

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

EMILE BAIR,

Plaintiff,
v.

ROSE TOWNSHIP,

Defendants.

Case No. 2:19-cv-10170-SJM-MKM

Hon. Stephen J. Murphy III

SCOTT P. BATEY (P54711)
BATEY LAW FIRM, PLLC
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ROBERT J. SEIBERT (P32098)
SEIBERT AND DLOSKI, PLLC
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ANSWER

NOW COMES Defendant, Rose Township, a Michigan municipal corporation, by and through its attorneys, Seibert and Dloski, PLLC and in answer to Plaintiff's Complaint, states as follows:

1. That in answer to Paragraph (1) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

2. That in answer to Paragraph (2) of said Complaint, Defendant admits the allegations contained therein.

3. That in answer to Paragraph (3) of said Complaint, Defendant denies that Plaintiff suffered any injuries for the reason the allegations is untrue.

4. That in answer to Paragraph (4) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

5. That in answer to Paragraph (5) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue. Defendant does admit that jurisdiction and venue are otherwise proper before this Court.

6. Defendant incorporates its answers to Paragraphs (1) through (5).

7. That in answer to Paragraph (7) of said Complaint, Defendant admits that Plaintiff is a 76 year old male who has been elected as Constable for Rose Township. Defendant denies that Plaintiff is an employee of Rose Township for the reason that the allegation is untrue.

8. That in answer to Paragraph (8) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

9. That in answer to Paragraph (9) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

10. That in answer to Paragraph (10) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

11. That in answer to Paragraph (11) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

12. That in answer to Paragraph (12) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

13. That in answer to Paragraph (13) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

14. That in answer to Paragraph (14) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

15. That in answer to Paragraph (15) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

16. That in answer to Paragraph (16) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

17. That in answer to Paragraph (17) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

18. That in answer to Paragraph (18) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

19. That in answer to Paragraph (19) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

20. That in answer to Paragraph (20) of said Complaint, Defendant admits that in January 2018 Plaintiff was in a rehabilitation facility. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's illness.

21. That in answer to Paragraph (21) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

22. That in answer to Paragraph (22) of said Complaint, Defendant admits that on or about January 20, 2018 Plaintiff's wife sent Defendant's Supervisor an email which is accurately reflected in said Paragraph. Defendant denies the remaining allegations contained therein for the reason they are untrue.

23. That in answer to Paragraph (23) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation regarding any communications between Plaintiff and his wife regarding resignation or

retirement. Upon information and belief, Defendant denies the remaining allegations contained therein for the reason they are untrue.

24. That in answer to Paragraph (24) of said Complaint, upon information and belief, Defendant denies the allegations contained therein for the reason they are untrue.

25. That in answer to Paragraph (25) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

26. That in answer to Paragraph (26) of said Complaint, Defendant admits that on or about February 14, 2018 Plaintiff's wife appeared at the Township Board meeting. Defendant denies the remaining allegations contained therein for the reason they are untrue.

27. That in answer to Paragraph (27) of said Complaint, Defendant admits that the Township Board tabled acceptance of Plaintiff's resignation until a subsequent Township Board meeting. Defendant denies the remaining allegations contained therein for the reason they are untrue.

28. That in answer to Paragraph (28) of said Complaint, Defendant admits that on or about March 14, 2018 the Township Board accepted Plaintiff's letter of resignation. Defendant denies the remaining allegations contained therein for the reason they are untrue.

29. That in answer to Paragraph (29) of said Complaint, Defendant admits that Plaintiff's former job duties and responsibilities were assigned to Dave Plewes. Defendant admits that Dave Plewes was younger than Plaintiff. Defendant denies the remaining allegations contained therein for the reason they are untrue.

30. That in answer to Paragraph (30) of said Complaint, Defendant admits that the Rose Township Board voted to eliminate the position of Township Constable.

Defendant denies the remaining allegations contained therein for the reason they are untrue.

31. That in answer to Paragraph (31) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue. At all times relevant hereto, Plaintiff was an elected official and not an employee of Defendant. Defendant further denies that it is responsible for all acts committed by its agents, representatives and employees within the scope of their employment for the reason they are untrue.

