IN THE COURT OF APPEALS
OF THE STATE OF NEW MEXICO

BOARD OF EDUCATION FOR
THE QUESTA INDEPENDENT
SCHOOL DISTRICT,

Plaintiff-Appellant,

v.

ARTESANOS DE QUESTA, a non-profit
corporation, and NANCY GONZALES,
in her individual capacity and as owner
of the Cariños Day Care Center,

Defendants-Appellees.

Nos. 29,911 & 30,069

Appeal from the Eighth Judicial District Court
Taos County
The Honorable Sam B. Sanchez

ANSWER BRIEF

Oral Argument Is Requested

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TABLE OF CONTENTS

Statement Regarding Transcript Citations

Transcript citations refer to the date of the trial or hearing and are substantially in the form required by Appendix part I.D. to Rule 23-112, NMRA. The trial took place on March 2-3, 2009, April 20, 2009, and May 12, 2009. The hearing on the motion for attorney fees took place on November 3, 2009.

[Note: it appears that the official log of the trial does not reflect the actual times on the CD. For example, for trial dates March 2 and 3, 2009, the times on the log appear to be approximately one hour and seven minutes behind the times on the CD. For trial dates April 20, 2009 and May 12, 2009, the times on the log appear to be a minute or two behind the times on the CD].

Statement of Compliance

Pursuant to Rule 12-213(G), NMRA, this brief complies with the type-volume limitations set forth in Rule 12-213(F)(3), NMRA, because it is prepared in a proportionally-spaced typeface, 14-point Times New Roman, and the body of the brief contains 10,471 words, according to WordPerfect X4.

TABLE OF AUTHORITIES

New Mexico Cases

Federal Cases

Cases From Other Jurisdictions

New Mexico Statutes

New Mexico Rules

Other Authorities

INTRODUCTION

Artesanos de Questa is comprised of a group of remarkable individuals who are motivated by a vision of helping their community and preserving their cultural traditions. Plaintiff Board of Education for the Questa Independent School District ["School Board"] sued Defendants Artesanos and Nancy Gonzales [collectively "Artesanos"] for forcible entry or unlawful detainer. [RP 9]; [RP 5 (CV-2007-485)].[1] The lawsuit arose out of a Lease into which the School Board and Artesanos had entered seven years earlier. After a trial on the merits, the district court found for Artesanos and dismissed the School Board's complaint. [RP 474]. The district court also awarded close to $50,000 in attorney fees against the School Board as sanctions. [RP 556].

The district court never entered any findings or conclusions about the Lease's validity, and the question in this appeal is not whether the Lease is valid. The question is whether the district court, sitting in equity, properly exercised its discretion to hold that the School Board is estopped from contesting the validity of the Lease and from suing Artesanos. Because the law in New Mexico is clear that

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[1]This case is a consolidation of two appeals arising out of a consolidation of two district court cases. All references to the record proper in this brief refer to the two consecutively-paginated volumes with district court case number CV-2007-438 highlighted in green on the covers, unless the citation specifically references the companion case, CV-2007-485.

equitable estoppel may be applied against a municipal corporation acting in its proprietary capacity where right and justice demand it, the district court acted well within its discretion in dismissing the School Board's suit. The district court also properly sanctioned the School Board. The Court should affirm the judgment.

STATEMENT OF FACTS

A. Background Facts About Artesanos and the Lease

Artesanos is a non-profit corporation. [RP 458]. Marcus Rael, one of the original founders, testified that Artesanos was originally established to help displaced miners. [CD 3/3/09, 4:35:54]. He testified that Artesanos was interested in helping people reclaim traditional arts and crafts such as woodworking, stained glass, tinwork, and farming. [CD 3/3/09, 4:33:41; *see also* CD 4/20/09, 2:29:08 to 2:30:56; *id.* at 3:01:33 (testimony of Roberto Vigil)]. Artesanos also had a program to assist small businesses. [CD 3/3/09, 4:36:29]. Artesanos was originally housed in the old Cisneros grocery in the Village of Questa, but eventually it needed to expand. [CD 3/3/09, 4:37:25 to 4:39:33].

In 1999, Artesanos and the School Board entered into negotiations for lease of the La Cienega Elementary school property, owned by the School District. [RP 458]. The Lease negotiations took place over a period of several months. [CD 3/3/09, 4:48:14]. During negotiations and throughout the drafting of the Lease,

the School Board was represented by legal counsel, whereas Artesanos had no legal advice or representation. [RP 458; CD 3/3/09, 4:50:04]. The School Board's attorney advised it of what needed to be done to have the Lease approved. [RP 459].

On September 2, 1999, Nelson Lopez, the Superintendent of the School District, wrote to Mr. Rael and advised him that the School Board had approved Artesanos to lease La Cienega. [RP 459; CD 4/20/09, 10:54:26]. Superintendent Lopez communicated with Steve Burrell, Legal Counsel for the New Mexico Department of Public Education, regarding review and approval of the Lease. [RP 459]. Initially, the Education Department refused to approve the Lease. [RP 184; CD 4/20/09, 10:58:07]. Mr. Lopez then submitted additional information. [RP 185; CD 4/20/09, 10:59:01]. On July 21, 2000, Mr. Burrell wrote Superintendent Lopez, informing him that the Department of Public Education had reviewed and approved the Lease. [RP 197; 460; CD 4/20/09, 11:06:29]. The Lease was to commence on June 1, 2000 and terminate on September 30, 2024. *Id.*

The Lease requires that Artesanos pay $1.00 on the first day of each month. [RP 460]. In addition, the Lease provides that $1,200 per month was the fair market value for use of the property; however, in lieu of rent payments, the School District would "accept in-kind contributions." [RP 71; 460].

On the leased premises, Artesanos conducted educational activities, including art, computer, and physical education classes. [RP 458; CD 3/3/09, 5:11:17; CD 4/20/09, 10:41:35]. Artesanos also offered community and welfare services, including distribution of commodities to senior citizens in need of food. [RP 458; CD 3/3/09, 5:11:52; CD 4/20/09, 2:32:11]. Artesanos also started an after-school program for at-risk children. [CD 3/3/09, 5:02:21].

All services and activities were conducted on a volunteer basis by trained members of the community. [RP 458]. Mr. Rael, Mr. Lopez, and Roberto Vigil, President of Artesanos, all testified that Artesanos paid for everything and that the School District did not pay for any of the benefits that it received. [CD 3/3/09, 5:12:12 to 5:12:47; CD 4/20/09, 10:43:46 to 10:44:00; *id.* at 2:35:15 to 2:35:29]. When asked whether the School Board ever advised Artesanos that it was failing to provide in-kind contributions, Mr. Rael responded, "No, sir." [CD 3/3/09, 5:28:33]. He testified that he felt that the in-kind contributions that Artesanos was providing were worth more than $1,200 per month. [CD 4/20/09, 10:34:55]. Likewise, Roberto Vigil testified that the School Board never made any demands or complaints regarding Artesanos' provision of in-kind contributions. [CD 4/20/09, 2:26:50 to 2:27:02]. He also testified that Artesanos donated more in-kind services than required by the Lease. [CD 4/20/09, 2:56:15].

B. Facts About All Parties' Reliance on the Validity of the Lease

In the fall of 2007, School Board member Lawrence Ortega informed Superintendent Romero that the Lease had been executed, reviewed, approved, and filed. [RP 461-62]. The School Board's attorney, Ramon Vigil, who later became a witness, testified that he knew that the Department of Education had approved the Lease. [CD 3/2/09, 12:53:21]. He testified that the School Board had tabled the idea of an investigation into the Lease but that he nevertheless proceeded with an investigation. [CD 3/2/09, 12:25:13 to 12:25:27; *see also* RP 462]. Upon questioning from the judge, Ramon Vigil admitted that the School Board did not meet as a School Board to vote on how to proceed regarding the issues that he investigated. [CD 3/2/09, 1:06:28 to 1:06:36].

