

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

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JOHN T. DARR, in his official
capacity as Sheriff of Muscogee County,

Plaintiff,

v.

COLUMBUS, GEORGIA, a City, a public
corporation and a political subdivision of
the State of Georgia; TERESA P.
TOMLINSON, in her official capacity as
Mayor of Columbus, ISAAH HUGLEY,
in his official capacity as the City Manager
of Columbus, PAM HODGE, in her
official capacity as Finance Director of
Columbus, JERRY "POPS" BARNES, in
his official capacity as District 1
Councilor, GLEN DAVIS, in his official
capacity as District 2 Councilor, BRUCE
HUFF, in his official capacity as District
3 Councilor, EVELYN TURNER PUGH,
in her official capacity as District 4
Councilor, MIKE BAKER, in his official
capacity as District 5 Councilor, GARY
ALLEN, in his official capacity as District
6 Councilor, EVELYN "MIMI"
WOODSON, in her official capacity as
District 7 Councilor, JUDY THOMAS,
in her official capacity as District 9 at
Large Councilor, and BERRY "SKIP"
HENDERSON, in his official capacity
as District 10 at Large Councilor,

Defendants.

H. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

CIVIL ACTION
FILE NO. SU-14-CV-3437

**CONSOLIDATED ANSWER AND DEFENSES OF DEFENDANTS TO
AMENDED PETITION FOR MANDAMUS ABSOLUTE AND INJUNCTION AND
PETITION FOR APPOINTMENT OF COUNSEL AND
PAYMENT OF ATTORNEYS' FEES AND COSTS**

COME NOW, COLUMBUS, GEORGIA, a city, a public and body politic and a political subdivision of the State of Georgia, TERESA P. TOMLINSON, in her official capacity as Mayor of Columbus, ISAIAH HUGLEY, in his official capacity as the City Manager of Columbus, PAM HODGE, in her official capacity as Finance Director of Columbus, JERRY "POPS" BARNES, in his official capacity as District 1 Councilor, GLENN DAVIS, in his official capacity as District 2 Councilor, BRUCE HUFF, in his official capacity as District 3 Councilor, EVELYN TURNER PUGH, in her official capacity as District 4 Councilor, MIKE BAKER, in his official capacity as District 5 Councilor, GARY ALLEN, in his official capacity as District 6 Councilor, EVELYN "MIMI" WOODSON, in her official capacity as District 7 Councilor, JUDY THOMAS, in her official capacity as District 9 Councilor, and BERRY "SKIP" HENDERSON, in his official capacity as District 10 at Large Councilor, and file this their Consolidated Answer and Defenses to Plaintiff Sheriff John T. Darr's Petition for Mandamus Absolute and Injunction and Petition for Appointment of Counsel and Payment of Attorneys' Fees and Costs. Defendants note they will also be filing a Brief in Response to said Petition for Appointment of Counsel and Payment of Attorneys' Fees and Costs herewith, as well as a Motion Dismiss under Rule 12(b)(6). Defendants request Plaintiff's Petitions be dismissed and the entry of an Order by this Court granting dismissal with prejudice and awarding any available damages to the Defendants and taxpayers of Defendant CCG for the frivolous nature of the claims filed, showing this Court as follows:

GENERAL OBJECTIONS

1.

Defendants object to Plaintiff's claims to the extent that they seek relief outside the jurisdiction of this Court and/or which exceeds the scope of authority of Plaintiff's pleading.

2.

Defendants object to Sheriff's claims to the extent they seek to alter or revise the processes and procedures, as well as the authority provided for, in the Charter of the Columbus Consolidated Government.

3.

Defendants object to the incomplete citations to the Charter, the Ordinances, the law, and his own actions throughout Sheriff's Petition, particularly to the extent the Sheriff attempts to characterize the provisions of the CCG Charter, the CCG Ordinances and the duties of the CCG Defendants within those documents as anything other than what is provided in the law and the documents themselves.

4.

Defendants object to the attempt to characterize the Sheriff or the law as anything other than what the law provides, whether that be for his constitutional duties or the participation he is required to undertake in the CCG legislative budget process. Defendants note the law speaks for itself.

5.

Defendants object to the extent the Sheriff requests Defendants to interpret the law or to make legal arguments in his Petition, as the Defendants are responsible for answering the factual allegations of the Petition. Defendants also object to the extent the Sheriff has misstated the burdens of the CCG Charter, the CCG Ordinances or the law. Any request for legal interpretation would best be left for the Court.

