

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,

Plaintiff,

v.

BRANDON MCGIVERN,

Defendant.

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Case No. 2025-CH-05527

Judge Eve M. Reilly

Courtroom 2405

**PLAINTIFF’S REPLY IN SUPPORT OF HIS MOTION TO STRIKE
DEFENDANT’S AFFIRMATIVE DEFENSES**

NOW COMES Plaintiff, KYLE HADLEY, by and through his counsel at the law firm of Cole Sadkin, LLC, and for his Reply in Support of His Motion to Strike Defendant’s Affirmative Defenses, states as follows:

INTRODUCTION

1. Plaintiff, by and through his counsel, Cole Sadkin, LLC, respectfully submits this Reply in further support of his Motion to Strike Defendant’s Affirmative Defenses. Defendant’s August 29, 2025 Response fails to rescue his defenses from the pleading deficiencies identified in Plaintiff’s Motion and instead doubles down on irrelevant factual accusations and discovery grievances.

2. First, Defendant’s Response improperly relies on factual assertions outside the pleadings. A motion to strike affirmative defenses under 735 ILCS 5/2-615 tests only the sufficiency of the allegations as pled. Assertions about “fabricated evidence,” bank records, eviction defaults, or discovery disputes cannot supply the missing factual basis in his Answer and Affirmative Defenses.

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3. Second, Defendant's Response highlights precisely why the defenses should be stricken: most are not affirmative defenses at all. "Failure to State a Claim" belongs in a Rule 2-615 motion, not as an affirmative defense. "Bad Faith," "Professional Misconduct," and "Abuse of Process" are not recognized defenses in Illinois. Defendant's attempt to repackage his accusations as defenses underscores the impropriety of his pleading.

4. Third, the factual allegations that are pled are conclusory, scattershot, and unsupported by the required elements. Defendant's defenses of estoppel, waiver, and laches omit any factual allegations of reliance, intentional relinquishment, or unreasonable delay. His "unclean hands" defense is nothing more than a laundry list of accusations without a causal link to Plaintiff's claims.

5. Finally, Defendant's Response demonstrates his ongoing strategy of abusive litigation tactics: over-pleading meritless defenses, injecting collateral landlord-tenant proceedings, and attempting to use accusations of misconduct as a substitute for valid defenses. The Court should not permit the pleadings to become a vehicle for discovery fights or collateral attacks. For these reasons, the Affirmative Defenses remain legally insufficient and should be stricken.

ARGUMENT

A. Failure to State a Claim

6. "Failure to State a Claim" is not an affirmative defense under Illinois law. It challenges the sufficiency of the complaint and must be raised by motion under 735 ILCS 5/2-615 or 2-619, not as an affirmative defense. See *Vroegh v. J&M Forklift*, 165 Ill. 2d 523, 530 (1995).

7. Defendant's Answer offers only the conclusory assertion that Plaintiff has failed to state a claim, without reference to any specific deficiencies.

8. Because this is not an affirmative defense, it should be stricken outright.

B. Statute of Frauds

9. Defendant's Statute of Frauds defense is pled only as a conclusory statement that the alleged agreement is unenforceable. It does not plead facts showing the absence of a writing, nor does it address equitable doctrines such as part performance, possession, or improvements that remove an agreement from the statute.

10. Without factual support or acknowledgment of recognized exceptions, this defense is legally insufficient.

C. Fabricated Evidence / Rule 137

11. Defendant asserts "fabricated evidence" as a defense. Accusations of discovery abuse or misconduct are not affirmative defenses to liability. They are collateral matters governed by Rule 137 or by the Court's inherent authority.

12. Even if true, such allegations do not negate Plaintiff's claims for breach of contract or equitable relief. This defense is improper and must be stricken.

D. Unclean Hands

13. Defendant alleges "unclean hands" but pleads no facts tying Plaintiff's alleged conduct directly to the equitable relief sought.

14. The unclean-hands doctrine requires misconduct that relates to the very transaction at issue. Defendant instead lists grievances—emails, professional status, supposed concealment—without showing how they bar Plaintiff’s claims.

15. These conclusory allegations fail to meet the requirements of an unclean-hands defense and must be stricken.

E. First and Material Breach

16. Defendant alleges that Plaintiff committed a “first and material breach,” but his Answer merely recites conclusions without facts identifying the specific contractual obligations breached, when, or how.

17. Illinois law requires specific factual allegations of breach, not vague assertions. Without them, this defense is insufficient.

F. Professional Misconduct

18. Defendant asserts “professional misconduct” as an affirmative defense. Illinois law recognizes no such defense in a private contract or equity case.

19. Allegations concerning Plaintiff’s professional license may be relevant in disciplinary proceedings, but they do not defeat or mitigate the claims here.

20. This defense should be stricken as improper.

G. Waiver, Estoppel, and Laches

21. Defendant pleads these equitable defenses in conclusory fashion. Each requires well-pled elements:

- 1.) Waiver: intentional relinquishment of a known right.
- 2.) Estoppel: misrepresentation, reliance, and detriment.
- 3.) Laches: unreasonable delay and resulting prejudice.

22. Defendant pleads none of these elements. He asserts only broad conclusions without supporting facts.

23. Without factual allegations meeting the required elements, these defenses are legally insufficient and must be stricken.

H. Bad Faith

24. Defendant asserts “bad faith” as a defense. Illinois does not recognize “bad faith” as an affirmative defense to a contract or equity claim.

25. This is a conclusory label, not a legal defense, and it should be stricken.

I. Abuse of Process / Forum Shopping

26. Defendant asserts “abuse of process” and “forum shopping.” These are not affirmative defenses.

27. Allegations that Plaintiff chose one forum or filed a parallel case do not defeat the elements of his contract and equitable claims. At most, such arguments are collateral and could be raised in other procedural contexts.

28. As pled, they are legally insufficient and should be stricken.

CONCLUSION

29. Defendant’s Affirmative Defenses are not recognized defenses, are pled without essential elements, or are conclusory and improper. Defendant’s Response fails to cure these

deficiencies because it relies on factual assertions outside the pleadings and collateral accusations.

30. Plaintiff respectfully requests that this Court strike Defendant's Affirmative Defenses in their entirety and grant such other and further relief as the Court deems just and proper.

Dated: September 9, 2025

Respectfully Submitted,

By: /s/Mason Cole
Attorney for the Plaintiff

Mason S. Cole
COLE SADKIN LLC
1652 W. Belmont Ave., Ste. 1
Chicago, Illinois 60657
T: (312) 548-8610
Firm ID: 49001
mcole@colesadkin.com
Counsel for Plaintiff