When confronted with the fact that he was simultaneously acting as the School Board's attorney and investigator, he denied that characterization and testified that he was only seeking information for his client. [CD 3/2/09, 12:29:00]. He admitted, however, that he provided a report on the results of his investigation. [CD 3/2/09, 12:29:35]. Ramon Vigil advised the School Board that there is evidence that the Department of Education granted approval of the Lease. [RP 462].

Between the commencement of the Lease in 2000 and initiation of the

lawsuits in 2007, the School Board never made any attempt to invalidate the Lease and never informed Artesanos that the Lease was invalid. [RP 461; CD 3/2/09, 12:30:13; CD 4/20/09, 11:16:15]. Superintendent Lopez testified that he relied on the decision rendered by the Department of Education that the Lease was legal and valid. [RP 461; CD 4/20/09, 11:16:26]. Mr. Rael and Roberto Vigil both testified that they, too, relied on the same decision regarding the Lease's validity. [RP 461; CD 4/20/09, 2:58:29; *id.* at 2:59:05]. Mr. Ortega testified that he signed the Lease with the authority of the School Board, and he relied on the valid, binding nature of the Lease. [CD 4/20/09, 11:41:19 to 11:41:48]. School Board member David Zimmerman testified that he believes the Lease is a legal and binding document. [CD 3/3/09, 3:11:56 to 3:12:02].

Mr. Lopez likewise testified that he has never been told that the Lease is invalid, and based on the letter from the Education Department, he believes that it is valid. [CD 4/20/09, 11:15:46 to 11:15:57]. When Artesanos' trial counsel asked Mr. Ortega on cross-examination whether he thinks the Lease is improper and should never have been approved, he answered, "No, I don't believe that." [CD 4/20/09, 11:41:55 to 11:42:12]. Joe Cisneros, a School Board member and a founding father of Artesanos, testified that he has always respected the Lease provisions. [CD 4/20/09, 1:56:03].

C. Facts About Cariños Child Development Center

One program administered by Artesanos is Cariños Child Development Center. [RP 458]. Cariños provided child care services for low income families. Cariños came about because there was a large demand for the welfare-to-work programs offered by Artesanos, and many of the participants were mothers who could not afford child care while they were in class. [CD 3/3/09, 5:42:02; CD 5/12/09, 9:22:08]. Defendant Nancy Gonzales testified that there is a "great need" for child care services in the Village of Questa, but since the School Board sued her and Artesanos, nobody has been providing those services. [CD 5/12/09, 10:21:07]. She agreed that it has "absolutely" been a big loss to the community. [CD 5/12/09, 10:21:22]. Even Superintendent Eric Martinez admitted that the closure of Cariños left the community in need. [RP 174].

Mr. Zimmerman testified that he objected to the opening of Cariños because it is not a cultural activity. [CD 3/3/09, 3:20:12]. The Lease requires that Artesanos is to use the premises "to provide cultural opportunities for the citizens of Questa." [RP 68]. Mr. Rael testified that the children were learning Spanish and also learning about artwork, and through that, they were discovering themselves. [CD 3/3/09, 5:43:41 to 5:44:31]. Roberto Vigil confirmed that Cariños was not about babysitting; it was about teaching culture and languages to

the children. [CD 4/20/09, 2:31:34; *id.* at 3:01:48].

Mr. Zimmerman disagreed that teaching children about other languages and art constitutes a cultural activity. [CD 3/3/09, 3:20:38 to 3:21:16]. Upon questioning by the judge, Ramon Vigil admitted that the Lease does not define "cultural opportunities for the citizens of Questa." [CD 1:05:50 to 1:05:59]. Mr. Zimmerman admitted the same. [CD 3/3/09, 3:21:36].

Ms. Gonzales is the volunteer director of Cariños. *Id.* She is a licensed instructor with 30 years of educational experience working with the School District. [CD 5/12/09, 9:18:28]. She earned a masters degree and is licensed in early childhood education, elementary education, and public school administration. [CD 5/12/09, 9:18:43]. Due to her expertise, Artesanos specifically asked Ms. Gonzales if she would consider assisting to set up the child development center. [CD 5/12/09, 9:12:07; *id.* at 9:22:44]. Mr. Rael testified that once Artesanos decided to start Cariños, Ms. Gonzales agreed to help. [CD 3/3/09, 5:23:12]. Ms. Gonzales testified that the regulations for opening a child care center are "intense" and "very very strict." [CD 5/12/09, 9:25:03].

There was at one time some confusion about whether Cariños should be operated as a for-profit or a non-profit. Numerous witnesses testified that Cariños started out as a non-profit project of Artesanos. [CD 3/3/09, 5:24:50 (Mr. Rael);

CD 4/20/09, 1:57:47 (Mr. Cisneros); *id.* at 3:01:20 (Roberto Vigil); CD 5/12/09, 9:23:05; *id.* at 9:29:21 (Ms. Gonzales)]. Indeed, Ms. Gonzales testified that this was Artesanos' intent "from day one." [CD 5/12/09, 9:54:46 to 9:55:15]. However, at one point, Artesanos changed the legal status of Cariños to a for-profit on the advice of a certified public accountant. [RP 465-66; CD 5/12/09, 9:41:14 to 9:41:23]. Ramon Vigil testified that Ms. Gonzales told him that she relied on this unsound advice. [CD 3/2/09,12:45:35]. He admitted that she relied to her detriment. [CD 3/2/09, 12:45:50]. School Board member Herman Medina confirmed that during an interview, Ms. Gonzales told them that she received bad advice from a CPA. [CD 3//2/09, 3:23:03].

Even after relying on the unsound advice in changing the status of Cariños, Ms. Gonzales continued to function as a volunteer, and she received no monetary benefit from the changed status. [RP 466]. Immediately upon realizing that it had received bad advice, Artesanos took the necessary steps to have the status of Cariños revert to a non-profit. [RP 466; CD 4/20/09, 3:21:48; CD 5/12/09, 9:44:07]. Since then, Cariños has been licensed under the Artesanos' non-profit by the Village of Questa. At one point the Village made an error in this respect, but it acknowledged its error and made the necessary correction. [CD 4/20/09, 3:22:56; *id.* at 3:25:28 to 3:27:06; CD 5/12/09, 10:12:17]. Despite knowing that

Ms. Gonzales had relied on unsound advice from a CPA, the School Board nevertheless attempted to have Ms. Gonzales criminally prosecuted. The district attorney found no evidence of wrongdoing and refused to pursue the matter. [RP 467].

Ramon Vigil testified that he could not remember whether the Board wrote the letter to the district attorney, or whether he wrote it. [CD 3/2/09, 12:47:28]. Mr. Medina testified that he was involved in the Board's decision to request an investigation by the district attorney. [CD 3/2/09, 3:26:42]. Ramon Vigil testified that the School Board never informed him that Cariños had reverted to its original status and was operating as a non-profit under the Artesanos umbrella. [CD 3/2/09, 12:33:26 to 12:33:48]. He admitted that it would have been important for him to know that, in deciding whether to pursue or drop the case. [CD 3/2/09, 12:35:13; *id.* at 12:35:58].

Cariños operated as a private entity only for about seven months, during several of which, Artesanos was in the process of taking care of the necessary paperwork to have it revert back to non-profit status. [CD 5/12/09, 9:51:20 to 9:52:15]. Ms. Gonzales specifically told the Board that Cariños was a non-profit program of Artesanos. [CD 3/2/09, 3:21:53]. Mr. Medina testified that he remembers Ms. Gonzales telling him not to refer to her as the owner of Cariños

because it was part of Artesanos. [CD 3/2/09, 3:25:02]. By October 2007 when the lawsuit was filed, Cariños was back under the Artesanos non-profit umbrella. [CD 5/12/09, 9:51:20 to 9:52:15]. The lawsuit against Ms. Gonzales, however, alleges that Cariños is a "privately-owned, for-profit business." [RP 10].

