



## E-Notice

2013-CH-23386

CALENDAR: 14

To: HOFFMAN JAY R  
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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

TOWNSHIP TRUSTEE SCHOOLS vs. LYONS TOWNSHIP HIGH SCHOOL  
2013-CH-23386

The transmission was received on 01/22/2018 at 1:48 PM and was ACCEPTED with  
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**MEMORANDUM IN SUPPORT OF MOTION FILED (LT's Supplemental Brief on Statute of Limitations  
and Held-In-Trust Issue, In Support of LT's Motion for Partial Summary Judgment)**

**EXHIBITS (Supp. SJ Ex. 1)**

**CERTIFICATES (Certificate of Service)**

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**DOROTHY BROWN**  
**CLERK OF THE CIRCUIT COURT**  
COOK COUNTY  
RICHARD J. DALEY CENTER, ROOM 1001  
CHICAGO, IL 60602

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP H.S. DISTRICT 204,	)	Calendar 14
	)	
Defendant and Counter-Plaintiff.	)	

**LT’S SUPPLEMENTAL BRIEF ON  
STATUTE OF LIMITATIONS AND HELD-IN-TRUST ISSUE**

**Introduction**

**Defendant Lyons Township High School District 204 (“LT,” a/k/a “District 204”)** moved for partial summary judgment against the claims of **Plaintiff Township Trustees Of Schools (“the TTO,” a/k/a “the Township Trustees” or the “Township Treasurer”)**. LT asked this Court to decide, as a matter of law, that the five-year statute of limitations in 735 ILCS 5/13-205 applies to the TTO’s claims. In response, the TTO claimed that its claims are exempt from any statute of limitations. Both parties agree that this legal issue is ripe for decision.

At the Court hearing on December 21, 2017, this Court asked the parties to file supplemental briefs on how the legal principles concerning held-in-trust funds established in the Supreme Court’s decision in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653 (1883) (“the *District 5 Case*”), apply to the facts of this case.

This is Movant LT’s Supplemental Brief. In this brief, LT will explain the controlling law and undisputed facts that lead to these legal conclusions:

- Under the *District 5* Case, disputed funds that a township treasurer credited to a school district's account, or paid out on the district's orders, are no longer held in trust and are subject to the statute of limitations.
- The *District 5* Case is consistent with Illinois law that distinguishes agency/custodial accounts from trust accounts.
- A claim is exempt from the statute of limitations only when it seeks to recover a pool of disputed funds still being held in a trust account, as in the *City of Lincoln* Case.
- The TTO maintains two types of accounts: the TTO Account containing money belonging to all of its districts, and held in trust; and Agency/Custodial Accounts for LT and the other districts, which are not trust accounts.
- The TTO admits that it has no authority, on its own, to take money out of LT's Agency Account, and that LT must order the TTO to do so.
- All of the TTO's claims in this case involve demands that the Court authorize the TTO to transfer current funds out of LT's Agency Account.
- None of the TTO's claims ask this Court to award to the TTO a pool of disputed funds being held in the TTO's Trust Account.
- Any disputed funds that the TTO placed into LT's Agency Account were spent many years ago on LT's orders, as in the *District 5* Case.

For these reasons, the TTO's effort to avoid the statute of limitations through the exception for public funds still held in trust should be rejected. Furthermore, as demonstrated in LT's prior briefs, the statute of limitations exception for claims based on rights belonging to the general public also is inapplicable to the facts of this case. Accordingly, LT is entitled to a partial summary judgment establishing that the five-year statute of limitations applies to the TTO's claims.

### **Argument**

#### **1. THE DISTRICT 5 CASE**

The Supreme Court's decision in the *District 5* Case involves the same township treasurer system for Illinois schools that LT and the TTO have operated under for many decades in Lyons

Township. In the *District 5* Case, the plaintiff school district, District 5, claimed that the township treasurer collected tax revenue for District 5 and then mistakenly **credited** that money to the defendant school district, District 1:

The bill alleges that complainant had been levying taxes for school purposes each year, since 1869, on property in its district [5], and that **the treasurer** of said town 2, **by mistake**, from confusing the names of the two districts, **placed to the credit of District No. 1 Union, and paid out, on its [District 1's] orders, funds arising from taxes levied and collected from sections 1 and 2 in complainant's [District 5's] school district ....** The object of the bill was the recovery of the above named sum of money.

