 894 A.2d

750, 754 (Pa. Super. 2006); *see also Bradway v. Cohen*, 642 A.2d 615, 618 (Pa. Cmwlth. 1994). Here, the Consolidation Act provides the Township with *no* adequate remedy and therefore this Court has equitable jurisdiction over this case. *See* Complaint at ¶ 73. Further, Pennsylvania law is well-settled that “[i]n the absence of a clear legislative mandate, laws are not to be construed to decrease the jurisdiction of the courts.” *Beneficial Consumer Disc. Co. v. Vukman*, 77 A.3d 547, 552 (Pa. 2013). “[I]f the legislature’s intention to limit jurisdiction is not clear, [the court] should construe the act in question as imposing no limitation.” *Id.* (quoting *In re Jones & Laughlin Steel Corporation*, 398 A.2d 186, 191 (Pa. Super. 1979)). There is *nothing* in the Consolidation Act that strips the courts of common pleas of jurisdiction to enter upon the instant inquiry of whether the consolidation process can be stayed for a referendum question approved by electors where it is impossible for municipal governing bodies to perform the actions necessary to effectuate a complete and successful consolidation and financial merger under the Consolidation Act until a future date. Because there is no statutory or other legal basis depriving this Court of subject matter jurisdiction over the instant case, Defendant’s preliminary objection must be denied.

6. Denied in part; admitted in part. It is admitted only that on November 7, 2022, the City and Township entered into a Consolidation Agreement pursuant to Section 737 of the Consolidation Act. Complaint at ¶ 37. The Consolidation Agreement and the Minutes of the DuBois/Sandy Joint Board Meeting held November 7, 2022, referenced in this Paragraph are documents in writing that speak for themselves. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written documents, such averments are specifically denied, and strict proof thereof is demanded at trial. By way of further response, only *after* the Consolidation Agreement was executed was it discovered that the City’s financial data upon which the Consolidation Study, consolidation plan, the Consolidation Referendum, and

Consolidation Agreement were premised are materially incorrect, inaccurate, and incomplete, and make complete and successful consolidation impossible. *See* Complaint at ¶¶ 6, 41, 55.

7. Denied. The averments of this Paragraph are specifically denied. Plaintiff's Complaint and the cases cited therein establish that this Court is authorized to assume equity jurisdiction over this case. By way of further response, the Township incorporates its response to Paragraph 5 above. Additionally, the averments of this Paragraph purport to summarize the Complaint which is a document in writing that speaks for itself. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written document, such averments are specifically denied, and strict proof thereof is demanded at trial. The averments of this Paragraph also constitute conclusions of law to which no response is required. To the extent that a response is required, the averments of this Paragraph are specifically denied and strict proof thereof is demanded at trial.

8. Denied. The averments of this Paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, the averments of this Paragraph are specifically denied and strict proof thereof is demanded at trial. By way of further response, the Township incorporates its response to Paragraph 5 above.

9. Denied. The averments of this Paragraph are specifically denied. Plaintiff's Complaint establishes that this Court has subject matter jurisdiction over this action and the ability to exercise equity jurisdiction over this action. By way of further response, the Township incorporates its response to Paragraph 5 above.

WHEREFORE, the Township respectfully requests that this Court overrule Defendant's Preliminary Objection Count I.

COUNT II
PRELIMINARY OBJECTIONS IN THE FORM OF A MOTION TO STRIKE
PURSUANT TO Pa. R.C.P. 1028(a)(2) FOR INCLUSION OF SCANDOLOUS AND
IMPERTINENT MATTER