Believing that the Lease was valid, Superintendent Richard Romero, successor to Mr. Lopez, took action to provide School District monies to Ms. Gonzales for repairs to the leased premises in order to commence operation of Cariños. [RP 461]. Mr. Rael testified that there were many repairs and upgrades that Artesanos undertook to make the premises safe for children. [CD 3/3/09, 5:23:36 to 5:24:41]. Mr. Cisneros testified that the School District approved expenditure of monies for Cariños. [CD 4/20/09, 11:59:07; *id.* at 2:00:09].

Mr. Medina testified that he had no knowledge about whether expenditures for Cariños benefitted Ms. Gonzales personally. [CD 3/2/09, 3:13:28 to 3:13:51]. He testified that he accompanied Ramon Vigil during virtually the entire course of the investigation. [CD 3/2/09, 3:14:14]. He testified that he does not remember whether Ramon Vigil asked any of the providers of labor or materials if they were all provided at La Cienega. [CD 3/2/09, 3:15:15 to 3:15:29]. Mr. Medina testified that he has a feeling they were provided at La Cienega, and he acknowledged that the invoices say "La Cienega." [CD 3/2/09, 3:16:22 to 3:17:35].

Mr. Zimmerman also testified about his belief that Ms. Gonzales used school property and public funds for her personal gain. [CD 3/3/09, 3:37:06 to 3:37:16]. On cross-examination, Artesanos' trial counsel had Mr. Zimmerman read into the record portions of the letter written by the district attorney after the School Board attempted to have Ms. Gonzales prosecuted. The letter confirms that monies disbursed from the School District were used to pay for materials and services to improve the building, and that all monies were accounted for. [CD 3/3/09, 3:38:47]. The district attorney's letter states: "I do not find that any of the monies expended inured to the benefit of Nancy Gonzales personally. In fact, the monies spent were spent to improve the building that is owned by Questa Independent School District, not Ms. Gonzales." *Id.* Artesanos' trial counsel then asked Mr. Zimmerman whether after reading that, he still believes that Ms. Gonzales benefitted personally, and he responded, "Yes, sir." [CD 3/3/09, 3:40:02 to 3:40:11]. Mr. Cisneros, on the other hand, testified that Ms. Gonzales was devoted to helping children get a better start in life. [CD 4/20/09, 2:06:40]. Ms. Gonzales herself testified that everything they purchased was used at La Cienega for Cariños. [CD 5/12/09, 9:48:08; *id.* at 9:49:37].

D. Facts About the Substandard Condition of the Property that the School Board Leased to Artesanos and the Work that Artesanos Contributed to Repairing and Improving the Premises

About one month after filing suit against Ms. Gonzales, the School Board filed another lawsuit against Artesanos, alleging that the Lease is invalid and that Artesanos violated the Lease provisions. [RP 8 (CV-2007-485)] The lawsuit alleged that Artesanos "failed to maintain the premises in good repair." *Id.* When asked whether the School Board ever advised Artesanos that it was not in compliance with the Lease, Mr. Rael responded, "No, sir." [CD 3/3/09, 5:28:13 to 5:28:27]. Roberto Vigil corroborated the testimony that Artesanos was never made aware of any alleged breaches of the Lease. [CD 4/20/09, 2:57:45 to 2:57:56; *id.* at 9:17:04].

At trial, Superintendent Martinez admitted that issues with the premises did not suddenly materialize in the past year and that "they've been there." [CD 3/2/09, 4:19:25 to 4:19:43]. When asked, "They've been there for quite a while, haven't they?" he responded, "Yes, sir." [CD 3/2/09, 4:19:43]. When asked if those conditions were in fact there as far back as 2000 when the School Board leased the property to Artesanos, he responded, "That's correct." [CD 3/2/09, 4:19:47 to 4:19:53]. Mr. Rael testified that when Artesanos entered into the Lease, one of the buildings was in decent shape, but the others had been "let go

pretty bad." [CD 3/3/09, 4:41:50 to 4:41:52]. He testified that the facility was "pretty wiped out" and "in terrible shape." [CD 3/3/09, 5:09:25].

Mr. Zimmerman testified that prior to the Lease, La Cienega had been used for a K-3 program, and they tried to get a bond issue to renovate the building. [CD 3/3/09, 12:30:31]. He testified that they vacated the building in 1998 or 1999, a year or two before they entered into the Lease with Artesanos. [CD 3/3/09, 12:31:37]. Superintendent Martinez admitted that the La Cienega building was no longer going to be used as a school due to all of the safety issues. [CD 3/2/09, 4:20:40]. He further testified that it would be too expensive to renovate La Cienega to comply with the codes; therefore, the school closed, and students were moved to another campus. [CD 3/2/09, 4:20:47]. Mr. Lopez's testimony confirmed that one reason for leasing the property to Artesanos was that it would cost too much to bring La Cienega up to par to be used as a school. [CD 4/20/09, 10:44:43].

The La Cienega building dates back to approximately the 1940s. [CD 3/3/09, 11:00:30]. Superintendent Martinez admitted that the School District knew that dangers existed yet still decided to lease the building to Artesanos. [CD 3/2/09, 4:21:11]. Specifically, he admitted that there was an asbestos problem when they entered into the Lease. [CD 3/2/09, 4:22:26]. He also admitted that the

bathrooms were non-compliant when they entered into the Lease. [CD 3/2/09, 4:22:41]. When asked whether the School Board leased the property knowing about all of the health and safety violations, Mr. Martinez answered, "Yeah, yeah, they did." [CD 3/2/09, 4:23:18 to 4:23:21]. Mr. Lopez confirmed that the School District was aware that the property was in bad shape during Lease negotiations. [CD 4/20/09, 10:46:34].

On cross-examination, Artesanos' trial counsel asked a hypothetical to Mr. Ted Maestas, a Risk Manager with Poms and Associates, which has the School District as a client. He asked, what if the School Board knew of the condition of the building and still leased it? [CD 3/3/09, 10:59:06] Mr. Maestas answered that if the building were in this condition back in 2000, the School District should not have leased it. [CD 3/3/09, 10:59:21]. Artesanos' trial counsel then asked another hypothetical: would it have been unconscionable to have leased the building if it was in worse condition in 2000 than it is today? [CD 3/3/09, 10:59:47] Mr. Maestas responded, "Hypothetically, yes." [CD 3/3/09, 10:59:57]. Based on all of the repair work that Artesanos has done, Mr. Rael testified that the quality and condition of the property has improved during the years of its tenancy. [CD 4/20/09, 10:38:27].

Artesanos upgraded one of the bathrooms at La Cienega so that it would be

accessible to a person in a wheelchair. [CD 3/3/09, 4:44:04]. Mr. Rael and Roberto Vigil testified that Artesanos paid for that renovation to bring the bathroom into compliance with the Americans with Disabilities Act. [CD 3/3/09, 4:44:22; CD 4/20/09, 2:47:26 to 2:47:56]. As part of its in-kind contributions pursuant to the Lease, Artesanos also provided a host of repair work to the premises, to the benefit of the School District. For example, Mr. Rael and Roberto Vigil testified that Artesanos upgraded the school kitchen to comply with applicable codes, it painted, did some electrical work, made roof and drain repairs, and repaired heating and water systems in the gymnasium. [CD 3/3/09, 4:52:17; *id.* at 4:52:28; CD 4/20/09, 2:37:23; *id.* at 2:40:09 to 2:40:59]. Artesanos also cleaned carpets, fixed broken windows, and repaired window seals. [CD 3/3/09, 5:10:00]. Artesanos also organized volunteers who were willing to help with upkeep of the grounds. They cleared debris and trimmed trees that had grown into the chain-link fence. [CD 3/3/09, 5:09:16].

