

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**TWO RIVERS PUBLIC CHARTER SCHOOL,
INC., et al.,**

Plaintiffs,

v.

ROBERT WEILER, JR., et al.,

Defendants.

Case No.: 2015 CA 009512 B

Judge: Judge Jeanette J Clark

Next Event: Initial Conference

April 29, 2016

**DEFENDANT ROBERT WEILER, JR.'S REPLY TO PLAINTIFFS' CONSOLIDATED
OPPOSITION TO THE MOTIONS TO DISMISS**

Defendant Robert Weiler, Jr., *pro se*, files this reply to the Plaintiffs' Consolidated Opposition to his Motion to Dismiss, filed February 26, 2016.

The plaintiffs' contention that Mr. Weiler has waived these legal defenses is preposterous. Not only was their lack of standing mentioned in the defendant's answer, if only in passing (See Mr. Weiler's Answer, Second Section, Paragraph 2(a)), but the plaintiffs' attorney himself specifically and explicitly consented to the motion replacing the answer (See Exhibit 1, an e-mail exchange between Mr. Weiler and Michael Murphy, Bailey Glasser LLP, attorney for the Plaintiffs). Under Rule 12(b) it is at the option of the defendant to state these claims in a responsive pleading or by motion¹, here the defendant has done both. Furthermore, Rule 12(h)

¹ (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or 3rd-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) [Deleted], (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse

makes clear that either of these defense may still be presented. Rule 12(h)(2)² specifically refers to the defense of failure to state a claim upon which relief can be granted, and Rule 12(h)(3)³ specifically refers to subject matter jurisdiction. A plain English reading of these rules supports the defendant's claim that these matters could be brought before the court even if they had not been mentioned in his Answer. To claim that a defendant has waived a defense in an answer while simultaneously consenting to that defense replacing the answer is disingenuous when viewed in the best light, and an outright fraud on the Court when viewed in the worst.

Because the defense of failure to state a claim upon which relief can be granted is tied to the plaintiffs' lack of standing, this defense is also preserved.

Regarding the behavior alleged to have taken place that the plaintiffs consider "extreme and outrageous (yelling, shouting, telling kids there was a baby-killing factory being built next door and that their principal didn't care, distribution of leaflets, statements in an e-mail, statements saying the protesters would be back every week, display of graphic images, following students to alternative entrances, etc.), not a single one of these allegations have been made against Mr. Weiler. Every one of these actions was attributed to others, many on days when Mr.

party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

² A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection or failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

³ Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Weiler was not even alleged to have been present, and against people who Mr. Weiler has never met.

The inclusion of Mr. Weiler in this suit is clearly for the purpose of painting every defendant with a broad brush regarding Mr. Weiler's nearly decade old criminal record. The plaintiffs have made that clear by including reference to it twice in the complaint, and once in the opposition to this motion, both times providing false information to this court in an attempt to inflame passions against Mr. Weiler. In the opposition the plaintiffs falsely claim that Mr. Weiler attempted to bomb a Planned Parenthood facility. Mr. Weiler has never been charged or convicted of any action against any Planned Parenthood facility. The plaintiffs clearly made this false claim because it is a Planned Parenthood facility being built next to the schools.

Furthermore, all of the false information the plaintiffs' have provided to this court could have been corrected with a less than diligent Google search, and/or a de minimus review of court records. Whether it was through gross negligence or outright malfeasance that the plaintiffs made these claims, the result was false information being filed with this court. Should the court not see fit *sua sponte* to sanction the plaintiffs' attorney for these false statements, Mr. Weiler may file a formal motion to do so.

Two Rivers' claim that they have suffered damage falls flat as they have not articulated a tort against Two Rivers, but only against a student, or group of students, who remain unidentified but are key to the case. As shown previously, Nuisance is not a tort in and of itself, but a type of damage. Without articulating a tort against Two Rivers itself, the case should be dismissed for Failure to State a Claim.

Two Rivers proposes to prove damage to unidentified persons. Without identification, not only would Two Rivers be unable to prove such damage, but defendants would be deprived of confronting the witnesses against them.

The failure of Two Rivers to join as a party to the case the allegedly affected individuals fatally affects their claims.

CONCLUSION AND HEARING REQUEST

Because plaintiffs have failed to articulate a tort causing the damages they claim, and because no person allegedly placed in emotional distress is a party to this case, and because the offensive behavior alleged by the plaintiffs are not alleged against Mr. Weiler, the motion of the defendant should be granted, and the case dismissed.

Defendant requests that the court schedule a hearing on the motion.

Dated: March 22, 2016

Respectfully Submitted,

By /s/ Robert Weiler, Jr.
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