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Case No. 2018-0029-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DELAWAREANS FOR EDUCATIONAL OPPORTUNITY and NAACP DELAWARE STATE CONFERENCE OF BRANCHES,	)	
Plaintiffs,	)	
v.	)	C.A. No. 2018-0029-JTL
JOHN CARNEY, SUSAN BUNTING, KENNETH A. SIMPLER, SUSAN DURHAM, DAVID GREGOR and GINA JENNINGS,	)	
Defendants.	)	

DEFENDANT DAVID M. GREGOR'S REPLY BRIEF IN SUPPORT OF HIS MOTION TO DISMISS THE VERIFIED COMPLAINT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

ARGUMENT 3

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER COUNT III 3

A. This Court should not allow Plaintiffs to attempt to "amend" their Complaint via their Answering Brief 3

B. Plaintiffs have an adequate remedy at law for Count III 9

C. This Court should not exercise "clean-up" jurisdiction over Count III 9

II. COUNT III SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AGAINST GREGOR 13

III. COUNT I AND II FAIL TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED AGAINST GREGOR 14

IV. PLAINTIFF'S NEW TAX COLLECTION INJUNCTION REQUEST SHOUD BE DISMISSED 15

A. This Court Does Not Have Jurisdiction Over the Tax Collection Injunction Request 17

B. The Tax Collection Injunction Request Fails To State A Claim For Which Relief Can Be Granted 18

CONCLUSION 21

TABLE OF AUTHORITIES

PAGE

CASES

Anglo American Sec. Fund L.P. v. S.R. Global Intern. Fund L.P.,
2006 WL 1494360 (Del. Ch. May 24, 2006).....7, 8

Cal. Pub. Employees' Ret. Sys. v. Coulter,
2002 WL 31888343 (Del. Ch. Dec. 18, 2002) 8

Cantor Fitzgerald L.P. v. Cantor,
1999 WL 413394 (Del. Ch. June 15, 1999).....13, 18

Delaware Bankers Ass'n v. Division of Rev. of Dept. of Fin.,
298 A.2d 352, 356 (Del. Ch. 1972) 17

Dover Historical Soc. v. City of Dover Planning Comm'n,
838 A.2d 1103 (Del. 2003).....17

East Sussex Assoc., LLC v. West Sussex Assoc., LLC,
2013 WL 2389868 (Del. Ch. June 3, 2013).....6, 8

Equitable Guar. And Trust Co. v. Donahoe,
45 A. 583 (Del. Ch. 1900) 17

Exxon Mobil Corp. v. Allapattah Services, Inc.,
545 U.S. 546 (2005).....11

Finley v. U.S.,
490 U.S. 545 (1989).....11

Getty Ref. & Mktg. Co. v. Park Oil, Inc.
385 A.2d 147 (Del. Ch. 1978) 12

In re EZCORP Inc. Consulting Agreement Deriv. Litig.,
2016 WL 197814 (Del. Ch. Jan. 15, 2016).....6

Korn v. New Castle Cty.,
2005 WL 3963418 (Del. Ch. Feb. 10, 2005).....20

McComb v. Robele,
116 A. 745 (Del. Ch. 1922) 17

Medek v. Medek,
2008 WL 4261017 (Del. Ch. Sept. 10, 2008).....9, 10

North River Ins. Co. v. Mine Safety Appliances Co.,
2013 WL 6713229 (Del. Ch. Dec. 20, 2013).....20

Orman v. Cullman,
794 A.2d 5, 28 n.59 (Del. Ch. 2002) 6, 7, 8

Young v. Red Clay Consol. School Dist.,
2015 WL 5853762 (Del. Ch. Oct. 2, 2015) 15

