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August 5, 2010

VIA HAND DELIVERY

Francis J. Catania, Esquire
101 West Baltimore Avenue
Second Floor
Media, PA 19063

**Re: Aston Valley Baseball League, Inc., a/k/a Aston Valley Baseball League v.
Penn-Delco School District. No. 09-13832**

Dear Mr. Catania:

As you know, we represent the Penn-Delco School District in the above matter. Enclosed please find a court-stamped copy of my client's Answer with New Matter and Counterclaim, together with a Notice to Plead. Please respond to the New Matter and Counterclaim in accordance with the Rules of Civil Procedure.

Very truly yours,
LEVIN LEGAL GROUP, P.C.

A handwritten signature in black ink that reads 'Paul Cianci'.

Paul J. Cianci

Enclosure
cc: Dr. George Steinhoff (with encl.)

LEVIN LEGAL GROUP, P.C.
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Counsel for Defendant Penn-Delco School District

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW AND EQUITY

ASTON VALLEY BASEBALL LEAGUE

Plaintiff,

v.

PENN-DELCO SCHOOL DISTRICT,

Defendants.


NO. 09-013832

NOTICE TO PLEAD

TO: ASTON VALLEY BASEBALL LEAGUE, PLAINTIFF
c/o Francis J. Catania, Esquire
Catania & Parker, L.L.P.
101 West Baltimore Avenue, Second Floor
Media, PA 19063
Counsel for Plaintiff

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.

Date: August 5, 2010


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LEVIN LEGAL GROUP, P.C.
Counsel for Defendant Penn-Delco School District

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 OFFICE OF
 JUDICIAL SUPPORT
 DELAWARE CO. PA.

**DEFENDANT'S ANSWER TO COMPLAINT
 WITH NEW MATTER AND COUNTERCLAIM**

AND NOW, comes the Defendant, the Penn-Delco School District (the "District"), by and through its undersigned counsel, the LEVIN LEGAL GROUP, P.C., and hereby files this Answer to Plaintiff's Complaint with New Matter and Counterclaim, and which, in support thereof, states the following:

ANSWER

1. Admitted, upon information and belief.
2. Admitted that the District is a third class school district with its principal offices located 2821 Concord Road, Aston, Pennsylvania, and that the District has a nine member

School Board. The remaining allegations are denied as stated. The day to day operations of the District are performed by employees of the District, appointed and otherwise. The funding of District operations comes from many sources, including taxes paid by District residents and revenues received from the Commonwealth of Pennsylvania and the federal government.

3. Denied. After reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

4. Denied. After reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

5. Admitted.

6. The District admits that the parties entered into a certain written agreement dated November 20, 2000, a copy of which is attached to the Complaint as its Exhibit "A" (the "Agreement"). As to whether the parties and their attorneys took all "legal actions necessary" is a conclusion on law to which no response is required. To the extent a response is required, those allegations are denied.

7. Denied. The allegations contained in the corresponding paragraph of the Complaint are conclusions of law to which no response is required. By way of further answer, Plaintiff has not fully complied with all of its obligations under the Agreement. By way of further answer, the Agreement is contrary to the provisions of the School Code and other Pennsylvania laws, and as a matter of law, was void *ab initio*.

8. The Agreement is a written document that speaks for itself. Plaintiff's characterizations of the contents of the Agreement are denied.

9. The District admits that the Plaintiff created a regulation sized baseball field with, among other things, a fenced in playing area, scoreboard, backstop, dugouts, storage facility, snack bar and announcer's booth, ostensibly pursuant to the Agreement.

10. The District admits, upon information and belief, the allegations relating to the Plaintiff's completion of a regulation sized baseball field, its date of opening for play, and the Jim Buggy Field dedication date. As for the other allegations in the corresponding paragraph of the Complaint, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

11. The Agreement is a written document that speaks for itself.

12. Denied. To the contrary, the Plaintiff has breached its obligations under the Agreement by failing to comply with the terms of the Agreement. By way of further answer, the District's below Counterclaim is incorporated herein by this reference as if set forth in full.

13. The Agreement is a written document that speaks for itself. Plaintiff's characterizations of the contents of the Agreement are denied.

14. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

15. The Agreement is a written document that speaks for itself. Plaintiff's characterizations of the contents of the Agreement are denied.

16. The Agreement is a written document that speaks for itself. Plaintiff's characterizations of the contents of the Agreement are denied.

17. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. To the extent responses are required, after reasonable

investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of the averments, and therefore said allegations are denied.

18. As for the first sentence of this paragraph, it contains conclusions of law to which no responses are required. As for the second sentence of this paragraph, the allegations in it are admitted.

19. The District admits that the Agreement exists. The District denies the allegation that the District's School Board members, officers and employees had actual or constructive knowledge of the Agreement for the reasons given by Plaintiff and could observe the value added to and the expenses avoided by the District. Strict proof is demanded at trial.

20. Denied. To the contrary, the Plaintiff has breached its obligations under the Agreement by failing to comply with the terms of the Agreement. By way of further answer, the District's below Counterclaim is incorporated herein by this reference as if set forth in full.

21. Admitted.

22. Denied. After reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

23. Denied. The allegations in the first sentence are conclusions of law to which no responses are required. As for the remaining allegations, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

24. Admitted in part; denied in part. The District denies that the Plaintiff removed itself from the field. To the contrary, the Plaintiff continued (and continues) to use the field with Board permission on numerous dates beyond July 31, 2009. The remaining allegations are

admitted, with the exception that the Plaintiff removed from the leased premises and retained various items of its property.

COUNT I
Breach of Agreement

25. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

26. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

27. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

28. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

29. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. To the extent a response may be required, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

30. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. The allegations related to the District raising no objection or benefitting economically are denied.

31. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. To the extent a response may be required, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

32. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. To the extent a response may be required, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

33. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required. To the extent a response may be required, after reasonable investigation, the District is without knowledge or information sufficient to form a belief as to the truth or accuracy of these averments, and therefore said allegations are denied.

34. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

WHEREFORE, the District respectfully requests that the Court enter judgment in its favor and against the Plaintiff and such other relief that the Court deems just and appropriate.

COUNT II
Quasi Contract

35. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

36. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

37. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

38. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

39. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

40. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

41. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

42. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

43. Denied. The allegations in the corresponding paragraph of the Complaint are conclusions of law to which no responses are required.

WHEREFORE, the District respectfully requests that the Court enter judgment in its favor and against the Plaintiff and such other relief that the Court deems just and appropriate.

NEW MATTER

44. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

45. The Court lacks subject matter jurisdiction over the Complaint because the Plaintiff's exclusive remedy was to file an appeal pursuant to the Local Agency Law, and it failed to do so.

46. The Complaint is barred, in whole or in part, by the doctrine of waiver.

47. The Complaint is barred, in whole or in part, by the applicable statute of limitations.

48. The Complaint is barred, in whole or in part, by the doctrine of laches.

49. The Complaint is barred, in whole or in part, by the doctrine of unclean hands.

50. The Complaint is barred, in whole or in part, by the doctrine of estoppel.
51. The Complaint is barred, in whole or in part, by the failure to pay consideration.
52. The Complaint is barred, in whole or in part, by Plaintiff's breach of the Agreement.
53. The Plaintiff is not entitled to recover damages against the District because the Plaintiff has materially breached the Agreement.
54. The Plaintiff's claims against the District are barred, in whole or in part, due to the Plaintiff's failure to mitigate its damages, if any.
55. The Plaintiff's quasi contract claims are barred, in whole or in part, due to Plaintiff's failure to comply with required statutory provisions.
56. The Plaintiff's claims against the District, and its defenses to the District's claims, are barred in whole or in part by the applicable statute of frauds and the parole evidence rule.
57. The Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.
58. The Plaintiff's claims are barred, in whole or in part, because it released or discharged the District from such claims, and/or it failed to submit its alleged claims within the time period and the manner required by the contract.
59. Under the School Code, the District did not have the authority to enter into the Agreement.
60. Section 709 of the School Code permits School Districts to lease land that it owns only when it is "unused and unnecessary." The leased premises described in the Agreement (the "Leased Premises") were not "unused and unnecessary" when the Agreement was entered into, and thus, under Section 709, the District did not have authority to enter into the Agreement.