FIRST DEFENSE

The Sheriff's Petition fails to state a claim upon which relief can be granted against some or all of these Defendants.

SECOND DEFENSE

The Sheriff's Petition is frivolous and without legal merit and has been filed for improper purposes with an objective to harass the Defendants at an unfortunate cost to the taxpayers.

THIRD DEFENSE

The Sheriff's Petition presents no case or controversy in that there is no injury in fact and asks the Court to render an advisory and/or legislative opinion on procedural issues, which are moot.

FOURTH DEFENSE

The Sheriff's Petition shows no damages have been incurred and no right to relief presently exists.

FIFTH DEFENSE

The Sheriff's Petition seeks injunctive and other equitable relief, which is inappropriate and unavailable insofar as "unknown" actions and speculative decisions.

SIXTH DEFENSE

The Sheriff has other legal rights available to him to prevent mandamus from being necessary, namely the legislative processes of the Columbus Council, as he has been repeatedly reminded. Sheriff's failure to exhaust his administrative remedies demonstrates no mandamus is necessary.

SEVENTH DEFENSE

The Sheriff incorrectly makes allegations against the Mayor and other City Officers who did not make the legislative budgetary decisions at issue in this case. These portions of the Sheriff's claims are not authorized by law or equity and may invoke the privileges of immunity.

EIGHTH DEFENSE

The Sheriff's Petition admits the City Council has acted in accordance with the City Charter in reviewing, deliberating and adopting a budget for Sheriff's Office which is sufficient for the carrying out of his constitutional duties, so that he should be estopped from further complaints on his FY2015 Budget. Further, Sheriff Darr has pled a request to have his FY2014 budget adopted as his budget for FY2015, yet his FY2015 budget is some \$400,000 more than his FY2014 budget.

NINTH DEFENSE

The Sheriff's claims may be barred, in whole or in part, by estoppel, the doctrines of laches, waiver, ratification, acquiescence, accord and satisfaction, settlement, consent, agreement, payment and release, unclean hands and the failure to appropriately mitigate damages.

TENTH DEFENSE

Plaintiffs' Complaint presents no case or controversy. Plaintiffs ask the Court to render an advisory and/or legislative opinion on procedural issues, which are moot and are well settled through the Columbus Charter, state and local legislation, and ordinances adopted by the Columbus Council. This Court lacks the subject matter jurisdiction to set aside a properly adopted budget of the Columbus Council or to order that funds be budgeted or distributed solely from a particular fund.

ELEVENTH DEFENSE

Mandamus is not a proper remedy to undo acts already done. In addition, requesting the specific performance of a discretionary function is outside the remedies available under a mandamus petition. The extraordinary relief requested is not available under the facts of the Sheriff's Petition.

TWELFTH DEFENSE

Sheriff Darr has unclean hands, which should preclude his entitlement to equitable relief. His failure to abide by the Charter and to submit budget requests sufficiently prior to the sixty (60) days before the beginning of the fiscal year 2015, which began on July 1, 2014, did not allow the Mayor an opportunity to incorporate any budgets requests in her recommended budget to be presented to Columbus Council. The Mayor's recommended budget was due to be presented to Columbus Council no later than May 1, 2014. Such failure of Sheriff Darr to present his budget requests is the failure of a legal obligation, and the failure of a condition precedent to the complaining of the acts of which the Petition complains. The Sheriff should be estopped from asserting his right to any mandamus or other equitable relief.

THIRTEENTH DEFENSE

Sheriff Darr fails in his Petition to show that he is entitled to the extraordinary relief of an injunction. He has not shown he is likely to prevail on the merits. Similarly, he has failed to demonstrate irreparable harm.

FOURTEENTH DEFENSE

Sheriff Darr also fails in his Petition to demonstrate that the injunction he seeks is in the public interest. His Petition demonstrates, instead, an economic harm upon the Defendant CCG, other Defendants and to the taxpayers, which far outweigh any harm to the Sheriff. Granting the

injunction the Sheriff seeks would undo the lawfully adopted FY2015 Budget of Defendant CCG which has been in place since July 1, 2014 and which has governed and directed some fifty (50) departments and numerous other offices and the decisions, purchases, expenditures associated therewith. Such relief would devastate the CCG operations and the taxpayers, and the initiatives, which the CCG has undertaken.

FIFTEENTH DEFENSE

Sheriff's claims for budgetary additions are outside the scope of the Court's jurisdiction and in direct contradiction to the "original and exclusive" jurisdiction of the City Council, which as broad discretion over the appropriation of its funds in its legislative functions. *See* O.C.G.A. §36-5-22.1.