32. That in answer to Paragraph (32) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

33. That in answer to Paragraph (33) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

34. That in answer to Paragraph (34) of said Complaint, Defendant admits that on or about December 20, 2018 the EEOC issued Plaintiff a Right to Sue letter. Defendant denies the remaining allegations contained therein for the reason they are untrue.

COUNT I

35. Defendant incorporates its answers to Paragraph (1) through (34) herein.

36. That in answer to Paragraph (36) of said Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding the claim that Plaintiff suffered from Parkinson's Disease which substantially interfered with a major life activity. Defendant denies that it believed that Plaintiff suffered from any illness which substantially interfered with any major life activities or constituted a disability under the ADA.

37. That in answer to Paragraph (37) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

38. That in answer to Paragraph (38) of said Complaint, Defendant admits the allegations contained therein.

39. That in answer to Paragraph (39) of said Complaint, Defendant admits the allegations contained therein.

40. That in answer to Paragraph (40) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

41. That in answer to Paragraph (41) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

42. That in answer to Paragraph (42) of said Complaint, Defendant admits the allegations contained therein.

43. That in answer to Paragraph (43) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

44. That in answer to Paragraph (44) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

45. That in answer to Paragraph (45) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

46. That in answer to Paragraph (46) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

47. That in answer to Paragraph (47) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

48. That in answer to Paragraph (48) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Count I of Plaintiff's Complaint with prejudice and award Defendant its costs and attorney fees so wrongfully sustained herein.

COUNT II

49. Defendant incorporates its answers to Paragraph (1) through (48) herein.

50. That in answer to Paragraph (50) of said Complaint, Defendant denies that Plaintiff was an employee for purposes of the ADEA for the reason the allegation is untrue. Defendant admits the remaining allegations contained therein with respect to the Michigan Elliott-Larsen Civil Right Act.

51. That in answer to Paragraph (51) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

52. That in answer to Paragraph (52) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

53. That in answer to Paragraph (53) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

54. That in answer to Paragraph (54) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

55. That in answer to Paragraph (55) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

56. That in answer to Paragraph (56) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

57. That in answer to Paragraph (57) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

58. That in answer to Paragraph (58) of said Complaint, Defendant denies the allegations contained therein for the reason they are untrue.

WHEREFORE, Defendant respectfully requests this Honorable Court to dismiss Count II of Plaintiff's Complaint with prejudice and award Defendant its costs and attorney fees so wrongfully sustained herein.

SEIBERT AND DLOSKI
Professional Limited Liability Company

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Dated: January 29, 2019

STATEMENT OF AFFIRMATIVE DEFENSES

NOW COMES Defendant, Rose Township, a Michigan municipal corporation, by and through its attorneys, Seibert and Dloski, PLLC and sets forth the following affirmative defenses to those claims raised in Plaintiff's Complaint;

1. Plaintiff's claim brought pursuant to the Age Discrimination Act of 1967, 29 U.S.C. §621 are barred because Plaintiff was not an employee of Defendant at the time of the alleged discrimination. Specifically, 29 U.S.C. §630(f) provides, in relevant part, "that the term 'employee' shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof" At all times relevant to the allegations contained in Plaintiff's Complaint, Plaintiff was the duly-elected Constable for Defendant.

2. Plaintiff's claim brought pursuant to the Age Discrimination Act of 1967, 29 U.S.C. §621 are barred because Defendant is not an "employer" for purposes of the Act. Specifically, 29 U.S.C. §630(b) defines the term "employer" to mean "a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year" Defendant did not employ twenty or more employees for each working day in any of the twenty or more calendar weeks for 2017 or 2018.

Respectfully submitted,

SEIBERT AND DLOSKI
Professional Limited Liability Company

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Dated: January 29, 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2019, I electronically filed Defendant's Answer to Plaintiff's Complaint with the Clerk of the Court using the ECF system which will send notification of such filing to the following registered participants of the ECF system as listed on the Court's Notice of Electronic Filing: Scott P. Batey.

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Dated: January 29, 2019