10. The Township incorporates its answers to Paragraphs 1 through 9 above as if set forth in full herein.

11. Denied. The averments of this Paragraph are specifically denied. This Court has equity jurisdiction over this case, and the Township is entitled to the relief requested in the Complaint. By way of further response, the Township incorporates its response to Paragraph 5 above. Additionally, as demonstrated by the exhibits to the Complaint, the allegations in the Complaint of “fraud, theft, and other issues concerning the City’s public accounts and finances,” including Paragraphs 6, 7, and 14, are supported by publicly available documents from the Pennsylvania Attorney General and various news outlets. Moreover, Defendant’s assertion that any of these allegations are scandalous and impertinent and therefore should be stricken fails as a matter of law. “To be scandalous and impertinent, the allegations must be *immaterial and inappropriate* to the proof of the cause of action.” *Common Cause/Pennsylvania v. Com.*, 710 A.2d 108, 115 (Pa. Cmwlth. 1998), *aff’d*, 757 A.2d 367 (Pa. 2000) (emphasis added). “A scandalous allegation bears cruelly on the moral character of an individual, states anything which is contrary to good manners, or anything which is unbecoming to the dignity of the court to hear, or which charges some person with a crime, not necessary to be shown in the cause.” *Williams v. Dunlap*, No. CV-22-0775, 2022 WL 19833439, at 1 (Pa. Com. Pl. Dec. 01, 2022) (citing *Universal Film Exchanges, Inc. v. Budco, Inc.*, 44 Pa. D. & C.2d 695, 713 (Pa. Com. Pl. 1968)). Conversely, “[a]llegations that are material and necessary to a plaintiff’s case are not legally scandalous.” *Id.* (citing *DeMeo v. Bullock*, 55 Pa. D. & C.2d 789, 792 (Pa. Com. Pl. 1972)). “An allegation is impertinent when it is irrelevant to the material issue made or tendered.” *Universal Film*

Exchanges, Inc. v. Budco, Inc., 44 Pa. D. & C.2d 695, 713 (Pa. Com. Pl. 1968) (citing *Schwinger v. Piekarski*, 13 Pa. D. & C.2d 617 (1957)). “[T]he right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice.” *Com., Dep’t of Env’t Res. v. Hartford Acc. & Indem. Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. 1979). The allegations Defendant seeks to strike go to the very crux of this matter in that such allegations are the very basis for the relief the Township is requesting and absolutely necessary for the Township’s claims in this case. Further, the averments of this Paragraph purport to summarize the Complaint which is a document in writing that speaks for itself. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written document, such averments are specifically denied, and strict proof thereof is demanded at trial. The remaining averments of this Paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, the remaining averments of this Paragraph are specifically denied, and strict proof thereof is demanded at trial.

12. Denied. The averments of this Paragraph purport to summarize the Complaint which is a document in writing that speaks for itself. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written document, such averments are specifically denied, and strict proof thereof is demanded at trial. By way of further response, as demonstrated by the exhibits to the Complaint, the allegations contained in Paragraphs 41 through 62 of the Complaint are supported by publicly available documents from the Pennsylvania Attorney General and various news outlets. Moreover, it is specifically denied that the allegations contained in Paragraphs 41 through 62 of the Complaint are scandalous and impertinent. To the contrary, these allegations go to the very crux of this matter and are absolutely

material, necessary, and relevant to the Township's claims in this case. By way of further response, the Township incorporates its response to Paragraph 11 above.

13. Denied. The averments of this Paragraph are specifically denied. In support of its preliminary objection to strike alleged scandalous and impertinent averments from the Complaint, Defendant makes assertions that contradict the facts of record. This Paragraph refers to the Pennsylvania Economy League Central Division's (the "PEL") Consolidation Study, the results and recommendations of which are set forth in the March 16, 2021, Consolidation Study Report attached as Exhibit A to the Complaint. Complaint at ¶¶ 28-30. PEL relied upon the financial information and data provided by the City and Township. PEL expressly states in its Consolidation Study Report that it "did not conduct independent audits of [financial] data provided by the municipalities." Exhibit A of Complaint at p. 23. By way of further response, the PEL's study and recommendations referred to in this Paragraph are documents in writing that speak for themselves. To the extent that the averments of this Paragraph may be inconsistent with or an attempt to characterize the written documents, such averments are specifically denied, and strict proof thereof is demanded at trial.

14. Admitted in part; denied in part. It is admitted only "[t]hat the financial records of both municipalities have been subject to audits which are a matter of public record." It is specifically denied that the fact the City's financial records have been subject to publicly available audits establishes that there is "no proof" to support the allegations contained in the Complaint or that such allegations are scandalous or impertinent. It is further specifically denied that any of the allegations at issue in the Complaint are scandalous or impertinent. By way of further response, the Township incorporates its response to Paragraph 11 above.

