



IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

THE BOARD OF EDUCATION OF)
THE AUSTINTOWN LOCAL SCHOOL)
DISTRICT)
700 South Raccoon Road)
Youngstown, Ohio 44515,)

Case No.

Plaintiff,)

JUDGE:

v.)

ELIZABETH ANN KING)
4839 West Road, NW)
West Farmington, OH 44491)

and)

MARJORIE RUTH KING WILLIAMS,)
1 Colley Avenue)
Norfolk, VA 23510)

and)

ROBERT C. KYLE)
2910 Owen Street)
San Diego, CA 92106)

and)

THEODORE L. KYLE)
16460 N. 106th Way)
Scottsdale, AZ 85255)

and)

RICHARD S. KING)
3 Deerfield Road)
Nottingham, NH 03290)

and)

JOHN KING
[Address unknown]

and

PATRICIA POWELL SCOVILLE
88 Mitchell Road
West Middlesex, PA 16159

and

MARTHA JEAN KING
111 Quincy Pl. NE
Washington, D.C. 20002

and

NANCY LOUISE KING
851 Euclid Avenue
Elmira, NY 14901

and

JOHN PHILIP GORDON KING
262 Crandall Avenue
Youngstown, OH 44504

and

JAMES ALAN FITCH KING
4003 Day Flower Court
Columbia, MO 65203

and

WILLIAM ROGER STEWART KING
111 Quincy Pl. NE
Washington, D.C. 20002

and

DEBORAH SPRAGUE ARNOLD-ROHT
1658 River Road
Manotick, ON K4M 1B4

and)
)
 CHARLES KELLOGG LATHAM III)
 5220 Woodstream Road)
 Mount Pleasant, SC 29466)
)
 and)
)
 BARBARA LATHAM SCHWARTZ)
 5060 Nature Drive)
 Howell, MI 48843)
)
 and)
)
 BURT SHURLY III)
 16908 Edgewater Lane)
 Huntington Beach, CA 92649)
)
 and)
)
 JOHN/JANE DOE 1 through 20,)
)
 Defendants.)

COMPLAINT

Now comes the Plaintiff, The Board of Education of the Austintown Local School District, by and through undersigned counsel, and for its Complaint, states as follows:

1. The Board of Education of the Austintown Local School District (“Plaintiff”) at all times mentioned herein, was and is a type of political subdivision known as a “school district” under the Ohio Revised Code, the Board of Education (“Board”) of which is a body politic and corporate, capable of suing and being sued, contracting and being contracted with, pursuant to Section 3313.17 of the Ohio Revised Code.

2. Plaintiff has a duly elected Board and duly hired Administrative Officers appointed by said Board, with the authority to enter into contracts, receive property and administer public education within its geographic boundaries.

3. The Court has jurisdiction over the subject matter as this case arises under Revised Code Section 5303.01.

4. Venue is proper in this Court pursuant to Civil Rule 3(B)(5) because the real estate that is the subject of this Complaint is situated in Mahoning County, Ohio.

FACTUAL ALLEGATIONS

5. Plaintiff is the rightful owner of the property commonly known as the former Austintown Fitch Middle School and more fully described as:

Situated in the Township of Austintown, County of Mahoning and State of Ohio, and being a portion of the east part of Tract No. 7 of the Salt Springs tract and bounded and described as follows:

Beginning at a point in the center of the Austintown and Jackson Road, said point being distant North 89° 10' west along the center of said road 545.33 feet from the production of the westerly line of Howard Avenue, said Howard Avenue being a part of what is known as the John McCurdy Plat, recorded in Volume 2, Page 116, of the Mahoning County Record of Plats; thence north 0° 50' east, 30 feet to and iron pin in the northerly line of the said the Austintown and Jackson Road; thence further north 0° 50' east, 770 feet to an iron pin marking corner; thence north 89° 10' west parallel with the Austintown and Jackson Road 435.6 feet to an iron pin marking corner; thence south 0° 50' west 770 feet to an iron pin in the northerly line of the Austintown and Jackson Road; thence further south 0° 50' west, 30 feet to the center of the said Austintown and Jackson Road; thence south 89° 10' east along the center line of said road 435.6 feet to the place of beginning, containing within these boundaries eight (8) acres of land, but subject to all legal highways ("Premises").

6. The Plaintiff took title to this Premises on or about April 28, 1924 in an instrument that was received by the Recorder of Mahoning County on or about May 6, 1924 and formally recorded on June 9, 1924.

7. The conveyance to the Plaintiff was made by Minta F. Goode, Walter S. Goode, Stella G. King, Fred G. King, J. H. Fitch, Jr., and Pearl S. Fitch (“Grantors”). (A true and accurate copy of the Quit Claim Deed conveying title is attached as Exhibit A.)