STATUTES

9 *Del. C.* ch. 83 .....10, 11

9 *Del. C.* § 8306(a).....3, 10, 16

9 *Del. C.* § 8311(a).....17

14 *Del. C.* 11

CONSTITUTION

Del. Const. art. X, § 1 .....*passim*

RULES

Del. Ct. Ch. R. 12(b)(6) 3, 5, 6, 18

Del. Ct. Ch. R. 15(aaa).....5, 6, 7

Del. Ct. Ch. R. 23.1.....5

PRELIMINARY STATEMENT

Defendant Chief Financial Officer David M. Gregor's ("Gregor" or "CFO")[1] motion to dismiss "(Motion") seeks to dismiss Count III for lack of subject matter jurisdiction and Counts I, II, and III for failure to state a claim for which relief can be granted. Upon receipt of the Motion, Plaintiffs had a choice -- move to amend their Complaint,[2] or file an answering brief. They filed an answering brief.

In their Answering Brief,[3] Plaintiffs admit that County Defendants do not have the power to effect a General Reassessment. Plaintiffs also admit that the Complaint named the wrong parties to effect a General Reassessment. Indeed, the Plaintiffs now assert that they do not seek a Court order requiring a General Reassessment. Instead, Plaintiffs have attempted to inject new allegations into the Complaint through the Answering Brief and raise a new request for relief -- that Gregor should be enjoined from collecting taxes.

This Court should not allow Plaintiffs' attempt to "amend" the Complaint through the Answering Brief. Moreover, the new request to enjoin Gregor from

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[1] At the time this suit was filed, J. Brian Maxwell was the Chief Financial Officer of New Castle County. On June 8, 2018, Gregor became the new Chief Financial Officer of New Castle County. On July 10, 2018, the Court approved substitution of the parties.

[2] Unless otherwise defined, all capitalized terms shall have the meaning ascribed to them in Defendant J. Brian Maxwell's Opening Brief ("Opening Brief").

[3] Answering Brief in Opposition to County Defendants' Motions to Dismiss.

collecting taxes will not promote Plaintiffs' ultimate goal of increasing educational funds; instead, such an injunction against collection will stop the flow of school property tax monies to school districts and have other devastating effects. For these and other reasons, the Court should dismiss Count III of the Complaint for lack of subject matter jurisdiction or, alternatively, for failure to state a claim for which relief can be granted. This Court should also dismiss Counts I and II for failure to state a claim for which relief can be granted.

ARGUMENT

I. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER COUNT III.

A. This Court should not allow Plaintiffs to attempt to "amend" their Complaint via their Answering Brief.

The Complaint's sole substantive section discussing County Defendants is titled "Property Reassessment."[4] Count III alleges: "Plaintiffs are entitled to an order that will require compliance with 9 *Del. C.* § 8306(a)."[5] While Count III is unclear,[6] Plaintiffs sought through that count an order affirmatively requiring compliance with 9 *Del. C.* § 8306(a). The context of Count III was in a Complaint that repeatedly asserted school districts were underfunded and that property assessments were too low.[7] Every defendant (the CFO, the other two County Defendants, and the State Defendants) properly concluded that Plaintiffs sought in this Court an order compelling a General Reassessment.[8]

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[4] *See* Compl. ¶¶ 51-54.

[5] *Id.* ¶ 189.

[6] *See generally* Opening Br. at 15-16 (discussing how Plaintiffs' language in Count III fails to provide a plain statement of the relief requested).

[7] *E.g.*, Compl. ¶ 7, ¶ 51.

[8] *See, e.g.*, Opening Br. 13-16; Opening Brief In Support Of The State Defendants' Motion To Dismiss ("State Opening Br.") 77-78; Defendant Susan Durham's Opening Brief In Support Of Her Motion To Dismiss ("Kent Opening Br.") 4-11; Defendant Gina Jennings' Opening Brief In Support Of Her Motion To Dismiss The Verified Complaint Pursuant To Court Of Chancery Rule 12(B)(6) ("Sussex Opening Br.") 20.