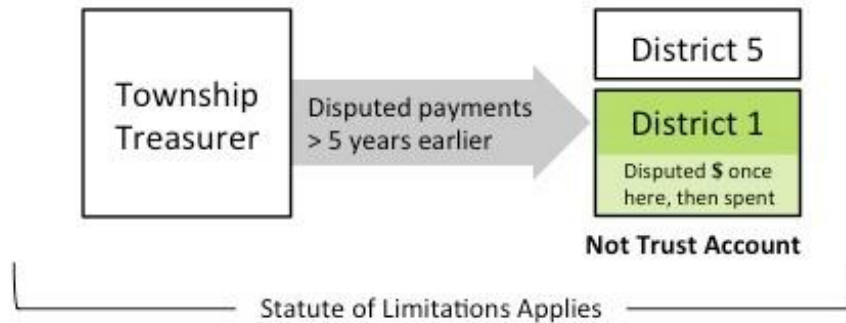
*Id.* at 655 (emphasis added).

Based on these facts, the Court held that District 5's claim was time-barred because the disputed funds no longer were held in trust by the township treasurer: "The trustee in this case was the township treasurer, and as long as he held the money it was a trust fund in his hands, **but when he [the township treasurer] paid it out to appellee [District 1], or on its [District 1's] orders, it was not a trust fund in appellee's [District 1's] hands** which would exclude the operation of the Statute of Limitations." *Id.* at 655-56 (emphasis added).

Accordingly, the *District 5* Case establishes the legal principle that once the township treasurer "placed to the credit" of District 1's account the disputed tax revenues, those disputed funds ceased to be held in trust. It also is clear from the holding quoted above that the township treasurer in the *District 5* Case continued to **manage** the account of District 1, **as it "paid out" disputed funds on the "orders" of District 1.**

The *District 5* Case can be portrayed graphically as follows:

## District 5 Case



### 2. AGENCY ACCOUNTS VERSUS TRUST ACCOUNTS

The holding of the District 5 Case is fully consistent with the distinction under Illinois law between “agency accounts” (some of which are called “custodial accounts”) and “trust accounts.”

In *Tucker v. Soy Capital Bank & Tr. Co.*, 2012 IL App (1st) 103303, the Court explained that a “custody” or “custodial” account is a type of agency account in which the custodian has the obligation to preserve and safekeep the property entrusted to him for his principal.” *Id.* ¶ 32 (quoting with approval Black’s Law Dictionary 384 (6<sup>th</sup> Ed. 1990)). Moreover, under Illinois law, agency accounts are distinct from trust accounts, and trust accounts must be expressly established. *Id.* ¶ 32-34. The *Tucker* Court ruled that the **IRA accounts at issue were alleged to be agency accounts, and therefore were not subject to the legal protections afforded to a trust:** “under the facts as alleged by plaintiffs in their amended complaint, the IRAs in this case specifically state that they are only custodial accounts.” *Id.* ¶ 34.

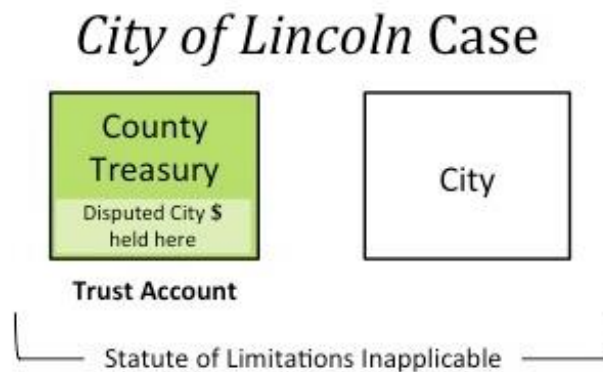
### 3. THE CITY OF LINCOLN CASE

The counterpoint to the *District 5* Case is the Supreme Court’s decision in *Bd. of Sup'rs of Logan County. v. City of Lincoln*, 81 Ill. 156 (1876) (“the *City of Lincoln* Case”). That case

explains when a pool of disputed public funds actually are held in trust, and thus not subject to a statute of limitations defense.