Roberto Vigil testified that the fire marshal has never informed Artesanos of any fire code violations, and the School Board has never confronted Artesanos with any such violations. [CD 4/20/09, 2:48:07 to 2:48:20]. Ms. Gonzales confirmed that after inspections by the fire marshal, Artesanos has never been cited. [CD 5/12/09, 10:01:04 to 10:01:57]. The fire marshal did recommend,

however, that if structural changes are ever made to the building, the windows should be lowered. [CD 5/12/09, 10:02:21 to 10:02:32].

Roberto Vigil testified that there are still parts of the facility that Artesanos has not yet repaired. Artesanos' policy is that rooms that have not yet been repaired are closed to the public. [CD 5/12/09, 9:14:23]. The rooms where Cariños and other programs take place have been repaired and are safe. [CD 5/12/09, 9:14:48]. Rooms that are under repair are not open to the public. [CD 5/12/09, 9:15:01].

E. Facts About Asbestos Contamination, the School Board's Failure to Take Action, and Artesanos' Abatement of the Problem

Superintendent Martinez testified that he hired an inspector to test for asbestos. Once it was confirmed that asbestos was present in the floor tile and mastic, the School Board did nothing to resolve the problem. [CD 3/2/09, 4:28:01 to 4:30:21]. Artesanos, however, went to the time and expense of remediating the asbestos contamination, to the benefit of the School District. [CD 4/20/09, 2:52:12 to 2:52:21; CD 5/12/09, 10:07:35]. In fact, Ms. Gonzales testified that even before the School Board had hired an inspector, she was working with Richard Serna from Southwest Hazard Control regarding their options for asbestos abatement. [CD 5/12/09, 10:04:42 to 10:05:08].

After Artesanos took care of the asbestos abatement, it requested a re-inspection and was informed by the inspector, Havona Environmental, that the asbestos had been correctly encapsulated for safe occupancy. [CD 3/2/09, 4:35:16; CD 4/20/09, 2:52:33 to 2:52:52; CD 5/12/09, 10:07:58; *id.* at 10:10:27; RP 181]. Roberto Vigil also testified that Artesanos had Havona inspect for mold, and there was no finding of mold. [CD 4/20/09, 2:53:08 to 2:53:17]. Superintendent Martinez testified that he nevertheless maintained a marquee in the Village of Questa, stating that La Cienega is unsafe due to asbestos. [CD 3/2/09, 4:37:00].

F. Artesanos' Desire to Purchase the La Cienega Property

The Lease contained a right of first refusal for Artesanos to buy the property at its appraised fair market value. [RP 70]. Ramon Vigil admitted that under the terms of the Lease, if Artesanos had the money, it could have purchased the property. [CD 3/2/09, 1:02:40]. Artesanos did exercise its option to purchase. [CD 1:02:00]. In fact, Artesanos offered to buy the property as is. [CD 3/2/09, 4:57:57]. Artesanos even tendered a written offer to buy the property in open court during the trial. [CD 3/3/09, 4:29:23].

Superintendent Martinez confirmed that he knew from the School District's attorney that Artesanos wanted to purchase the building, and the attorney asked

him to get an appraisal for that purpose. [CD 3/2/09, 4:40:22 to 4:41:24]. He testified that he never did have the property appraised. [CD 3/2/09, 4:55:55]. Ramon Vigil confirmed that the School District never had the property appraised. [CD 3/2/09, 12:56:58; *id.* at 12:57:25].

It is worth noting that the financial condition of the School District is not good. [CD 3/3/09, 11:10:16]. Mr. Maestas testified that Questa probably has one of the most financially challenged districts in the state. [CD 3/3/09, 11:10:25]. He agreed that the School District hardly has any money. [CD 3/3/09, 11:10:29]. Instead of allowing Artesanos to purchase a building that Mr. Maestas testified should be razed, the School Board continued to pay its attorneys well over $120,000 in attorney fees to fight over the Lease. [CD 3/3/09, 11:00:50; CD 11/3/09, 1:37:10]. As Mr. Cisneros testified, the whole point of being a School Board member is to help children, not to pursue a vendetta. [CD 4/20/09, 2:07:02].

G. Facts About Insurance

The Lease requires Artesanos to maintain insurance on the property. [RP 460]. Superintendent Lopez informed Mr. Rael that Artesanos did not need to provide the School District with insurance because the School District itself would provide the insurance. [RP 462]. Mr. Rael testified that during the Lease

negotiations, the School District stated that it was going to maintain its own insurance policy since it was the owner of the facility. [CD 4/20/09, 10:34:04]. He testified that the parties were in agreement on that issue, and there were no problems. [CD 4/20/09, 10:36:42]. Artesanos relied to its detriment on this statement by Superintendent Lopez.

At no time between 2000 and 2007 did the School Board ask Artesanos to provide insurance. [RP 463; *see also* CD 4/20/09, 10:34:22; *id.* at 10:34:22; *id.* at 2:26:30]. When asked if he ever met with Ms. Gonzales to request an insurance policy, Ramon Vigil testified that he thinks he did, but he cannot remember. [CD 3/2/09, 12:32:18]. He admitted that he does not know whether Ms. Gonzales complied with regulations – one of which required insurance - before opening Cariños. [CD 3/2/09,12:32:40]. Ms. Gonzales testified that they did, in fact, have an insurance policy for the child development center because it is required by CYFD regulations. [CD 5/12/09, 10:10:34 to 10:11:04]. She testified that she sent proof of insurance to Superintendent Romero. [CD 5/12/09, 10:11:17 to 10:11:50]. The district court concluded that the School Board orally modified the terms of the contract by its statements and assurances regarding insurance. [RP 473].

H. Facts About Artesanos' Payment of Utilities Pursuant to the Lease

Another allegation in the complaint against Artesanos is that it has failed to pay for utilities. [RP 8 (CV-2007-485)]. Lorraine Duran, a customer service representative for Kit Carson Electric, admitted on cross examination that Artesanos is current with its electric bills. [CD 3/2/09, 5:36:27]. Roberto Vigil's testimony corroborated that of Ms. Duran. [CD 4/20/09, 2:46:41].

The district court heard testimony about a huge water bill – thousands of dollars – that Artesanos is in the process of paying off. This resulted from a water line break. [CD 3/3/09, 5:13:34; CD 4/20/09, 2:41:47; *id.* at 2:43:16]. Mr. Rael testified that Artesanos discovered the break in the spring after moving into La Cienega. [CD 3/3/09, 5:13:07]. He testified that the break could have occurred before Artesanos even signed the Lease. [CD 3/3/09, 5:14:21].

Roberto Vigil confirmed that the plumbing that Artesanos had inherited was faulty because the pipes had no insulation. [CD 4/20/09, 2:44:11]. Nevertheless, both Mr. Rael and Roberto Vigil testified that Artesanos continues paying down the balance. [CD 3/3/09, 5:15:35; *id.* at 5:15:56; CD 4/20/09, 2:46:21]. Mr. Vigil also testified that Artesanos undertook plumbing modifications to remedy the water line break. [CD 4/20/09, 2:43:44]. When asked whether any School Board

member had ever complained to Artesanos – prior to filing suit – about payment of utilities, Mr. Rael responded, "No, sir." [CD 3/3/09, 5:28:39].