The Opening Brief pointed out that Plaintiffs "failed to allege that [the CFO] has the authority or financial wherewithal to implement a General Reassessment."[9] Plaintiffs concede this argument:

- "[County Defendants] cannot implement a general reassessment or decide when one will be performed."[10]
- "Plaintiffs agree with [the CFO] that he lacks the ability to implement [a general reassessment] on his own."[11]

Conceding, as they must, the above legal propositions, Plaintiffs attempt to sidestep this substantive defect in their Complaint by arguing that they are not seeking a General Reassessment. Rather, for the first time in their Answering Brief, Plaintiffs claim that they are seeking to enjoin "illegal taxation," and suggest such an injunction may lead to a General Reassessment. This new argument is contained in the following excerpts from the Answering Brief:

- Plaintiffs request "an injunction against illegal taxation."[12]
- "What Plaintiffs seek to gain in this action through Count III is an order that will prevent the counties from basing tax collection on stale assessments."[13]

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[9] Opening Br. 14. *See also* Kent Opening Br. at 8-9 (analyzing proposition that defendant Durham has no authority to perform a General Reassessment); Sussex Opening Br. 20 (similar proposition); State Opening Br. 4, 30 n.116, 79, 80 n.285.

[10] Answering Br. 11.

[11] *Id.* at 26-27. *See also id.* at 28 n.7 (recognizing that a "non-party" must be involved with the implementation of a General Reassessment).

[12] *Id.* at 11.

[13] *Id.* at 12 (emphasis supplied).

- "Plaintiffs[] request . . . a declaration that would require County Defendants to cease collecting taxes on the basis of assessments that do not reflect current market value."[14]

- "[T]he goal of Count III is to stop County Defendants from collecting taxes on the basis of out-of-date assessments."[15]

- "[T]here is a reasonable likelihood that the governing bodies would decide to [implement General Reassessments] if County Defendants are prevented from collecting taxes."[16]

- "An order preventing county tax collection . . . might lead to decisions by Kent County Levy Court, New Castle County Council and Sussex County Council to implement general reassessments."[17]

These new allegations and request for relief (hereinafter, the "Tax Collection Injunction Request") were not contained in the Complaint and constitute a back-door attempt to amend the Complaint. Plaintiffs, however, may not amend their Complaint through an answering brief. Court of Chancery Rule 15(aaa) provides:

> [A] party that wishes to respond to a motion to dismiss under Rules 12(b)(6) or 23.1 by amending its pleading must file an amended complaint, or a motion to amend in conformity with this Rule, no later than the time such party's answering brief in response to either of the foregoing motions is due to be filed.

[14] *Id.* at 13 (emphasis supplied).

[15] *Id.* at 14 (emphasis supplied).

[16] *Id.* at 28 n.7.

[17] *Id.* at 11.

This rule "is intended to conserve litigants' and judicial resources by discouraging a party from briefing a dispositive motion before filing an amended complaint."[18] The plain language of this rule required Plaintiffs to amend their Complaint by the date the answering brief was due (May 22, 2018). Plaintiffs did not do so. The Court should reject Plaintiffs' attempt to amend the Complaint through their answering brief.

The Chancery Court consistently has rejected a plaintiff's attempt to ignore Rule 15(aaa) by "amending" the Complaint in an answering brief. An early example of this is *Orman v. Cullman*.[19] In that case, the plaintiff shareholder alleged a breach of fiduciary duty and duty of disclosure by the board of directors of General Cigar Holdings, Inc. ("General Cigar") in connection with a cash-out merger of the public shareholders of General Cigar.[20] The board defendants moved to dismiss pursuant to Court of Chancery Rule 12(b)(6). Rather than moving to amend his complaint, the plaintiff briefed the defendants' motion, and the Chancery Court issued a decision that included a detailed substantive analysis of the complaint's allegations with respect to each of the board defendants. In the

[18] *East Sussex Assoc., LLC v. West Sussex Assoc., LLC*, 2013 WL 2389868, at *1 (Del. Ch. June 3, 2013).

[19] 794 A.2d 5, 28 n.59 (Del. Ch. 2002). Rule 15(aaa) was adopted in 2001. *In re EZCORP Inc. Consulting Agreement Deriv. Litig.*, 2016 WL 197814, at *4 (Del. Ch. Jan. 15, 2016).