8. The Quit Claim Deed to the Plaintiff specifically reserves in the conveyance any rights of reversion of title to the Premises which would vest in the original Grantors or their heirs by reason of the fact that the Premises ceases to be used for school purposes only.

9. The Plaintiff, through its duly-elected Board, determined that the Premises would no longer be used for school purposes only and that the Premises would be listed for sale.

10. The Premises was subsequently listed for sale and qualified buyers were identified; however, the sale of the Premises could not be consummated because the reversionary language in the Quit Claim Deed created a potential cloud on title that either made title uninsurable or otherwise unduly restricted the alienability of the Premises.

11. Each and every one of the Defendants herein named are all the known and unknown heirs of the original Grantors, and each of them claims some right, title, estate, lien or interest in the Premises, which is adverse to Plaintiff’s title. The claims of each of these individual Defendants constitute a cloud on Plaintiff’s title to the Premises and prohibits the Plaintiff from conveying title to the Premises or otherwise developing the same.

12. The true names of the Defendants named herein as John/Jane Doe 1 through John/Jane Doe 20 are unknown to the Plaintiff, and suit is being brought against these Defendants by their fictitious names. Plaintiff will amend its Complaint to show their true names and capacities when they have been ascertained. Upon information and belief, these John/Jane Doe Defendants claim some right, title, estate, lien or interest in the Premises adverse to Plaintiff’s title. The claims of each of these individual John/Jane Doe Defendants constitutes a

cloud on Plaintiff's title to that Premises and prohibits the Plaintiff from conveying title to the Premises or otherwise developing the same.

COUNT I
(Quiet Title)

13. Plaintiff incorporates paragraphs 1 through 12 of its Complaint as though fully rewritten herein.

14. The Quit Claim Deed from the Grantors to the Plaintiff is the root of title for the Premises as defined in Section 5301.47 of the Ohio Revised Code.

15. The Defendants, including the John/Jane Doe Defendants, have not preserved and kept effective their reversionary interest in the Premises and have not complied with Section 5301.51 of the Ohio Revised Code entitled "Preservation of Interests."

16. As a result of Defendants' failure to comply with R.C. §5301.51, the Plaintiff has marketable record title to this Premises as it has an unbroken chain of title to the Premises for 40 years or more.

17. The reversionary interest created in the Quit Claim Deed is of no force and effect and the claims of the Defendants are without merit. Defendants, collectively and individually, have no right, title or interest whatsoever in the Premises or any part thereof. Plaintiff seeks to quiet title in the Premises, solely in its name, free and clear of any claimed interest by the Defendants including any interest claimed by or through the reversionary clause in the Quit Claim Deed. Plaintiff likewise is entitled to an order that the Defendants' collective and individually interests in the Premises are extinguished.

COUNT II
(Declaratory Relief)

18. Plaintiff incorporates paragraphs 1 through 17 of its Complaint as though fully rewritten herein.

19. An actual controversy has arisen and now exists between the Plaintiff and the collective Defendants, as well as each Defendant individually, concerning the parties' respective rights to the Premises. Plaintiff contends that it owns that Premises free and clear of any reversionary interest claimed by the Defendants from the Quit Claim Deed, while the Defendants, collectively and individually, contend that they have an interest in the Premises as a result of the reversionary clause in the Quit Claim Deed.

20. Plaintiff seeks a judicial determination as to whether any or all of the Defendants have an enforceable reversionary interest stemming from the Quit Claim Deed in order that the Plaintiff may ascertain its rights to encumber, sell, lease or otherwise dispose of the Premises free and clear of the efforts of the Defendants to enforce the reversionary clause.

21. A judicial determination of the rights and responsibilities of the parties over the Premises in question is necessary and appropriate at this time in that the uncertainty over the issue of whether Defendants, collectively and individually, have an enforceable reversionary interest in the Premises is thwarting Plaintiff's efforts to demolish the building on the Premises, develop the real estate for purposes other than school use, or sell the Premises to a third party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, The Board of Education of the Austintown Local School District, prays for judgment as follows:

1. For a judgment quieting title in the aforementioned real property and finding The Board of Education of the Austintown Local School District as the owner in fee simple of that

property and the Defendants, collectively and individually, have no enforceable interest in the property, together with the costs of this action.

2. For a judgment declaring that the Quit Claim Deed's reversionary clause, together with the use restriction, are unenforceable and that The Board of Education of the Austintown Local School District owns and holds the aforementioned real property in fee simple, free and clear of any claim of the Defendants, collectively and individually, together with the costs of this action.

3. That Plaintiff, The Board of Education of the Austintown Local School District, be awarded its costs and attorneys' fees sustained herein as well as any such other relief as this Court may deem just, equitable and appropriate under the circumstances.