I. Facts About the Grant of Funds that the School Board Prevented Artesanos From Receiving

Mr. Rael and Ms. Gonzales testified that Artesanos received a grant of $80,000 from the Legislature. [CD 3/3/09, 5:18:02; CD 5/12/09, 9:56:01]. The grant was intended to help upgrade the La Cienega facility and to install a fire alarm system in the main building for the child care center. [CD 3/3/09, 5:18:59]. Mr. Rael and Ms. Gonzales testified that although the money was granted to Artesanos, the School District was to act as the fiscal agent, administering the grant and distributing the funds to Artesanos. [CD 3/3/09, 5:20:40; CD 5/12/09, 9:57:08]. Mr. Rael testified that the School Board interfered with the grant and that Artesanos never did receive any of the funds. [CD 3/3/09, 5:18:41; *id.* at 5:21:01]. He testified that the School Board did not want to accept the grant on behalf of Artesanos because the Board felt that it would jeopardize its ability to obtain capital. [CD 3/3/09, 5:21:51]. He testified that he eventually gave up in trying to access the grant monies for Artesanos. [CD 3/3/09, 5:30:24].

J. Facts About the District Court's Entry of Two Restraining Orders Against the School Board

Between 2007 and 2009 – the date of entry of judgment – the School Board

interfered with Artesanos' use and enjoyment of the leased premises. [RP 463]. The School Board attempted to bar Artesanos from the premises and advertised in a local newspaper that the La Cienega school is contaminated with asbestos, in spite of the fact that Artesanos abated the asbestos contamination in the portion of the facility being used by the community. [RP 463]. As a direct result of the School Board's intentional interference, Artesanos has been prohibited from making necessary repairs. [RP 463].

The School Board has systematically harassed Artesanos in an effort to close down programs and services. [RP 464]. On at least two occasions, the School Board attempted to cancel the Lease unilaterally, causing Artesanos to seek temporary restraining orders. [RP 463-64]. The district court twice entered temporary restraining orders against the School Board. [RP 217, 278].

When asked whether the School Board had ever compensated Artesanos for breaking the Lease, Superintendent Martinez responded, "No, sir." [CD 3/2/09, 4:37:34]. When Artesanos trial counsel asked, "Why not?" Mr. Martinez could not give an answer, other than to reply, "It's a good question." [CD 3/2/09, 4:37:51 to 4:37:56].

Due to the School Board's outrageous and reprehensible conduct in pursuing this litigation, the district court awarded attorney fees to Artesanos in the

amount of $49,168.20 as sanctions against the School Board. [RP 495; 556]. The award of sanctions will be discussed more fully below. *See infra* Part II.

K. Additional Facts About the School Board's Bad Faith Conduct

Just days after the School Board sued Artesanos, Artesanos sent a letter to the Board stating that it would agree to cooperate in any way necessary to get the Lease submitted to the State Board of Finance for approval. [CD 3/2/09, 12:56:18; *id.* at 12:59:03]. In fact, Artesanos actually went to the State Board of Finance to find out the procedure for getting the lease approved. [CD 3//209, 12:58:44]. Ramon Vigil testified that he communicated this to the Board. [CD 3/2/09, 12:58:56]. He admitted that the School District nevertheless failed to submit the Lease to the State Board of Finance to have it approved. [CD 3/2/09, 12:56:44 to 12:56:58].

As for the motivation for pursuing legal action against Artesanos and Ms. Gonzales, Mr. Medina unwittingly, yet neatly, capsulized the petty nature of the lawsuits. He testified that if Ms. Gonzales had not "done what she did," the School Board "would have won Board of the Year for two years in a row." [CD 3/2/09, 3:32:31]. He continued: "It's something that . . . she took away from us . . . and I guess that's . . . where all this comes from." [CD 3/2/09, 3:32:42]. Mr. Cisneros corroborated this testimony, stating that there were School Board

members who wanted to "oust" Ms. Gonzales. [CD 4/20/09, 2:04:44]. In addition to being sophomoric, the district judge characterized the School Board's reasons for filing the lawsuits as "vindictive." [CD 11/309, 1:57:36]. Mr. Rael testified that to this day, he still does not know why the School Board has a problem with Artesanos. [CD 3/3/09, 5:31:05].

STANDARD OF REVIEW

I) The Court reviews a trial court's decision to grant equitable relief for an abuse of discretion. *Village of Wagon Mound v. Mora Trust*, 2003-NMCA-035, ¶ 25, 133 N.M. 373, 62 P.3d 1255 (2002). "Where the court's discretion is fact-based, [the reviewing Court] must look at the facts relied on by the trial court as a basis for the exercise of its discretion, to determine if these facts are supported by substantial evidence." *Gilmore v. Gilmore*, 2010-NMCA-013, ¶ 24, 147 N.M. 625, 227 P.3d 115 (2009). When reviewing the sufficiency of the evidence, the Court must "view the evidence in the light most favorable to the district court's findings, indulge all reasonable inferences in support of the district court's decision, and disregard all evidence to the contrary." *State v. UU Bar Ranch Ltd. Partnership*, 2005-NMCA-079, ¶ 11, 137 N.M. 719, 114 P.3d 399.

II) The Court reviews an award of attorney fees for an abuse of discretion. *New Mexico Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M.

654, 986 P.2d 450.

ARGUMENT

I. The District Court Did Not Abuse Its Discretion in Entering Judgment for Artesanos Because Various Equitable Doctrines Support the Judgment.

The district court held that the doctrines of estoppel, laches, and unclean hands barred the School District's complaints. [RP 469-70]. Each will be discussed in turn.

A. The District Court Properly Applied the Doctrine of Equitable Estoppel.

1. *Well-Established Principles of Law Support the Application of Equitable Estoppel*

The School Board argues that equitable estoppel "generally will not lie against the State." [BIC 26]. It should be noted at the outset that the School Board never presented any such argument to the district court, nor in its docketing statement to this Court. [RP 530]. The School Board has failed to preserve this argument for appellate review. *See* Rule 12-216(A), NMRA.

Under the statutes at issue here, a school district is defined as a political subdivision. *See Daddow v. Carlsbad Mun. Sch. Dist.*, 120 N.M. 97, 104-05, 898 P.2d 1235, 1242-43 (Ct. App. 1995) (citing NMSA 1978, § 13-6-4). As a political subdivision, the School District and its Board are not arms of the State. *See id.*

"School districts operate independently, like counties and municipalities." *Id.*, 120 N.M. 97, 105, 898 P.2d 1235, 1243.

Even if the Court equates the School Board with "the State," our Supreme Court recently reiterated that "'estoppel against the State is a well-grounded doctrine in New Mexico.'" *Water-Haskins v. NM Human Servs. Dept.*, 2009-NMSC-031, 146 N.M. 391, 210 P.3d 817 (quoting *Am. Legion Post No. 49 v. Hughes*, 120 N.M. 255, 260, 901 P.2d 186, 191 (Ct. App. 1994)). Indeed, the School Board concedes that school districts are "subject to equitable doctrines." [BIC 27]. While the School Board asserts that applying the doctrine of estoppel against a school district is rare [BIC 27], the doctrine "may be more readily applied to subordinate governmental agencies than to the government and the state itself." *See* P.H. Vartanian, *Applicability of Doctrine of Estoppel Against Government and Its Governmental Agencies*, 1 A.L.R. 2d 338, § 7 [hereinafter "*Estoppel Against Govt.*"]

A leading commentator on the law of municipal corporations has stated that "[a] municipal corporation's conduct may estop it from asserting its title to property." MCQUILLIN ON THE LAW OF MUNICIPAL CORPORATIONS § 28:72 at 283 (3rd ed. 2004) [hereinafter "MUNICIPAL CORPS"]; *see also id.* § 49:36 at 369-70 (in proper circumstances, defense of estoppel may be raised in litigation involving a

municipality); *id.* at § 49:52 at 430 ("Municipal corporations are subject to, and may invoke, the usual appropriate equitable remedies.").