[20] *Orman*, 794 A.2d at 13-14.

context of analyzing those allegations with respect to one of the board defendants, the Chancery Court noted an attempt by the plaintiff to amend his complaint in the briefing and reasoned:

> It is of no help to [the plaintiff] that he improperly attempts to expand the scope of his complaint in his brief opposing the motion to dismiss by adding the new allegation that '[the director's] company could not reasonably hope to attract the future business of General Cigar . . . if he were to vote against the merger." Pl.'s Br. in Opposition at 12. As stated above, at this stage of litigation, the Court is only permitted to consider the well-pleaded facts contained in the complaint and any documents incorporated by reference into that complaint. Should a plaintiff become aware that the allegations set forth in his complaint are inadequate to support his claim, he should request leave of the Court to amend his complaint rather than attempt to expand its scope through briefing. See Court of Chancery Rule 15(aaa). Briefs relating to a motion to dismiss are not part of the record and any attempt contained within such documents to plead new facts or expand those contained in the complaint will not be considered.[21]

In *Anglo American Sec. Fund L.P. v. S.R. Global Intern. Fund L.P.*,[22] the plaintiffs were limited partners in a hedge fund that sued the general partner and the accounting firm on several legal theories, including breach of a limited partnership agreement.[23] In their complaint, the plaintiffs alleged three alternative breach of contract theories: that certain of the defendants never allocated an incentive fee to the partnership capital account; that the defendants withdrew the

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[21] *Id.* at 28 n.59 (emphasis supplied). In footnote 59, the Chancery Court further considered and rejected as a substantive matter the merits of the new allegations.

[22] 2006 WL 1494360 (Del. Ch. May 24, 2006).

[23] *Id*. at *1-2.

incentive fee on a day inconsistent with the terms of the contract; and that defendants did not disclose the withdrawal of the incentive fee.[24] In deciding cross-motions for summary judgment, the Chancery Court analyzed and found as a matter of law that each of the three breach of contract claims were without merit as a matter of law based upon the undisputed facts.[25] The Chancery Court also briefly acknowledged a fourth breach of contract legal theory that the plaintiffs raised for the first time in their briefing on the cross-motions for summary judgment and explained:

> Plaintiffs attempt to inject yet another claim under the rubric of Count I by asserting that [the money manager] orally represented that his money would remain invested alongside the [plaintiffs], thereby inducing the [plaintiffs] to invest in the Fund. POB at 6–7. I reject this eleventh hour claim for two reasons. First, it is not pled in the amended complaint, and parties are not entitled to amend claims in briefing on motions.[26]

It is clear that "[a]rguments in briefs do not serve to amend the pleadings."[27] Consequently, this Court should disregard the Plaintiffs' attempt to amend their

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[24] *Id*. at *2.

[25] *Id.* at *2-3.

[26] *Id.* at *2 n.23 (citing *Cal. Pub. Employees' Ret. Sys. v. Coulter*, 2002 WL 31888343 (Del. Ch. Dec. 18, 2002). The Court also analyzed and rejected the merits of the new claim.

[27] *Cal. Pub. Employees' Ret. Sys. v. Coulter*, 2002 WL 31888343, at *12 n.34 (citing *Orman v. Cullman*, 794 A.2d at 28 n.59). *See also East Sussex Assoc., LLC v. West Sussex Assoc.*, LLC, 2013 WL 2389868, at *2 (Del. Ch. June 3, 2013) (Rule 15(aaa) requires a plaintiff to choose between standing on the complaint and

Complaint in their Answering Brief. Gregor replies to the Answering Brief based upon the filed Complaint. In Section IV of this Reply Brief, however, Gregor responds to the new Tax Collection Injunction Request in the event this Court should choose to evaluate it.