Respectfully submitted,



Mark S. Fusco (# 0040604)

mfusco@walterhav.com

Direct Dial: 216-619-7839

WALTER | HAVERFIELD LLP

1301 E. Ninth Street, Suite 3500

Cleveland, OH 44114

(216) 781-1212 telephone

(216) 575-0911 facsimile

*Attorney for Plaintiff, the Board of Education
of the Austintown Local School District*

Cochran, who acknowledged that he did sign the foregoing instrument for himself individually and for and in behalf of Sarah Davis Cochran, as her duly appointed and authorized Attorney in Fact, and that the same is his free act and deed and the free act and deed of the said Sarah Davis Cochran.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Youngstown, Ohio, this 1st day of May, 1924.

JAS. M. CUNNINGHAM - NOTARY PUBLIC.
(NOTARIAL SEAL)
Revenue Stamps
\$1.50 Cancelled

RECEIVED MAY 5-1924.

AT 4:10 O'CLOCK P. M.

RECORDED JUNE 9-1924.

FEE \$1.35

THOS. R. ATWOOD - RECORDER.

36020

J. H. FITCH, JR., ET AL

TO THE BOARD OF EDUCATION OF THE AUSTINTOWN
QUIT CLAIM DEED TOWNSHIP SCHOOL DISTRICT

KNOW ALL MEN BY THESE PRESENTS, that We, Minta F. Goode, Walter S. Goode, Stella C. King, Fred G. King, and J. H. Fitch, Jr., and Pearl S. Fitch, the Grantors, for diverse good causes and considerations thereunto moving, and especially for the sum of One Dollar (\$1.00), received to their full satisfaction of The Board of Education of the Austintown Township School District, County of Mahoning, State of Ohio, the Grantees, have given, granted, remised, released and forever quit claimed, and do by these presents absolutely give, grant, remise, release and forever quit claim unto the said Grantees, and their successors in office forever, all such right and title, with such exceptions as are hereinafter noted, as they, the said Grantors, have or ought to have in and to the following described piece or parcel of land; situated in the Township of Austintown, County of Mahoning and State of Ohio, and being a portion of the east part of Tract No. 7 of the Salt Springs tract and bounded and described as follows:

"Beginning at a point in the center of the Austintown and Jackson Road, said point being distant North 89° 10' west along the center of said road 545.33 feet from the production of the westerly line of Howard Avenue, said Howard Avenue being a part of what is known as the John McCurdy Plat, recorded in Volume 2, Page 116, of the Mahoning County Record of Plats; thence north 0° 50' east, 30 feet to an iron pin in the northerly line of the said the Austintown and Jackson Road; thence farther north 0° 50' east, 770 feet to an iron pin marking corner; thence north 89° 10' west parallel with the Austintown and Jackson Road 435.5 feet to an iron pin marking corner; thence

THE OHIO LEGAL BLANK CO., INC.

EXHIBIT
A

CLEVELAND, OHIO 44102-1799

south 0° 50' west 770 feet to an iron pin in the northerly line of the Austintown and Jackson Road; thence further south 0° 50' west, 30 feet to the center of the said Austintown and Jackson Road; thence south 89° 10' east along the center line of said road 435.6 feet to the place of beginning, containing within these boundaries eight (8) acres of land, but subject to all legal highways."

This deed is given to clear up the title of the Grantees in this parcel of real estate which is not now clear for the reason that John H. Fitch deeded the same to them in 1915, that said deed has as yet not been recorded, and that the record title of said parcel is now in these Grantors as devisees and heirs of said John H. Fitch.

Said warranty deed of John H. Fitch to these Grantees provided for reversion of title in the event that the parcel ceased to be used for school purposes, and these Grantors specifically reserve in this conveyance any rights of reversion of the title to said premises which may hereafter vest in themselves, or their heirs, by reason of the fact that said premises ceased to be used for school purposes only.

TO HAVE AND TO HOLD the premises aforesaid, with the appurtenances thereunto belonging, to the said Grantees and their successors in office, so that neither the said Grantors nor their heirs, nor any other persons claiming title through or under them, shall or will hereafter claim or demand any right or title to the premises, or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands the -- day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-four.

SIGNED AND ACKNOWLEDGED

IN THE PRESENCE OF:

GENEVA DEEM
G. ADOLPHUS HOUK

STATE OF OHIO,)
) (SS.
MAHONING COUNTY,)

J. H. FITCH, JR.
PEARL S. FITCH
STELLA G. KING
FRED G. KING
MINTA F. GOODE
WALTER S. GOODE

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Minta F. Goode, Walter S. Goode, Stella G. King, Fred G. King, and J. H. Fitch, Jr., and Pearl S. Fitch, the Grantors in the foregoing deed, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Youngstown, Ohio, this 22 day of April, A.D. 1924.

O. E. BEERHART - NOTARY PUBLIC.
(NOTARIAL SEAL)

RECEIVED MAY 5-1924.

AT 4:41 O'CLOCK P. M.

RECORDED JUNE 9-1924.

FEE \$1.25

THOS. R. ATWOOD - RECORDER.