Generally, principles of equitable estoppel will be applied against governmental entities only when a statute so provides or when right and justice demand it. *See N.M. Tax. & Rev. Dept. v. Bien Mur Indian Mkt. Ctr.*, 108 N.M. 228, 230, 770 P.2d 873, 875 (1989). The principle that the state is rarely equitably estopped "has often been regarded as a corollary of the principle of sovereign immunity." *Id.*, 108 N.M. at 230-31, 770 P.2d at 875-76. As our Supreme Court has observed, "commentators have long suggested that as the latter doctrine [i.e., sovereign immunity] wanes in importance, so too should the courts' reluctance to apply equitable estoppel against the state." *Id.*, 108 N.M. at 231, 770 P.2d at 876 (citing K. Davis, ADMIN. LAW TREATISE § 17.09 (1st ed. 1958)).

There is no issue of sovereign immunity here, as the School District is the Plaintiff. In addition, the School District is acting in its proprietary capacity as a landlord in a lease dispute. [RP 68]. Thus, the jurisprudential underpinnings of the courts' reluctance to apply equitable estoppel are not present here.

In any case, our Supreme Court has decided that sovereignty does not preclude the application of the doctrine of equitable estoppel in a dispute involving school property. In *Silver City Consolid. Sch. Dist. v. Bd. of Regents of*

N.M. West. Coll., 75 N.M. 106, 111, 401 P.2d 95, 99 (1965), the Court recognized that "estoppel in its usual sense is not generally applicable *against a sovereign in the exercise of governmental functions*." (emphasis added). "But," the Court continued, "where right and justice demand it, the doctrine will be applied, particularly where, as here, the controversy is between a public agency and a governmental subdivision." *Id.*; *cf. Super Wash, Inc. v. City of White Settlement*, 131 S.W.3d 249 (Tex. App. 2004), *rev'd in part on other grounds*, 198 S.W.3d 770 (Tex. 2006) (even when acting in governmental capacity, municipality may be subjected to equitable estoppel "where right and justice, honesty and fair dealing require it"). Just as in the instant case, the dispute in *Silver City* involved a school building and a governmental subdivision. Just as in *Silver City*, the Court should affirm the district court's application of the doctrine of equitable estoppel to the School District.

Besides New Mexico, other jurisdictions have applied the doctrine of equitable estoppel against a school district, in particular where, as here, the district is engaged in a proprietary function. *See, e.g., Williams Scotsman, Inc. v. Garfield Bd. of Ed.*, 876 A.2d 877, 884 (N.J. 2005) (school board subject to estoppel even where it failed to comply with mandates of state bidding statute); *Emma Corp. v. Inglewood Unif. Sch. Dist.*, 8 Cal. Rptr. 3d 213, 223 (2004) (school district

estopped from enforcing contract); *EUA Cogenex Corp. v. N. Rockland Cent. Sch. Dist.*, 124 F. Supp. 2d 861, 870 (S.D.N.Y. 2000) (school district estopped from asserting lack of authority to enter contract absent board approval, where district performed under contract for four years); *Bd. of Ed. Sch. Dist. No. 67 v. Sikorski*, 574 N.E.2d 736, 742 (Ill. App. 1991), *appeal withdrawn*, 587 N.E.2d 1012 (1991) (even if school board violated school code in sale of school property, board estopped from raising its violation as ground to render sales contract void); *Bd. of Trustees of Monroe C. Bd. of Ed. v. Rye*, 521 So.2d 900, 908-09 (Miss. 1988) (in suit against occupants of land, school board estopped to assert title to school property); *see also Estoppel Against Govt.*, 1 A.L.R. 338, § 8 (equitable estoppel may be applied against municipality that has entered into express contract that would be unconscionable to repudiate). The doctrine of equitable estoppel can and should be applied to the School Board under the circumstances of this case, as discussed in the next section.

2. *The Facts Support the Application of Equitable Estoppel*

The question whether any party, including a governmental entity, should be equitably estopped is a question of fact. *See* MUNICIPAL CORPS, § 49:36:10 at 30 (July 2009 pocket part). As will be demonstrated, the district court's judgment is amply supported by record evidence.

Courts must weigh the appropriate factors before determining whether to apply the doctrine of estoppel against a governmental entity. "The essential elements that apply to the state agency to be estopped are: (1) the agency's conduct amounting to a false representation or concealment of material facts or, at least, that is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the agency's intention, or at least expectation, that the other party will act upon such conduct; and (3) the agency's knowledge, actual or constructive, of the real facts." *Waters-Haskins*, at ¶ 22, 146 N.M. 391, 210 P.3d 817.

In enumerating these factors, the Supreme Court cited *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 24 n.5, 132 N.M. 207, 46 P.3d 668, a case that the School Board cites for the proposition that courts are reluctant to apply estoppel to a governmental entity. [BIC 26-27]. *Gallegos* states the elements that must be met in order to establish estoppel against the *federal* government. *See id.* However, it should be noted that New Mexico courts "do not restrict the use of estoppel against the state as severely as the United States Supreme Court has restricted its use against the federal government." *Rainaldi v. Pub. Empl. Retirement Bd.*, 115 N.M. 650, 659, 857 P.2d 761, 770 (1993).

"The essential elements that apply to the party raising equitable estoppel as

a defense are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change [its] position prejudicially." *Id.* (citation omitted). To apply the doctrine of equitable estoppel "against a state agency," courts must find each of these six elements. *Waters-Haskins*, ¶ 22, 146 N.M. 391, 210 P.3d 817. Courts "apply estoppel against the state only when the agency has engaged in a shocking degree of aggravated and overreaching conduct, or when right and justice demand it." *Id.* at ¶ 23.

The Court must examine the conduct of both parties to determine whether estoppel applies. *Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 28, 136 N.M. 440, 99 P.3d 690 (citing *Gonzales v. Pub. Empl. Retirement Board*, 114 N.M. 420, 427, 839 P.2d 630, 637 (Ct. App. 1992)). Viewing the evidence in the light most favorable to the district court's findings, indulging all reasonable inferences in support of the district court's decision, and disregarding all evidence to the contrary, Defendants have met each element of the defense of equitable estoppel. *See UU Bar Ranch*, at ¶ 11, 137 N.M. 719, 114 P.3d 399.

The School Board's conduct was calculated to convey the impression that the Lease was valid. The School Board intended and expected that Artesanos would take action consistent with the Lease being valid and binding. The School

Board accepted all benefits provided by Artesanos under the Lease. Yet the School District had actual knowledge from its attorney that the Lease required Finance Board approval. [RP 459].

On the other hand, Artesanos, which was unrepresented by legal counsel during Lease negotiations, did not have access to the truth about the validity of the Lease, or what needed to be done to obtain approval. Artesanos relied upon the School Board's conduct, which unfairly prejudiced Artesanos. [RP 461-63].

As for the alleged breaches of the Lease provisions, the School Board was willing to Lease the property to Artesanos, knowing it was substandard, non-compliant, and contaminated with asbestos. The School Board knew full well that the property had so many health and safety issues that it could not afford to make the necessary repairs to continue using La Cienega as a school. The Board accepted enormous benefits from Artesanos' repairs and improvements to the premises for a period of seven years.

3. *The Discretionary Nature of the School Board's Conduct Does Not Change the Fact that Equitable Estoppel Applies*

The statute governing the lease of public property states that a lease of property belonging to a school district – where the lease is for a period of more than five years – "shall not be valid unless it is approved prior to its effective date

by the state board of finance." NMSA 1978, § 13-6-2.1. The School Board confuses the issue of the Lease's validity with the issue of whether the School Board is estopped from suing Artesanos. Contrary to the School Board's contention, the district court never found or concluded that the Lease is valid. [BIC 17; RP 457-74]. The Lease's validity is not the issue here.

Even if the Lease is invalid, the question remains: did the School Board's conduct estop it from suing Artesanos for forcible entry or unlawful detainer? The district court correctly answered that question in the affirmative. Conflating the two issues, the School Board believes that § 13-6-2.1 is dispositive of the equitable estoppel issue, but it is not.

