

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

REPUBLICAN NATIONAL COMMITTEE, et al.

v.

CHAPMAN, et al.

CASE NO: 447 MD 2022

OPPOSITION OF RESPONDENT DELAWARE COUNTY BOARD OF ELECTIONS TO PETITIONERS' APPLICATION FOR LEAVE TO FILE REPLY

Respondent Delaware County Board of Elections ("Board") Answer to Petitioners' Application for Leave to File Reply in Support of Application Special Relief in the Form of a Preliminary Injunction ("Application for Leave") and responds as follows:

PRELIMINARY STATEMENT

Petitioners' request for leave to reply should be denied because 1) the argument that the Petitioners will not succeed on the merits of their action due, in part, to laches is not New Matter and is instead more appropriately decided under the standard set forth in *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount., Inc.*, 828 A.2d 995, 1001 (Pa. 2003); and 2) the requested relief denies the Board, and other Respondents, appropriate time to prepare responses to any new issues raised.

As an initial matter, Petitioners' argument concerning the doctrine of laches misreads the Board's Answer and uses this misreading as a basis to request additional briefing. Petitioners have filed two papers: a Petition for Review ("Petition") and an Application for Emergency Relief ("Application"), which seeks a preliminary injunction while the underlying Petition for Review is pending. Petitioners are correct that their underlying Petition, governed by Pa. R.A.P.

1513, is subject to the rules of pleading according to the Pennsylvania Rules of Civil Procedure. *See* Pa. R.A.P. 1517. Their Application, however, is brought under Pa. R.A.P. 1532. Pa. R.A.P. 1532 provides that this Court may enter an injunction “on application.” That application, here the Application, is not subject to the same rules of pleading as the Petition for Review filed under Pa. R.A.P. 1513. Instead, applications made under Rule 1532 “are considered under the general standards governing those motions.” *Johnson v. Wetzel*, 271 A.3d 547 (Pa. Cmwlth. 2021). A motion for a preliminary injunction, unless included within a Complaint (which is not the case here), is not a pleading authorized by Pa. R.C.P. 1017, such that defenses are required to be pled as New Matter under Pa. R.C.P. 1030.¹

Here, the Board does not raise laches as an affirmative defense to the Application. Rather, the Board argues that Petitioners are not entitled to an injunction because they will not succeed on the merits of their Petition for a number of reasons, including that the Petition is barred by laches. Both Petitioners and the Board rely on the test for injunctions set forth in *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 646–47, 828 A.2d 995, 1001 (Pa. 2003), which says that the party seeking an injunction “must show that it is likely to prevail on the merits.” In Paragraphs 11 through 17 of their Application, the Petitioners argue that they are entitled to injunctive relief, in part, because they are likely to succeed on the merits. *See, e.g.*, Application at ¶ 15. The Board asserted in response that, under *Summit Towne Center*, Petitioners are unlikely to succeed on the merits of the Petition, in part because the action is

¹ Pa. R.C.P. 1531, governing injunctions, does not provide for a specific form of application for a preliminary injunction or an answer/opposition. Moreover, while Petitioners request injunctive relief in Count III of their Petition for Review (subject to the rules of pleading under Pa. R.C.P. 1017 and 1030), their Application for Emergency Relief is an entirely separate filing seeking emergency injunctive relief, presumably before this Court rules on the injunction request in the underlying Petition. If Petitioners contend that their Application for Emergency Relief constitutes a Petition, *see* Pa. R.C.P. 206.1, any Answer is governed by Pa. R.C.P. 206.2 which does not call for the assertion of New Matter as a defense but instead only requires that respondents “state the material facts which constitute the defense to the petition.”

barred by laches. *See* Answer of Delaware Board of Elections at ¶¶ 11, 15. The laches argument is thus not an affirmative defense to the Application. Instead, it is part of an argument that Petitioners will not satisfy the fourth prong of *Summit Towne Center*, and that this Court should deny injunctive relief accordingly.

Additionally, Petitioners' requested relief – filing a reply brief on Sunday, September 25th to respond to issues raised by the parties in their Answers – does not provide the Board and other Respondents sufficient time to brief any new arguments raised by Petitioners ahead of the hearing currently scheduled for September 28th.

Petitioners' arguments in their Application need only be construed under the *Summit Towne Center* test. Yet in their Application for Leave to File Reply, Petitioners request relief to respond to the Board's answer with "reasonable time to assess any new issues that may be introduced." *See* Application for Leave to Reply at ¶ 16. If new issues may be introduced, it is unfair to allow only Petitioners to raise and brief them without affording the Board and other Respondents the opportunity to defend their positions and respond to new arguments.

Accordingly, the Board respectfully requests that the Application for Leave to Reply be denied. In the event that this Court does grant the Application for Leave to Reply, the Board respectfully requests that it, any other Respondents who wish to participate, be afforded a brief surreply of 5 pages to be submitted by 5:00 p.m. on Monday, September 26th.

RESPONSE TO APPLICATION FOR LEAVE TO FILE REPLY

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted in part, denied in part. It is admitted that this Court granted the Board's Application for Relief allowing it to respond to the Application. All other allegations are denied as stated. Further, this Paragraph refers to a writing, which speaks for itself, and any characterization thereof is denied.

9. This Paragraph is directed to a party other than the Board and, as such, no response is required.

10. This Paragraph is directed to a party other than the Board and, as such, no response is required.

11. Denied. This Paragraph contains conclusions of law to which no response is required.

12. Denied. This Paragraph contains conclusions of law to which no response is required.

13. Denied. Further, this Paragraph contains conclusions of law to which no response is required.

14. Denied. Further, this Paragraph contains conclusions of law to which no response is required.

15. Denied.

16. Denied. By way of further response, this Application should be decided under the proper standard set forth in *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 646–47, 828 A.2d 995, 1001 (2003) which requires no further briefing.

17. Denied. This Paragraph purports to request the relief sought in the Application and no response is required thereto. Further, this Paragraph contains conclusions of law to which no response is required. To the extent this Paragraph contains allegations of fact directed to the Board, they are denied.

18. Denied.

Dated: September 21, 2022

Respectfully submitted,

/s/ Nicholas M. Centrella, Jr.
J. Manly Parks (74647)
Nicholas M. Centrella, Jr. (326127)
30 South 17th Street
Philadelphia, PA 19103
Tel.: (215) 979-1000
JMParks@duanemorris.com
NMCentrella@duanemorris.com

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