B. Plaintiffs have an adequate remedy at law for Count III.

Count III of the Complaint seeks an order compelling performance of an obligation, and Plaintiffs have conceded that this relief can be provided by a writ of mandamus.[28] This writ provides an adequate remedy at law and deprives the Chancery Court of equity jurisdiction.[29]

C. This Court should not exercise "clean-up" jurisdiction over Count III.

Plaintiffs alternatively assert that this Court could exercise "clean-up" jurisdiction over Count III. The clean-up doctrine permits the Chancery Court to exercise jurisdiction over claims for which there is an adequate remedy of law under certain circumstances where those claims are coupled with claims for which the plaintiff has no adequate remedy at law.[30] The doctrine, however, is

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answering the motion to dismiss, or amending the complaint before the motion is due).

[28] *See generally* Answering Br. 10 (conceding that mandamus is available to a party who seeks an order compelling performance of an obligation).

[29] *See generally* Opening Br. 9-10 (analyzing the lack of equity jurisdiction when the writ of mandamus is available).

[30] *E.g.*, *Medek v. Medek*, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008).

discretionary.[31] Before hearing legal counts along with equitable counts, the Chancery Court should consider "whether the facts involved in the equitable counts and in the legal counts are so intertwined as to make it undesirable or impossible to sever them" and other considerations relating to judicial efficiency.[32]

This Court should not exercise clean-up jurisdiction over Count III. Plaintiffs rely upon Counts I and II as providing this Court with subject matter jurisdiction.[33] For the reasons set forth in the State's Opening Brief, this Court should dismiss Counts I and II. Without Counts I and II, Count III will not be connected to a claim for which there is equity jurisdiction.

Even if this Court does not dismiss Counts I and II, this Court should not exercise clean-up jurisdiction over Count III. The facts involved in Count III as compared to Counts I and II are not "so intertwined as to make it undesirable or impossible to sever them."[34] Count III relates to a property assessment system arising under Chapter 83 of Title 9 of the *Delaware Code*, and whether real property is assessed at its "true value" within the meaning of 9 *Del. C.* § 8306(a) and interpretive case law. By contrast, Counts I and II relate to the Education

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[31] *Id.*

[32] *Id.*

[33] Answering Br. 18.

[34] *Medek*, 2008 WL 4261017, at *3.

Clause of the Delaware Constitution, and Title 14 of the *Delaware Code*. Plaintiffs argue the phrase "general and efficient" in the Education Clause sets a qualitative adequacy standard.[35] The State disagrees, and argues that "general" means only "state-wide and uniform,"[36] that "efficient" refers to "legislative and managerial efficiency,"[37] and that the phrase "general and efficient" does not create a qualitative adequacy standard.[38] These constitutional issues have nothing to do with Gregor or Chapter 83 of Title 9 of the *Delaware Code*.

Another factor weighing against the exercise of clean-up jurisdiction is the lack of identity of the parties. In Count III, the alleged bad actors are county finance directors; in Counts I and II, the alleged bad actors are the State or State employees. In an analogous situation, the United States Supreme Court held that the federal common law of pendent party jurisdiction did not permit a federal court to exercise jurisdiction over additional defendants where there was no independent jurisdictional basis.[39]

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[35] *See generally* Plaintiffs' Answering Brief in Opposition to State Defendants' Motion to Dismiss 13-34.

[36] *See generally* State Opening Br. 62.

[37] *Id.* at 63-65.

[38] *E.g.*, *id.* at 65-67.

[39] *See Finley v. U.S.*, 490 U.S. 545, 549-53 (1989), *superseded by statute as recognized in Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 558 (2005).

Plaintiffs cite to *Getty Ref. & Mktg. Co. v. Park Oil, Inc.*,[40] which identified factors the Chancery Court should consider in determining whether to exercise clean-up jurisdiction:

> [T]o resolve a factual issue which must be determined in the proceedings; to avoid [sic] multiplicity of suits; to promote judicial efficiency; to do full justice; to avoid great expense; to afford complete relief in one action; and to overcome insufficient modes of procedure at law.