15. Denied. The averments of this Paragraph are specifically denied. The Township's claims and requested relief to stay the consolidation process at least until the criminal investigation and forensic audit are completed is because the fraud, theft, and other issues concerning the City's public accounts and finances, as detailed in the same Paragraphs that Defendant seeks to strike, has made it impossible to effectuate a complete and successful consolidation and financial merger under the Consolidation Act. The Complaint's allegations regarding "fraud, theft, and other issues concerning the City's public accounts and finances," and specifically Paragraphs 6, 7, 14, and 41-62 of the Complaint, are therefore absolutely relevant, material, and appropriate. Defendant's assertion that these allegations are "irrelevant, immaterial and inappropriate" because they "prejudice" and "urge the Court to invoke equity jurisdiction" where the Court supposedly has no jurisdiction is completely without merit. This Court has jurisdiction over this case, and it is the Township that will be severely prejudiced by striking these material, relevant, and necessary allegations from the Complaint. By way of further response, the Township incorporates its response to Paragraph 5 above. Finally, Defendant's assertion that these allegations are in violation of Pennsylvania's pleading requirements contained in Pa. R.C.P. 1019 is specifically denied. To the contrary, only if Defendant obtains the relief that it seeks would the Complaint not comply with Pennsylvania's pleading requirements because the very material facts on which the Township's causes of action are based would be stricken. *See* Pa. R.C.P. 1019(a).

WHEREFORE, the Township respectfully requests that this Court overrule Defendant's Preliminary Objection Count II.

COUNT III
PRELIMINARY OBJECTION TO PLAINTIFF'S COMPLAINT UNDER THE
PROVISIONS OF Pa. R.C.P. 1028(a)(5)
RAISING LACK OF CAPACITY TO SUE

16. The Township incorporates its answers to Paragraphs 1 through 15 above as if set forth in full herein.

17. Admitted in part; denied in part. It is only admitted that the Township did not initiate the Consolidation Referendum referred to in the Complaint. It is further admitted only that prior to the Consolidation Referendum being placed on the ballot, the Township Supervisors voted at the June 7, 2021, meeting to not move forward with consolidation at the present time. The remaining averments of this Paragraph are specifically denied.

18. Admitted in part; denied in part. It is admitted only that pursuant to Sections 733(a)(2), 735, and 736 of the Consolidation Act, the Consolidation Referendum referred to in the Complaint was placed on the ballot by voter initiative petitions and approved by electors. The consolidation process, however, which consists of the actions necessary to effectuate successful consolidation and financial merger of the Township and City under the Consolidation Act, remains ongoing. The remaining averments of this Paragraph are therefore specifically denied.

19. Denied. The averments of this Paragraph constitute conclusions of law to which no response is required. To the extent that a response is required, the averments of this Paragraph are specifically denied and strict proof thereof is demanded at trial. By way of further response, the Township specifically denies that Section 741 of the Consolidation Act is in any way applicable to this case. Section 741 does not provide the Township with any adequate remedy that it seeks in this case and therefore the Township has not brought any claims under Section 741.

20. Denied. The averments of this Paragraph are specifically denied. As an initial matter, it is unclear whether Defendant is purporting to bring a preliminary objection based on "lack

of capacity” or “lack of standing.”¹ The Pennsylvania Supreme Court has explained that “capacity to sue” refers to the legal ability of a person to come into court and lack of capacity to sue generally “refer[s] to or involves only a general legal disability, ... such as infancy, lunacy, idiocy, coverture, want of authority, or a want of title in plaintiff in the character in which he or she sues.” *In re Estate of Sauers*, 32 A.3d 1241, 1248–49 (Pa. 2011). “The quintessential example of someone who lacks capacity to sue or be sued is a deceased person, as capacity only exists in living persons.” *Id.* at 1249. Capacity to sue “is distinguished from standing to sue which is a right to relief, which goes to the existence of the cause of action.” *Id.* at 1248. Either way, Defendant’s preliminary objection fails as a matter of law.

