

**IN THE STATE OF MISSOURI  
JACKSON COUNTY DISTRICT COURT  
AT INDEPENDENCE, MISSOURI**

SAMUEL K. LIPARI	)	
(Assignee of Dissolved	)	
Medical Supply Chain, Inc.)	)	
<i>Plaintiff</i>	)	
	)	
vs.	)	
	)	
GENERAL ELECTRIC COMPANY,	)	<b>Case No. 0616-cv07421</b>
GENERAL ELECTRIC CAPITAL	)	
BUSINESS ASSET FUNDING CORP.,	)	
GE TRANSPORTATION SYSTEMS	)	
GLOBAL SIGNALING, L.L.C.	)	
<i>Defendants</i>	)	

**MOTION TO DISMISS THE GE  
DEFENDANTS' SECOND SET OF AFFIRMATIVE  
DEFENSES UNDER RULE 55.08 AND SUGGESTION IN SUPPORT**

Comes now the petitioner, Samuel K. Lipari ("plaintiff") appearing *pro se* and respectfully submits the following proposed order to strike the General Electric Company, General Electric Capital Business Asset Funding Corporation and GE Transportation Systems Global Signaling, LLC ("defendants") affirmative defenses.

**STATEMENT OF FACTS**

1. The defendants raised affirmative defenses in their first responsive pleading on 5-4-06.
2. The defendants' first set of affirmative defenses were raised in a pleading addressing the preceding petition to dismiss the petitioner's claims contained in the petition which was overruled on 5-25-06.

3. The plaintiff filed a motion on 6-01-06 to dismiss the defendants' first set of affirmative defenses, which has not yet been ruled on.

4. The defendants answered the petition on 7-17-06 on the same day the defendants removed the action to federal court.

5. The defendants' answer on 7-17-06 listed a second set of affirmative defenses addressing the plaintiff's petition, not the preceding pleading.

6. The defendants' answer on affirmative defenses contained in ¶¶ 113-117 of the 7-17-06 answer are conclusory, lacking a short and plain statement of facts showing GE is entitled to any defense or avoidance.

7. The plaintiff timely replied to defendants' answer by seeking to dismiss the second set of affirmative defenses for being in violation of Missouri Rule 55.08.

10. The plaintiff's motion was filed contemporaneously to when the state court has jurisdiction returned to it through receipt of a certified letter containing the US District Court order remanding the action.

11. On February 9, 2007, the defendants orally sought an extension without a showing of good cause and obtained an extension of ten days to reply to the plaintiff's motions to dismiss the defendants affirmative defenses.

12. The defendants failed to file a responsive pleading opposing dismissal of their affirmative defenses as of February 22, 2007.

**SUGGESTION IN SUPPORT OF PROPOSED ORDER DISMISSING  
AFFIRMATIVE DEFENSES**

The plaintiff has attached a proposed order striking the defendants' affirmative defenses.

**CONCLUSION**

The plaintiff respectfully requests that the court grant the plaintiff's motions to dismiss the defendants' affirmative defenses.

Respectively submitted,

\_\_\_\_\_  
Samuel K. Lipari  
*Pro se*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 23rd day of February, 2007, by first class mail postage prepaid to:

Leonard L. Wagner and John K. Power, Esq., Husch & Eppenberger, LLC 1700 One Kansas City Place 1200 Main Street Kansas City, MO 64105-2122

\_\_\_\_\_  
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*Pro se*

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GE TRANSPORTATION SYSTEMS	)	
GLOBAL SIGNALING, L.L.C.	)	
<i>Defendants</i>	)	

**ORDER STRIKING DEFENDANTS' AFFIRMATIVE DEFENSES**

The Court hereby grants the plaintiff's motions to "dismiss" properly motions to strike the defendants' affirmative defenses.

The only affirmative defenses raised by the defendants in their first responsive pleading dated 05/04/06 are defective at law. The GE Defendants are not entitled to affirmative defenses based on conditions created by Medical Supply to protect Medical Supply from buying a building the City of Blue Springs might have prevented from being used as a corporate headquarters under *McDermott v. Burpo*, 663 S.W.2d 256 at 261 (Mo. App.W.D., 1983). The GE Defendants are also not entitled to affirmative defenses based on failure to perform the GE accepted duty of providing the

mortgage under *Fleischer v. McCarver*, 691 S.W.2d 930, 933 (Mo.App.E.D. 1985).

The defendants' second set of affirmative defenses raised for the first time in their answer to the plaintiff's petition are untimely. In *Detling v. Edelbrock*, 671 S.W.2d 265, the Missouri Supreme Court mandated that affirmative defenses not responsively raised against the plaintiff's petition are waived:

"Respondent answered appellants' amended petition with a motion to dismiss in which the defense was neither raised nor intimated...Having failed to raise the defense in a timely fashion, the defense was waived."  
[Emphasis added ]

*Detling v. Edelbrock*, 671 S.W.2d 265 at 271 (Mo., 1984).

Whereas for the above reasons, the court orders the defendants' affirmative defenses stricken.

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Hon. Michael W. Manners  
Judge  
Div. 2  
16<sup>th</sup> Circuit Court  
State of Missouri