Plaintiffs, however, failed to identify how these factors support the exercise of clean-up jurisdiction in this matter. The factual issues are separate, and there has been no showing of extra expense to Plaintiffs. Plaintiffs admitted that County Defendants do not have the power to order a General Reassessment; therefore, including Count III in this Court will not achieve "full justice," or "afford complete relief in one action." Finally, as a court of equity, this Court should consider the substantial burden upon Gregor that would be imposed by including him in a civil action involving discovery and a trial on educational systems in Delaware, about which he can do nothing. In summary, Plaintiffs have failed to meet their burden to demonstrate that the factors this Court articulated in *Getty Ref. & Mktg. Co.* weigh in favor of exercising clean-up jurisdiction.

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[40] *Getty Ref. & Mktg. Co.*, 385 A.2d 147, 150 (Del. Ch. 1978), *aff'd per curiam*, 407 A.2d 533 (Del. 1979).

II. COUNT III SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AGAINST GREGOR.

In the CFO's Opening Brief, he argued that "Plaintiffs fail to allege that [the CFO] has the authority or financial wherewithal to implement a General Reassessment."[41] Plaintiffs have conceded this point.[42]

The CFO also argued that Plaintiffs failed to allege a sufficient nexus between a General Reassessment and the alleged violation of the Education Clause.[43] Plaintiffs respond that a General Reassessment could generate an additional $64 Million,[44] and argue, without support, that total Division III funding "need not change."[45]

This Court need not analyze Plaintiffs' arguments, because Plaintiffs concede that Count III does not seek a General Reassessment,[46] and "non-part[ies]" -- entities not named in this civil action -- would be necessary to implement a

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[41] Opening Br. 14.

[42] *See* Section I.A, *supra* p.4 (discussing Plaintiffs' concessions in their Answering Brief).

[43] *See generally* Opening Br. 17-22 (analyzing *Cantor Fitzgerald L.P. v. Cantor*, 1999 WL 413394 (Del. Ch. June 15, 1999), the allegations of the Complaint, and restrictions imposed by *Delaware Code*).

[44] Answering Br. 28.

[45] *Id.* at 30; *see generally id*. at 28-30.

[46] *Id*. at 11 ("Plaintiffs . . . have not asked this Court to order County Defendants to implement a general reassessment.").

General Reassessment.[47] Therefore, whatever the impact a General Reassessment might have, Plaintiffs conceded that request for relief is not before this Court.

III. COUNTS I AND II FAIL TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED AGAINST GREGOR.

Count I alleges:

> [The] defendants are failing to provide the education required by the Education Clause, and there is an existing and continuing constitutional violation."[48]

Count II alleges:

> Delaware's system for funding schools is unconstitutional because it places an unreasonably heavy burden on taxpayers residing in school districts with low property values to provide sufficient resources to children in those districts. Plaintiffs are entitled to an order that will require that Delaware cease its violation and meet its constitutional obligations.[49]

In his Opening Brief, the CFO argued that this Court should dismiss each of Counts I and II against him.[50] The Complaint alleges only that he "is responsible for the collection of taxes due to New Castle County and the school districts located therein."[51] The Complaint does not allege that Gregor has an obligation to

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[47] *Id.* at 28 n.7.

[48] Compl. ¶ 179.

[49] Compl. ¶¶ 183-84.

[50] *See generally* Opening Br. 23-24.

[51] Compl. ¶ 20.

comply with the Education Clause, or that he has any constitutional obligation with respect to the Education Clause.

Plaintiffs' only response is that because Gregor allegedly is collecting insufficient taxes, he is contributing to the inadequacy of education support. This argument does not address the lack of connection between the collection of taxes, and the alleged inadequacy of funds for educational support. Plaintiffs' argument is weakened further by their concession that they are not seeking affirmative equitable relief from this Court to order Gregor to engage in a process that will increase property tax revenue (i.e., a General Reassessment). Finally, Counts I and II allege constitutional violations. Plaintiffs in their Answering Brief acknowledge that Gregor does not have constitutional obligations, but only has "statutory obligations."[52] This is a concession that Counts I and II are not directed towards him. Counts I and II should be dismissed against Gregor as a matter of law.[53]

IV. PLAINTIFFS' NEW TAX COLLECTION INJUNCTION REQUEST SHOULD BE DISMISSED.

As discussed previously in Section I.A., Plaintiffs have developed in their

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[52] Answering Br. 12.

