

3. Defendant responded not by engaging constructively or renegotiating, but by launching procedural and retaliatory attacks. He filed Affirmative Defenses and a Counterclaim devoid of factual and legal foundation. He also filed a series of emergency motions—including to strike Plaintiff’s complaint and to gain immediate access to the property—resulting in a barrage of court dates designed to increase burden and cost.

4. Notably, Defendant also initiated a parallel action in the Law Division—Case No. 25-M1-707919—seeking eviction of Plaintiff in what is plainly a retaliatory measure. That action is not only baseless, but serves no legitimate purpose other than to harass and financially exhaust Plaintiff.

5. Defendant’s conduct is a textbook example of using litigation as a weapon. From invoking emergency relief without justification to lodging unsupported Affirmative Defenses, his strategy reflects gamesmanship, not meritorious pleading. These tactics are not only improper but unjust, and this Court should decline to indulge them.

LEGAL STANDARD

6. Under Illinois law, a motion to strike is proper where an affirmative defense fails to set forth a legally recognized defense or fails to allege sufficient facts to support the asserted defense. 735 ILCS 5/2-615; *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997).

7. Affirmative defenses must contain factual allegations which, if proven, would defeat or mitigate the claim. Legal conclusions unsupported by specific factual allegations are not sufficient. See *International Ins. Co. v. Sargent & Lundy*, 242 Ill. App. 3d 614, 630 (1st Dist. 1993).

8. Courts must examine the substance of each affirmative defense to determine whether it raises a matter that completely negates liability or diminishes the plaintiff's claim. See *Dewan v. Ford Motor Co.*, 363 Ill. App. 3d 365, (1st Dist. 2005).

9. The mere assertion of a legal doctrine, such as waiver or estoppel, without factual elaboration, is insufficient and warrants dismissal. See *Maniez v. Citibank, F.S.B.*, 404 Ill. App. 3d 941 (1st Dist. 2010).

10. Illinois courts consistently reject conclusory or boilerplate affirmative defenses that fail to demonstrate how they apply to the facts of the case. See *Performance Food Group Co., Ltd. liability Co. v. ARBA Care Center of Bloomington, Ltd. liability Co.*, 2017 IL App (3d) 160348, 86 N.E.3d 1042.

STATEMENT OF FACTS

11. On or about June 2022, Hadley originally agreed to terms to purchase the subject Property from McGivern pursuant to Seller-financing. On or around February 15, 2025, in an effort to unwind the underlying Purchase Agreement, Defendant Brandon McGivern delivered a letter to Plaintiff outlining his intent to sell the subject property under certain payment and performance terms.

12. Between March and April 2025, Plaintiff Kyle Hadley performed substantial property maintenance and assumed regular payments, consistent with the verbal agreement and Defendant's representations.

13. On April 14, 2025, Defendant provided Plaintiff with written purchasing terms reiterating the payment structure and confirming Plaintiff's continued occupancy and upkeep obligations.

14. On May 16, 2025, Defendant sent Plaintiff a 60-day notice to vacate—an abrupt shift that contradicted their ongoing transaction and came after Plaintiff’s reliance-based performance.

15. Following this, Defendant began initiating emergency motions, culminating in the filing of the instant Affirmative Defenses and the retaliatory L&T case, McGivern v. Hadley, 25-M1-707919 (which was specifically stricken by Judge Porter on June 26, 2025), thereby escalating a private transaction into protracted and burdensome litigation.

ANALYSIS

16. Under Illinois law, an affirmative defense must set forth a legally recognized defense and contain well-pleaded facts supporting each element of that defense. Conclusory statements or mere labels are insufficient.

17. Defendant asserts five purported affirmative defenses: (1) Failure to State a Claim, (2) Estoppel, (3) Waiver, (4) Laches, and (5) Bad Faith.

18. The first defense, "Failure to State a Claim," is not a true affirmative defense under Illinois law. It challenges the sufficiency of the complaint and is properly raised in a motion to dismiss under 735 ILCS 5/2-615. See *Schuster v. Occidental Fire & Cas. Co.*, 2013 Ill. Cir. LEXIS 8282.

19. The second defense, "Estoppel," is pleaded without alleging any of the essential elements: a misrepresentation or concealment of material fact by Plaintiff, reasonable reliance by Defendant, and resulting detriment. See *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302 (2001). Absent such allegations, the defense fails as a matter of law.

20. The third defense, "Waiver," is similarly deficient. It lacks any factual support for the assertion that Plaintiff intentionally and knowingly relinquished a known right. Illinois law

requires more than vague reference to accommodation or delay. See *Stump v. Swanson Development Co., Ltd. liability Co.*, 2014 IL App (3d) 110784, 5 N.E.3d 279).

21. The fourth defense, "Laches," is inapplicable here. Plaintiff's complaint was filed promptly after Defendant attempted to repudiate the alleged purchase agreement. No unexplained delay or prejudice has been identified that would justify applying this equitable defense.

22. The fifth defense, "Bad Faith," is not a legally recognized affirmative defense to the equitable and declaratory relief sought in this case. It is an unsupported legal conclusion that fails to meet basic pleading standards under Illinois law.

CONCLUSION

23. Each of the above defenses is legally insufficient and unsupported by any factual allegations. As such, allowing them to stand would prejudice Plaintiff by expanding discovery and litigation over non-viable issues.

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Strike all five of Defendant's Affirmative Defenses pursuant to 735 ILCS 5/2-615.
- B. Stay the written discovery issued by Defendant on __ until the pleadings are finalized.
- C. Stay Plaintiff's obligation to respond to Defendant's Complaint filed on __ until these Affirmative Defenses are finalized or stricken.
- D. Grant such other and further relief as this Court deems just and proper.

Dated July 8, 2025

Cole Sadkin, LLC
1652 W. Belmont
Chicago, Illinois 60657
(312) 548-8610
mcole@colesadkin.com
Cook County Attorney No. 49001
Counsel for Plaintiff

Respectfully submitted,

KYLE HADLEY

By: /s/Mason Cole