The Supreme Court has stated that estoppel "is available [only] to bar those rights or actions over which an agency has discretionary authority." *Waters-Haskins*, at ¶ 17, 146 N.M. 391, 210 P.3d 817. "If the power is clearly vested but is irregularly or defectively exercised by the municipality and its officers and agents, the case presents a defective execution of the power only, and this affords a basis for the application of the doctrine of equitable estoppel." MUNICIPAL CORPS, § 29:106, at 96. Here, the Legislature clearly vested the School District with the power to engage in transactions involving the sale or lease of public property. *See* NMSA 1978, §§ 13-6-2 to -3. The School District was not engaged

in an *ultra vires* or illegal act when it negotiated and signed a Lease for the La Cienega school. The School District's failure to obtain Finance Board approval is a "defective execution" of its power, and, thus, the School District can be estopped from suing Artesanos. *See* MUNICIPAL CORPS, § 29:106, at 96.

The distinction between an irregular exercise of a granted power and the total absence or want of power is an important one. In the latter scenario – where the municipality's action is *ultra vires* – equitable estoppel does not apply. *See Estoppel Against Government*, 1 A.L.R. 2d 338, § 8. However, in the former scenario – where the municipality's action is lacking in some technical respect or where "there has been nonobservance of some collateral act" – a municipality may be estopped. *Id.; see also* MUNICIPAL CORPS, § 29:106, at 96. This is especially so where, as here, the municipality has received and appropriated benefits. *Id.* In that case, courts may apply estoppel "to control the conduct of municipal corporations where, in the judgment of the court, the facts are such as to demand it in order to prevent manifest injustice and wrong." *Id.* That is precisely what the district court did in the instant case, and it acted well within its discretion in doing so. *Cf. Aylward v. State Bd. of Chiropractic Examiners*, 172 P.2d 903, 909 (Cal. App. 1946), *modified by* 192 P.2d 929 (1948) (Board may be estopped as right and justice require where entering into contract was within Board's corporate powers,

although method of exercising that power was irregular or unauthorized).

The School Board invokes the public policy behind § 13-6-2.1, namely oversight and accountability for public property. [BIC 22]. An equally important public policy is that a municipality must stand by its contracts and respect its contractual obligations just as an individual must. *See Estoppel Against Government*, 1 A.L.R. 2d 338, § 6[a]. Furthermore, oversight of public property would not be an issue here if Artesanos were permitted to purchase the property, or if the School Board were ordered to submit the Lease to the State Board of Finance for approval.

It should be noted that Artesanos' defense of equitable estoppel in no way prevents the School Board from discharging its statutory duties or from performing any of its governmental functions. The School Board itself failed to perform its statutory duty. Artesanos even offered to have the Lease submitted to the State Board of Finance for approval, but the School Board dug in its heels. It would be unjust to permit Artesanos to suffer the consequences of the School Board's actions, as the district court correctly decided.

Failing to submit the Lease for approval under the statute does not answer the estoppel question. Other courts have held that a municipality may be estopped even where the requirements of a state statute are not followed. For example, in a

case with facts strikingly similar to those in the instant case, the Alabama Supreme Court held that the city was estopped from denying the validity of a lease where a private party detrimentally relied on the city's conduct for eight years, even though the city never approved the lease by an ordinance as required by the Alabama Code. *See City of Guntersville v. Alred*, 495 So.2d 566, 568 (Ala. 1986). The Court should reach the same result here.

Likewise, the Illinois Court of Appeals has held that where a school board violated state law in the sale of school property, it was estopped from raising its violation as a ground to render the sales contract void. *See Sikorski*, 574 N.E.2d at 742. The court stated that "the Board cannot set up its own violation of the School Code in order to retain the . . . School property and render void *ab initio* the contract between the parties." *Id.*; *see also Williams Scotsman*, 876 A.2d at 884 (even where board of education failed to comply with mandates of state bidding statute, doctrine of estoppel applied against board). Cases like *Guntersville*, *Sikorski*, and *Williams Scotsman* demonstrate that the School Board's arguments are legally insupportable.

The School Board next argues that *UU Bar Ranch*, 2005-NMCA-079, 137 N.M. 719, 114 P.3d 399, "is dispositive" and requires that § 13-6-2.1 "should be enforced." [BIC 23-25]. *UU Bar Ranch* is distinguishable and does not control

the instant case. Furthermore, the instant appeal is not about whether § 13-6-2.1 "should be enforced." Our State's statutes should always be enforced. The question here is whether the district court acted within its discretion in holding that the School Board is estopped from suing Artesanos.

UU Bar Ranch addressed a companion statute – § 13-6-2 – and held that a private party could not establish title to a stretch of road owned by the State Game Commission based on the doctrines of equitable estoppel and laches, where the state agency at issue failed to obtain state Board of Finance approval for the sale of that land. *UU Bar Ranch*, ¶ 30, 137 N.M. 719, 114 P.3d 399. *UU Bar Ranch* is distinguishable because Artesanos is not trying to establish title to La Cienega school based on estoppel.

The School Board's argument under *UU Bar Ranch* leads to the result that a state agency or political subdivision may at will shirk its statutory duty to seek Finance Board approval of the sale or lease of public property so that there will be no impediment to repudiating the sale or lease in the future, thereby allowing the subdivision to escape any legal consequences of the resulting injustice and detrimental reliance. Such a result would deter private parties from transacting with a state agency or political subdivision for the sale or lease of public property, which in turn would seriously impair the proprietary interests of those state

agencies and political subdivisions. By affirming the judgment, the Court can avoid that undesirable result.

It is true that "'[e]stoppel cannot lie against the state when the act sought would be contrary to the requirements expressed by statute.'" *See Kilmer*, at ¶ 26, 136 N.M. 440, 99 P.3d 690; *see also Waters-Haskins*, at ¶ 17, 146 N.M. 391, 210 P.3d 817. Here, however, the act sought is simply to bar the School Board from maintaining an action for forcible entry or unlawful detainer. That act is in no way contrary to any statutory requirement. In fact, right and justice demand that the School District be so barred. *Cf. Waters-Haskins*, at ¶ 32, 146 N.M. 391, 210 P.3d 817 (holding that a state agency is estopped because right and justice demand it).

It is significant that the district court saw fit to impose sanctions against the School Board in the amount of close to $50,000 due to the School Board's atrocious conduct in this matter. [RP 556]. That is another indication that "right and justice demand" that the School District be estopped from preying on Artesanos. This Court should not condone the School District's dishonorable conduct. The district court properly held that the doctrine of equitable estoppel bars the School Board's complaint. This Court should affirm the judgment.

B. The District Court Properly Applied the Rule of Laches.

The district court also grounded its judgment in the rule of laches. [RP 469-

70]. The elements of laches are: "1) conduct on the part of another [that] forms the basis for the litigation in question; 2) delay in the assertion of the complaining party's rights; 3) lack of knowledge or notice on the part of the defendant that the complaining party would assert such rights; and 4) injury or prejudice to the defendant in the event relief is accorded to the complaining party or the suit is not barred." *Village of Wagon Mound*, at ¶ 35, 133 N.M. 373, 62 P.3d 1255. "Laches will lie when, in addition to other factors, there has been an unexplainable delay of such duration in asserting a claim as to render enforcement of such claim inequitable." *Id.*

The School Board argues that laches does not apply in "nondiscretionary matters." [BIC 27]. As will be discussed, the doctrine of laches may be applied to a governmental entity just as to a private party, and the question whether the School Board had discretion to act is not dispositive, as discussed above. *See supra* Part I.A.3.