[53] *See generally* Opening Br. 14-15 (discussing *Young v. Red Clay Consol. School Dist.*, 2015 WL 5853762, at *8-13 (Del. Ch. Oct. 2, 2015) (Board of Elections dismissed as a party because it did not have authority to review alleged violations of election laws)).

Answering Brief a new claim for relief seeking an injunction to prohibit Gregor from collecting alleged "illegal" taxes. This Court should see through this attempt to avoid the jurisdictional and substantive defects associated with the Complaint's request for a General Reassessment. Regarding the jurisdictional defect, in the Opening Brief, the CFO argued that if there was a violation of 9 *Del. C.* § 8306(a), the Superior Court had jurisdiction to issue a writ of mandamus, and therefore this Court lacked equity jurisdiction.[54] To avoid that result, Plaintiffs -- for the first time in their Answering Brief -- inform this Court (and Defendants) that they seek only to enjoin Gregor from collecting alleged "illegal" taxes. This approach enables them to argue that they seek a negative injunction and therefore argue that the jurisdictional cases cited in the Opening Brief do not apply.[55]

Regarding the merits, the CFO argued that he lacked the power to order a General Reassessment, and Plaintiffs admit this in their Answering Brief. Plaintiffs' new legal theory is that they seek only a negative injunction (and not a General Reassessment). This new legal theory appears designed to attempt to moot the substantive deficiency identified in the Opening Brief.

Unfortunately for Plaintiffs, their new legal theory creates new jurisdictional and substantive deficiencies. Assuming *arguendo* that this Court permits Plaintiffs

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[54] *See generally* Opening Br. 8-11.

[55] *See generally* Answering Br. 9-11.

to amend their Complaint through the new factual allegations and claim for relief contained in their Answering Brief, this Court should find the new Tax Collection Injunction Request to be without merit as discussed below.

A. This Court Does Not Have Jurisdiction Over the Tax Collection Injunction Request.

The new Tax Collection Injunction Request seeks "an injunction against illegal taxation."[56] The Complaint does not allege that either Plaintiff is a property owner in New Castle; therefore Plaintiffs do not have standing to enjoin the alleged "illegal taxation."[57] Assuming *arguendo* that Plaintiffs were property owners and therefore paid property taxes, they would have an adequate remedy at law – an appeal of those tax bills.[58]

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[56] *Id.* at 11.

[57] *See generally Dover Historical Soc. v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1115-1116 (Del. 2003) (analyzing standing of institutional plaintiff and individual plaintiffs).

[58] 9 *Del. C.* § 8311(a); *See generally Delaware Bankers Ass'n v. Division of Rev. of Dept. of Fin.*, 298 A.2d 352, 356, 358 (Del. Ch. 1972) (court dismissing action for injunction against occupational tax for lack of equity jurisdiction, and identifying Tax Appeal Board as providing an adequate remedy of law); *Equitable Guar. And Trust Co. v. Donahoe*, 45 A. 583, 584 (Del. Ch. 1900) (bill in equity to restrain state tax collection dismissed, and identifying common law remedy as an adequate remedy of law); *see also McComb v. Robele*, 116 A. 745, 749 (Del. Ch. 1922) (because request for injunction against alleged illegal taxation did not relate to one of the recognized "heads of equity jurisdiction," the court dismissed the action for lack of jurisdiction).

B. The Tax Collection Injunction Request Fails To State A Claim For Which Relief Can Be Granted.

In the event this Court finds it has subject matter jurisdiction over the Tax Collection Injunction Request, that claim should be dismissed pursuant to Rule 12(b)(6) for a failure to state a claim for which relief can be granted.[59] First, Plaintiffs failed to allege a sufficient nexus and factual basis between their Tax Collection Injunction Request and the State's compliance with the Education Clause.[60] Enjoining Gregor from collecting taxes will not increase the funds available for education. To the contrary, such an injunction will decrease the amount of funds available for education.

