

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

Hon. Patrick J. Duggan
Case No. 2:07-cv-14124

HOSANNA TABOR EVANGELICAL LUTHERAN
CHURCH AND SCHOOL

Defendant

Omar Weaver
Equal Employment Opportunity Commission
Attorneys for Plaintiff
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477 Michigan Avenue
(313) 226-3407

Deano C. Ware, P.C.
Deano C. Ware (P65421)
Attorneys for Defendant
P.O. Box 40162
Redford, Michigan 48240
(313) 541-8433

**DEFENDANT HOSANNA TABOR EVANGELICAL
LUTHERAN CHURCH AND SCHOOL'S
ANSWER AND NOTICE OF AFFIRMATIVE DEFENSES AND
RELIANCE ON JURY DEMAND AND CERTIFICATE OF SERVICE**

NOW COMES, Deano C. Ware, counsel for Defendant Hosanna Tabor Evangelical Lutheran Church and School ("Hosanna Tabor") and states as follows for its Answer and Affirmative Defenses to Plaintiff's complaint saving and reserving unto itself all right and manner of benefit and exception to the many insufficiencies and inaccuracies in the Plaintiff's Complaint and for answer thereto, or to so much thereof as it is advised it is necessary or material for to answer says:

NATURE OF ACTION

Defendant neither admits nor denies that this is an action governed under Title I of the Americans with Disabilities Act of 1990 ("ADA") as Defendant leaves Plaintiff to its proofs that the complainant Cheryl Perich ("Perich") has a disability as defined under the

act.

JURISDICTION AND VENUE

1. Denied. Defendant denies that this court has jurisdiction over this matter as Defendant denies that the complaint Perich has a “disability” as that term is defined under Title I of the Americans with Disabilities Act of 1990 (“ADA”). Defendant further denies that this court has jurisdiction over this matter because Defendant neither admits nor denies that at all times relevant to this complaint, Defendant Hosanna Tabor was an employer covered under the ADA. Defendant further denies that this court has jurisdiction over this matter as Plaintiff has failed to attempt to conciliate this matter with Defendant in a good faith manner.
2. Admitted in part. Defendant only admits that the practices at issue in this complaint occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan.
3. Admitted in part. Defendant denies that Plaintiff is expressly authorized to bring this action as Defendant denies that this action is governed by the ADA.
4. Neither admitted nor denied as Defendant is without sufficient information at this time to admit or deny that “at all relevant times” it has continuously had at least 15 employees. Defendant further denies that it is a Michigan corporation and states by way of further answer that Defendant is a Michigan Ecclesiastical corporation.
5. Neither admitted or denied as Defendant is without sufficient information at this time to admit or deny that “at all relevant times” it has engaged in an industry affecting commerce.
6. Neither admitted nor denied as Defendant is without sufficient information at this time to admit or deny that “at all relevant times” it has been a covered entity under Section 101(2) of the ADA.

STATEMENT OF CLAIMS

7. Denied as untrue. Defendant denies that all conditions precedent to the institution of this lawsuit have been fulfilled. Plaintiff has failed to attempt to conciliate this matter in good faith as required by the Act. Further Plaintiff has failed to prosecute this matter in a timely manner as required by the Act. Plaintiff has failed to bring this matter in the time allowed by the Act.
8. Denied as untrue. Defendant denies that it has engaged in any unlawful employment practices. Defendant denies that it terminated Perich's employment in retaliation for threatening to file an ADA lawsuit.
9. Denied as untrue.
10. Denied as untrue.
11. Denied as untrue.

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully request that Plaintiff's prayer for relief be denied and complaint be dismissed with prejudice and that this court enter order awarding Defendant its costs and attorney fees incurred in the defense of this matter.

Respectfully submitted,

DEANO C. WARE, P.C.

/s/Deano C. Ware
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Redford, Michigan 48240
(313) 541-8433
attorneyware@msn.com

Dated: October 29, 2007

AFFIRMATIVE DEFENSES

NOW COMES the Defendant, Hosanna Tabor Evangelical Lutheran Church and School, by and through its attorneys, Deano C. Ware, P.C., and by way of Affirmative Defenses, states that it will rely upon and insist in its defense and demand a reply hereto:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred by statute.
3. Plaintiff's claims are barred by statute of limitations.
4. Plaintiff's claims are barred by a statute of repose as provided in the ADA.
5. Lack of Jurisdiction. This court lacks subject matter jurisdiction over this matter as Plaintiff's claims are not governed by the ADA.
6. Laches. Plaintiff's claims are barred in whole or part by the doctrine of laches.
7. Defendant's actions are covered in whole or part by the separation clause of the United States Constitution and ecclesiastical in nature such that this court is barred from ruling on them.
8. Defendant reserves the right to amend its affirmative defenses as further defenses become known through the course of discovery.

Respectfully submitted,

DEANO C. WARE, P.C.

/s/Deano C. Ware
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P.O. Box 40162
Redford, Michigan 48240
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attorneyware@msn.com

Dated: October 29, 2007

RELIANCE UPON JURY DEMAND

NOW COMES the Defendant, Hosanna Tabor Evangelical Lutheran Church and School and hereby relies upon Plaintiff's demand for jury trial in this matter.

Respectfully submitted,

DEANO C. WARE, P.C.

/s/Deano C. Ware
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Dated: October 29, 2007

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2007, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following Omar Weaver, and I hereby certify I have mailed by United States Postal Service the document to the following non-ECF participants:

DEANO C. WARE, P.C.

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