"Although there is authority to the contrary, all the consequences of laches and lack of diligence ordinarily apply to a municipal corporation in the same manner that they do to private corporations." MUNICIPAL CORPS, § 49:9 at 249 (3rrd ed. 2004). "[I]t is generally conceded that the doctrine applies to actions maintained by a city in its proprietary, as distinguished from its governmental

capacity." *Id.* at § 49:9, 249–50; *see also Hammon v. Dixon*, 338 S.W.2d 941 (Ark. 1960) (ordinary principle of laches operates against city with respect to proprietary matter such as sale of land); *Gardner v. Inc. City of McAlester*, 179 P.2d 894 (Okla. 1947) (under doctrine of laches, city may be barred from prosecuting action where property out of which action arises is held by city in its proprietary capacity).

Whether an action is barred by the doctrine of laches "should be determined from the facts of the particular case, because delay alone does not amount to laches unless, in addition, injury has also resulted." MUNICIPAL CORPS., § 49:9 at 250-51. Under the facts of the instant case, the Court could affirm the judgment under the doctrine of laches. Assuming there was any conduct that could form the basis of two baseless lawsuits, the School Board delayed filing suit for seven years. Artesanos had no notice that the Board would file suit. Numerous witnesses testified that for the seven years that the Board accepted benefits under the Lease, it never informed Artesanos about any failures to comply with the Lease or that the Lease was invalid. [RP 461; CD 3/2/09, 12:30:13; CD 3/3/09, 5:28:13 to 5:28:33; CD 4/20/09, 9:17:04; *id.* at 11:16:15; *id.* at 2:57:45 to 2:57:56]. Artesanos will suffer injury if these suits are not barred because it will be required to vacate the property that it has worked so hard to renovate for the benefit of the

community and the School District.

The School Board should not be permitted to shirk its statutory duty for seven years and then cry foul, pursuing Artesanos as a predator. This is especially so where, as here, an organization providing important community-based services for low-income families has relied to its detriment on the School Board's conduct. For seven years the School Board reaped the benefits of Artesanos labor and services under the Lease and gave no indication that there were any problems. As a matter of equity, the School Board's attempt to oust Artesanos from the premises, and its harassment of Artesanos, works harm to the public interest and should not be condoned by this Court.

C. The District Court Properly Applied the Doctrine of Unclean Hands.

The district court also grounded its judgment in the doctrine of unclean hands. [RP 469-70]. "The doctrine of unclean hands generally prevents a complainant from recovering where he or she has been guilty of fraudulent, illegal or inequitable conduct in the matter with relation to which he [or she] seeks relief." *Magnolia Mtn. Ltd. v. Ski Rio Partners, Ltd.*, 2006-NMCA-027, ¶ 36, 139 N.M. 288, 131 P.3d 675 (2005). In general, "the doctrine is appropriately invoked only where the complainant dirtied [his or her] hands in acquiring the right he [or

she] now asserts." *Id.* at ¶ 37. The Court should note that "particular deference is given to trial court rulings involving unclean hands." *Id.* This Court has explained that the doctrine of unclean hands is closely related to the doctrine of estoppel. *Medina v. Medina*, 2006-NMCA-042, ¶ 25, 139 N.M. 309, 131 P.3d 696. Thus, "the same factors that are relevant to the estoppel determination are relevant to an unclean hands analysis." *Id.* For the reasons already discussed, the Court can and should affirm the judgment because the School Board acted with unclean hands.

D. The Court Should Require the School Board to Make Artesanos Whole.

Even if the Court decides that the validity of the Lease is somehow dispositive, or that estoppel, laches, or unclean hands may not be applied against the School Board, as a matter of fairness, the Court should require the School Board to make Artesanos whole, rather than allowing the School Board to get away with repudiating the Lease based on its own failure to secure approval, after years of detrimental reliance. "If a municipality sues to recover property on the ground that it had no power to make the contract, it should be required, as a condition of recovery, to put the other party in status quo, if possible." MUNICIPAL CORPS, § 29:134. Artesanos expended large sums of money to repair

and upgrade the crumbling-down facility that it leased from the School District. The School District received enormous benefits as a result.

The instant case "is one where, under all the circumstances, to assert a supposed public right would be to encourage and promote a wrong, whereby a party acting in good faith under affirmative acts of a municipal corporation, and making expensive and permanent improvements in reliance thereon, would unjustly and inequitably be deprived of the rights which the corporation had granted to him." *Dist. of Columbia v. Cahill*, 54 F.2d 453, 455 (D.C. Cir. 1931). The Court should not permit that result.

II. The District Court Acted Well Within Its Discretion in Awarding Artesanos Reasonable Attorney Fees That It Incurred in Defending Itself Against the Predatory and Unjust Conduct of the School Board.

The School Board argues that the Court should follow the American Rule. [BIC 44]. The School Board concedes, however, that there are exceptions to the American Rule. [BIC 43]. In particular, an award of attorney fees "may be justified as an exercise of a court's inherent powers when litigants, their attorneys, or both have engaged in bad faith conduct before the court or in direct defiance of the court's authority." *NARAL*, ¶ 16, 127 N.M. 654, 986 P.2d 450 (citation omitted). As the Supreme Court has observed, "[a]llowing an award of reasonable attorney fees to sanction bad faith conduct pursuant to a court's inherent powers is

consistent with the policies underlying the American rule." *Id.* at ¶ 18. The School Board claims that bad faith conduct on its part is "[a]bsent" [BIC 43], but, as discussed throughout, the district court heard ample evidence of the School Board's bad faith.

In addition to the evidence discussed above, the Court should be aware that the School Board requested a continuance of the trial setting in order to get the property appraised, and, instead of getting an appraisal, it tried to evict Artesanos for a second time. [RP 275]. In addition, before filing suit against Ms. Gonzales, the School Board knew: 1) that Ms. Gonzales had relied on unsound advice from a CPA; 2) that the district attorney had declined the School Board's invitation to prosecute her because she had done nothing wrong; and 3) that Cariños had reverted to its original non-profit status. *See supra* State of Facts Part C. It is also unconscionable that the School Board sued Artesanos for failing to keep the premises in good repair when it knew that it had leased a severely dilapidated property to Artesanos in the first place and that Artesanos had gone to significant time and expense to repair and improve the property. *See supra* State of Facts Part D.

It is disingenuous for the School Board to argue that it had no alternative but to file suit. [BIC 43]. This is especially so given that Artesanos actually

offered to purchase the so-called "damaged, uninsurable piece of public property" to take it off the School Board's hands and to provide the School District with needed revenue. [BIC 41]. Another alternative to filing suit would have been to take care of what the School Board was advised to do ten years ago, with Artesanos' expressed offer of cooperation – that is, submit the Lease to the State Board of Finance for approval.

The School Board complains that the district court never stated the basis of its ruling. [BIC 41]. The judge made extensive findings, which he announced from the bench. [CD 11/309, 1:56:37 to 2:02:17]. The court first pointed out that even though the School Board knew that it had to get approval from the State Board of Finance, it failed to do so. Instead, the School Board accepted the provisions of the Lease and the benefits conferred thereunder and sat on it for seven years. [CD 11/3/09, 1:57:02]. Then, for a "vindictive reason," the School Board decided that it wanted to get rid of Artesanos and conveniently tried to fall back on its failure to seek approval of the Lease. [CD 11/3/09, 1:57:02 to 1:57:36]. The district court correctly concluded that in so doing, the School Board acted with unclean hands and deserved to be sanctioned. [CD 11/309, 1:58:17].

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the

district court and the award of attorney fees to Artesanos.

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rule 12-213(A)(6), Appellees state that oral argument would be helpful to a resolution of the issues because the record is voluminous and because it is necessary to have a command of the complex factual scenario to understand the district court's proper exercise of its equitable jurisdiction.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January 2011, I caused to be delivered a true and correct copy of the foregoing on the following by first class U.S. mail, postage prepaid:

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