Defendant’s preliminary objection for alleged lack of capacity and/or standing is based on Defendant’s flawed assertions that: (1) the Township has brought the instant action as “a representative of the individual electors,” and (2) the Consolidation Act prohibits the Township from bringing this action because Section 741 of the Consolidation Act is the *sole* basis under which an action regarding consolidation can be brought once a consolidation referendum has been approved by the electors under the Consolidation Act. First, the Township is not asserting claims as “a representative of the individual electors.” To the contrary, as set forth more fully in the Complaint, the Township has an independent and distinct duty pursuant to the Consolidation Act and Consolidation Agreement to perform the actions necessary to effectuate complete and successful consolidation and financial merger of the Township and City. The Township therefore brought this action to stay the consolidation process because the vast, substantial, and material financial uncertainties of the City’s finances make it impossible for the Township to carry out its

¹ The heading of Count III of Defendant’s Preliminary Objection states it is being brought “under the provisions of Pa. R.C.P. 1028(a)(5) raising lack of capacity to sue.” The wherefore clause states, however, that “Defendant respectfully requests that Plaintiff’s Complaint be dismissed because Plaintiff lacks standing to bring this action before the Court.” Preliminary Objections at p. 6-7.

independent responsibility to effectuate a successful consolidation. And unless these vast uncertainties are resolved the Township will suffer substantial financial losses and harm and other significant adverse impacts if the consolidation process continues. See Complaint at ¶¶ 36-40, 54-62, 66-67, 71-72.

Second, there is *nothing* in the Consolidation Act that bars the Township from bringing this case as Defendant contends. Simply because the Consolidation Act contains no express provision for an action by a municipality to stay the consolidation process where successful consolidation is impossible until a future date does not mean that such an action is barred. And barring such an action is contrary to the very purpose of the Consolidation Act, which is to provide for successful and complete consolidation, and is the exact purpose of the Township's action. The Township clearly has both capacity and standing to bring this suit to comply with its independent duty to effectuate successful consolidation as required under the Consolidation Act.

Finally, to the extent that Defendant avers in this Paragraph that this Court does not have jurisdiction over this action or that this Court cannot grant the relief the Township seeks, such averments are specifically denied. By way of further response, the Township incorporates its response to Paragraph 5 above.

21. Denied. The averments of this Paragraph are specifically denied. The Township has capacity to bring this action, and the Township's action is not barred by the Consolidation Act. Preliminary Objection Count III fails as a matter of law and should therefore be overruled. By way of further response, the Township incorporates its response to Paragraph 20 above.

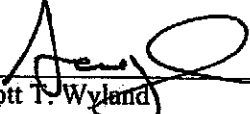
WHEREFORE, the Township respectfully requests that this Court overrule Defendant's Preliminary Objection Count III.

Respectfully submitted,

SALZMANN HUGHES, P.C.

Date: July 10, 2023

By:



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Solicitor to Sandy Township

VERIFICATION

I have read the statements made in the foregoing Answer in Opposition to Defendant's Preliminary Objections and they are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein made are subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Sandy Township

Date: 10 Jul 2023

By:



Shawn Arbaugh, Township Manager

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provision of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: July 10, 2023

By:

SALZMANN HUGHES, P.C.



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CERTIFICATE OF SERVICE

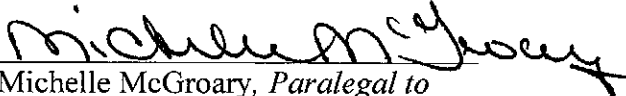
I hereby certify that on the 10th day of July 2023, I served a true and correct copy of the foregoing document via United States mail, first class mail, postage prepaid, and addressed as follows:

Toni M. Cherry, Esq.
P. O. Box 505
1 North Franklin St.
DuBois PA 15801
8143715800

Date: July 10, 2023

SALZMANN HUGHES, P.C.

By:


Michelle McGroary, *Paralegal to*
Scott T. Wyland

SANDY TOWNSHIP,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	CLEARFIELD COUNTY,
	:	PENNSYLVANIA
v.	:	
	:	DOCKET NO. 2023-0749-CD
CITY OF DUBOIS,	:	
Defendant	:	CIVIL ACTION – LAW
	:	

ORDER

AND NOW, this _____ day of _____, 2023, upon consideration of Plaintiff's Answer in Opposition to Defendant's Preliminary Objections to Plaintiff's Complaint, it is hereby ORDERED and DECREED that the Preliminary Objections are OVERRULED.

By the Court:

J.