61. Under the School Code, the District did not have the authority to enter into the Agreement, and the Agreement was thus void *ab initio*.

62. Under Section 751 of the School Code, “[a]ll construction, reconstruction, repairs, maintenance or work of any nature . . . upon school property . . . made by any school district, where the entire cost, value, or amount of such construction, reconstruction, repairs, maintenance or work, including labor and material, shall exceed [\$10,000], [must] be . . . entered into . . . with the lowest responsible bidder, upon proper terms, after due public notice has been given asking for competitive bids.”

63. The Agreement was not entered into in accordance with Section 751 of the School Code. To the contrary, it was entered into “[a]fter many discussions, meetings and exchanges of information and documents.” Complaint, ¶ 6.

64. In addition to violating the public bidding requirements in Section 751 of the School Code, the Agreement also violated many other Pennsylvania statutes governing public construction works, e.g., (1) Section 752 of the School Code, which requires the Agreement to contain a clause (found nowhere in the Agreement) that work be performed by “competent and first-class workmen and mechanics; (2) 24 P.S. § 7-753, related to payment of minimum wages; (3) 24 P.S. § 7-756, related to bonding requirements; (4) the Prevailing Wage Act (43 P.S. § 165-1, *et seq.*; and (5) the Separations Act (53 P.S. § 1003), which requires separate specifications and contracts for different types of work in construction projects.

65. Because the Agreement violates Section 751 of the School Code and/or other Pennsylvania statutes, it was void *ab initio*.

66. The Plaintiff has not stated any claims that entitle it to an award of attorney’s fees.

67. The Plaintiff has not stated any claims that entitle it to injunctive relief.

68. The District reserves its right to raise any additional defenses and new matter that are uncovered during the course of discovery in this litigation.

WHEREFORE, the District respectfully requests that the Court enter judgment in its favor and against the Plaintiff and such other relief that the Court deems just and appropriate.

COUNTERCLAIM

Counterclaim Plaintiff, the Penn-Delco School District (the "District"), by and through its undersigned counsel, hereby Counterclaims against Counterclaim Defendant, the Aston Valley Baseball League ("AVBL"), as follows:

69. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

70. Paragraph 4 of the Agreement provides, in part, that "The [District] and the [AVBL] agree that the [AVBL] shall make the improvements to the [Leased Premises] described in Exhibit "B" attached hereto, subject to the limitation set forth in this paragraph; the [AVBL] may not otherwise improve the [Leased Premises] without the express prior written consent of the [District]."

71. Paragraph 4 of the Agreement also provides, in part, that "under any and all circumstances, the [AVBL] shall complete any improvements which it has commenced making, regardless of whether or not the [AVBL] must pay for the completion of such improvements from its own funds."

72. There are numerous improvements that the AVBL undertook to complete at the Leased Premises which have not been completed or are in a condition where they are unusable and/or unsafe. For example, and not by way of limitation, at the Leased Premises: there is no

phone service; stairwells were installed without railings; electrical boxes were installed without covers; and electrical outlets were installed without ground fault circuit interruptors.

73. In addition, upon information and belief, without the District's authorization or knowledge, AVBL installed fencing in a portion of a parking lot near the Jim Buggy Field.

74. In addition, upon information and belief, without the District's authorization or knowledge, AVBL installed and used a stainless steel grill and deep fat fryer with an incomplete or potentially non-code compliant ventilation system.

75. In addition, upon information and belief, without the District's authorization or knowledge, the AVBL applied millage from roads in Aston Township to a parking lot adjacent to the Jim Buggy Field. The District does not know whether the millage was tested for contamination or whether it is contaminated.

76. In addition, upon information and belief, the AVBL did not obtain the required permits to construct some or all of the improvements it allegedly constructed upon the Leased Premises.

COUNT I **Breach of Contract**

77. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

78. The AVBL breached its obligations under the Agreement by failing to complete, at its expense, the improvements to the Leased Premises that it commenced making.