SIXTEENTH DEFENSE

Sheriff has failed to show any facts alleged in his Petition to indicate a clear or manifest abuse of the broad discretion provided to the legislative authority of the Defendant CCG.

SEVENTEETH DEFENSE

The Sheriff has failed to state a claim within the subject matter jurisdiction of this Court.

EIGHTEENTH DEFENSE

Sheriff's claims are barred to the extent he has failed, in whole or in part, to fulfill all conditions precedent prior to bringing this action.

NINETEENTH DEFENSE

The Sheriff is not entitled to recover for claims under Georgia law in this action due to his failure to comply with the requirements of O.C.G.A. §36-11-1.

TWENTIETH DEFENSE

The Sheriff's Petition fails to state a claim, because the Defendants did not proximately cause the damage asserted.

TWENTY-FIRST DEFENSE

The Sheriff's Petition should be dismissed to the extent that it exceeds the protections of immunity for any of these governmental entities and officials named as Defendants.

TWENTY-SECOND DEFENSE

Defendants' actions were taken in good faith and in a fair and equitable manner so as to bar some or all of Sheriff's claims.

TWENTY-THIRD DEFENSE

The Sheriff's Petition fails to demonstrate any legal duty owed to the Sheriff by some or all of these Defendants.

TWENTY-FOURTH DEFENSE

Defendants hereby plead for each and every affirmative defense available under O.C.G.A. §9-11-8(c) and/or O.C.G.A. §9-11-12(b) to the extent that these defenses are applicable to this case.

TWENTY-FIFTH DEFENSE

Defendants object to the misnomers made throughout Sheriff's Petition. Defendants object to all references to "Defendant City" and to the description of Defendant Columbus, Georgia in the caption as stated. Said Defendant is legally named the Columbus, Georgia, Consolidated Government, (hereinafter "Defendant CCG").

Wherefore, Defendants request dismissal of Sheriff's Petition in the related filings tendered herewith, but file this Answer and Defenses to the specific allegations of Sheriff's Petition as follows:

PARTIES AND JURISDICTION

1.

Defendant Columbus, Georgia ("the City") is located in the Chattahoochee Judicial Circuit and is a body corporate and politic of the State of Georgia.

ANSWER: Defendants deny the Sheriff's misnomer of "Defendant City", as Columbus, Georgia and Muscogee County, Georgia were combined as the State's first consolidated government, officially known as the Columbus, Georgia or the Columbus, Georgia, Consolidated Government ("CCG"). Accordingly, said Defendant will be referred to herein as "Defendant CCG" and Sheriff's Petition should be amended to reflect the correct legal name. To the extent not expressly admitted, this paragraph is denied.

2.

The City is a consolidated government of the former City of Columbus, Georgia and Muscogee County, Georgia.

ANSWER: Defendants admit that the Defendant CCG is a consolidated government formed by consolidation of the City and the Muscogee County governmental bodies. To the extent not expressly admitted, this paragraph is denied.

3.

The City is subject to the jurisdiction and venue of this Court.

ANSWER: Defendants admit that the Defendant CCG is subject to the venue of this Court, but they deny the Court has the jurisdiction over many matters in the Petition.

Defendants deny any wrongdoing to implicate jurisdiction and venue as necessary. To the extent not expressly admitted, this paragraph is denied.

4.

The City has all the powers and duties previously vested in Muscogee County, Georgia and is the “county governing authority” of Muscogee County as term is defined under Georgia law. O.C.G.A. §1-3-3(7) and Columbus City Charter (“Charter”) § 2-100(1).

ANSWER: Defendants object to the extent these allegations seek legal interpretation or legal argument. Defendants refer Plaintiff to the Charter and Georgia law, which speak for themselves. To the extent not expressly admitted, this paragraph is denied.

5.

The consolidated government of Columbus is a mayor-council-city manager form of government. Charter, § 1-101.

ANSWER: Defendants object to the extent these allegations seek legal interpretation or legal argument. Defendants refer Plaintiff to the Charter and Georgia law, which speak for themselves. To the extent not expressly admitted, this paragraph is denied.

6.

Defendant Teresa P. Tomlinson (“the Mayor”) is the duly elected Mayor of the City.

ANSWER: Defendants admit that Defendant Teresa P. Tomlinson is the duly elected Mayor of Defendant CCG and is generally subject to the venue of this Court in her official capacity. In further response thereto, Defendants deny the jurisdiction of this Court is necessary. To the extent not expressly admitted, this paragraph is denied.