To be sure, Plaintiffs speculate about what might happen if this Court issues such an injunction. They suggest "non-part[ies]"[61] might decide to implement a General Reassessment. The mere fact that Plaintiffs must refer to non-parties is a basis to find this new claim for relief has no nexus to the ultimate relief sought by the Complaint. Moreover, what each of those non-parties might do is speculation.

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[59] Court of Chancery Rule 12(b)(6).

[60] *See generally* Opening Br. 12-22 (discussing and applying the standard of *Cantor Fitzgerald L.P. v. Cantor*, 1999 WL 413394, at *3 (Del. Ch. June 15, 1999) to Count III of the Complaint).

[61] Answering Br. 28 n.7; *see also id.* at 11 ("An order preventing county tax collection . . . might lead to decisions by Kent County Levy Court, New Castle County Council and Sussex County Council to implement general reassessments.").

There cannot be a nexus between the requested negative injunction and an increase in funding through a General Reassessment where Plaintiffs speculate about future, discretionary conduct of such non-parties. In summary, there is no nexus between the Tax Collection Injunction Request and Plaintiffs' goal of substantially increasing funding for education.

The second reason this Court should dismiss the Tax Collection Injunction Request on the merits is because Plaintiffs do not allege that the taxes are too high, or unauthorized by law, as is typically the case when a taxpayer seeks to enjoin collection of a tax.[62] The theme of paragraphs 51 through 54 of the Complaint is that County Defendants should be collecting more taxes to provide more local funding for education programs. Specifically, Plaintiffs assert the County is collecting "real estate taxes [that are] reduced"[63] and that the County is collecting "less tax revenue available for schools"[64] than it could be. Plaintiffs have not cited any case where a court enjoined a tax collector from collecting taxes because the taxes were too low.

The third reason this Court should dismiss the Tax Collection Injunction Request on the merits relates to the equities of the claim. Plaintiffs must

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[62] *See generally*, *supra* footnote 58 (citing tax injunction cases).

[63] Compl. ¶ 51; *see also* Answering Br. 4 ("tax revenue . . . in all three counties is reduced").

[64] *Id.* ¶ 187.

demonstrate that considering the potential harm to the parties, the balance of equities favors the issuance of relief.[65] Plaintiffs have not alleged how the injunction would ameliorate at all the alleged harm of the insufficient funding for schools. By contrast, an injunction against tax collection would be economically devastating both to the County and to all school districts within the County.[66] This Court should find that the egregious harm of issuing the injunction outweighs any benefit as a matter of law.[67] For all these reasons, the Tax Collection Injunction Request should be dismissed because it is without merit as a matter of law.

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[65] *E.g.*, *Korn v. New Castle Cty*., 2005 WL 396341, at *8 (Del. Ch. Feb. 10, 2005).

[66] Plaintiffs' discussion of the Tax Collection Injunction Request fails to recognize these devastating effects. Moreover, a General Reassessment does not happen overnight. Thus, the Tax Collection Injunction Request fails to recognize that the cut off of funds to the schools and the County could continue for years until the speculated General Reassessment became effective.

[67] *E.g.*, *North River Ins. Co. v. Mine Safety Appliances Co*., 2013 WL 6713229, at *7, *9 (Del. Ch. Dec. 20, 2013) (granting defendant's motion for judgment on the pleadings where equities did not support the relief requested because equity "will not do a useless thing"), *aff'd* 105 A.3d 369 (Del. 2014).

CONCLUSION

For the foregoing reasons, Gregor respectfully requests that this Court: (1) dismiss Count III of the Complaint against him for lack of subject matter jurisdiction; or in the alternative, for failing to state a claim for which relief can be granted; and (2) dismiss Counts I and II of the Complaint against him for failing to state a claim for which relief can be granted.

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