79. As a result of AVBL's breaches of the Agreement, the District will incur damages, including, but not limited to, the expenses incurred in completing the improvements that the AVBL commenced and putting them in a safe and usable condition.

WHEREFORE, the District respectfully requests that this Court enter judgment in its favor and against the AVBL in an amount to be determined by the Court, together with interest, reasonable attorney's fees, costs of suit and such other relief as the Court deems appropriate.

COUNT II
Constructive Trust and Accounting

80. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

81. Paragraph 8 of the Agreement provides, "Subletting. The Lessee may not sublease, assign or otherwise subcontract the leased premises or any portion thereof without the express prior written consent of the School District."

82. Upon information and belief, AVBL subleased the leased premises (as that term is defined in the Agreement) or some portion of it without the District's authorization or knowledge.

83. It is believed and therefore averred that AVBL received money or other property due to its subletting of the Leased Premises or a portion thereof in violation of the Agreement.

84. Any such money or property received by AVBL due to its subletting of the Leased Premises is rightly due and owing to the District.

85. AVBL would be unjustly enriched if it were permitted to retain the funds and/or property that they obtained as a result of its unauthorized and illegal subletting of the Leased Premises.

86. AVBL's accounts are not available to the District.

87. The District is entitled to an order requiring the AVBL to make an accounting of any and all monies or property received from all sources as a result of its subletting of the Leased Premises or any portion of it.

WHEREFORE, the District respectfully requests that the Court grant judgment in its favor, together with costs of suit, and against the Plaintiff and issue an Order: (1) ordering the imposition of a constructive trust upon the monies or other property that the Plaintiff received from or as a result of its subletting any portion or all of the leased premises described in the Agreement; (2) directing the Plaintiff to set aside and preserve those funds or other property pending the outcome of this litigation; and (3) for any other relief this Court deems proper.

COUNT III
Unjust Enrichment

88. The preceding paragraphs are incorporated herein by this reference as if set forth in full.

89. Benefits have been conferred upon AVBL through its subletting of the Leased Premises in violation of the Agreement and collecting money or other property in exchange for such subletting.

90. The AVBL accepted and retained such benefits under such circumstances that it would be inequitable for AVBL to retain the benefit without payment of value to the District.


91. AVBL would be unjustly enriched if it were permitted to retain the funds and/or property that they obtained as a result of its unauthorized and illegal subletting of the Leased Premises.

WHEREFORE, the District respectfully requests that this Court enter judgment in its favor and against the AVBL in an amount to be determined by the Court, together with interest, reasonable attorney's fees, costs of suit and such other relief as the Court deems appropriate.

Respectfully submitted,

LEVIN LEGAL GROUP, P.C.

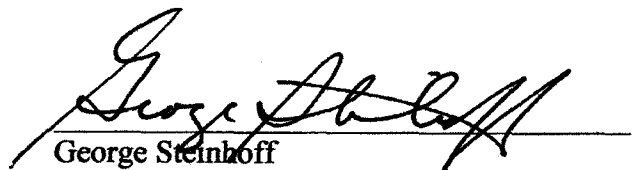
Dated: August 4, 2010


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Counsel for Defendant
Penn-Delco School District

VERIFICATION

I, George Steinhoff, Superintendent of the Penn-Delco School District, verify that I have reviewed the foregoing Answer with New Matter and Counterclaim, and the facts alleged therein are true and correct to the best of my knowledge, information and belief. I am authorized to sign this Verification on behalf of the Penn-Delco School District. I understand that by signing this Verification, I am subject to the penalties for unsworn falsification to authorities provided by 18 Pa.C.S. § 4904.

Dated: August 4, 2010


George Steinhoff

CERTIFICATE OF SERVICE

I, Paul J. Cianci, hereby certify that on this date I caused a copy of the foregoing Defendant's Answer to Complaint with New Matter and Counterclaim, and a Notice to Plead, to be served upon the undersigned counsel for Plaintiff by hand delivery:

Frank J. Catania, Esquire
Catania & Parker, L.L.P.
101 West Baltimore Avenue
Second Floor
Media, PA 19063

Date: August 5, 2010



Paul J. Cianci