In the *City of Lincoln* Case, the City claimed ownership of a pool of disputed funds that the County received and held in the County Treasury: these funds were “taxes collected for county purposes within the city, and **paid into the county treasury by each**, respectively.” *Id.* at 157 (emphasis added). The Court held that because the disputed funds belonged to the City but were held in the County Treasury, the County was holding those funds in trust for the City: “The funds involved in this controversy are in the nature of **trust funds, held by the county for a specific object**, defined by a public law, and hence the Statute of Limitations is not available as a defense to the action.” *Id.* at 158-59 (emphasis added).

The *City of Lincoln* Case can be portrayed graphically as follows:



#### 4. THE TTO’S TRUST ACCOUNT AND LT’S AGENCY ACCOUNT

In order to apply controlling Illinois law on the held-in-trust exception, we need to identify the nature of the accounts and transactions at issue in our case. In an effort to avoid any question about the existence of a factual dispute, LT will reply almost entirely on the facts obtained through the TTO’s own binding admissions made in this case.

ELECTRONICALLY FILED  
1/22/2018 1:48 PM  
2013-CH-23386  
PAGE 5 of 13

Michael Thiessen, the current President of the TTO’s Board of Trustees, is the highest ranking authority at the TTO. He testified that the TTO maintains separate accounts for the TTO and for each of the member school districts, including LT. According to Thiessen, the accounts of LT and the other school districts contain **“agency funds which we manage on their behalf.”** LT’s Ex. to Opening Summary Judgment Motion (“SJ Ex.”) 12, p. 7-8.

Likewise, the TTO’s current Treasurer, Dr. Susan Birkenmaier, testified that the TTO periodically “reassign[s] funds” by moving money “out of the TTO account” and putting it “into the various accounts,” including LT’s Account. SJ Ex. 7, p. 191-92.

Thiessen’s admission that LT’s Account is an Agency Account is fully consistent with the TTO’s statements in the Amended Complaint, which Thiessen verified and which therefore are judicial admissions.<sup>1</sup> **The TTO admits, repeatedly, that the TTO manages an “Agency Account” for LT.** SJ Ex. 11, ¶ 20, 21, 58. The TTO’s demand for relief in the Amended Complaint asks this Court to authorize the TTO to deduct funds from LT’s “Agency Account.” *Id.* p. 11-12. The TTO further admits that the TTO is, under the School Code, the “custodian” of LT’s funds, *id.* ¶ 13-14, and that LT’s Agency Account is in the TTO’s “custody.” *Id.* ¶ 22.<sup>2</sup>

These admissions of the TTO are, in fact, consistent with the cited provisions of the School Code. 105 ILCS 5/8-6 provides that the **“school treasurer shall have custody of the school funds” – and says nothing about holding the school district’s funds in trust.** Likewise, 105

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<sup>1</sup> Statements in verified pleadings are judicial admissions “which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” *Robins v. Lasky*, 123 Ill.App.3d 194, 198 (1<sup>st</sup> Dist. 1984).

<sup>2</sup> As authorized by statute and as alleged in the Amended Complaint, the TTO actually maintains custody of LT’s funds in more than a single bank account – in particular, in checking accounts in LT’s name set up at various banks, and in a series of pooled investment accounts at financial institutions containing funds of all the school districts. *See* 105 ILCS 5/8-7 (“Each township and school treasurer is permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds ....); SJ Ex. 11, ¶ 22, 39-44. However, for purposes of this motion, the point is that the TTO must hold the funds belonging to LT in accounts and ledger entries dedicated solely to LT, and must account at all times for LT’s money separately from the money of the other districts or the money in the TTO’s operating funds. Thus, for ease of reference, this brief refers to LT’s funds as LT’s Account.

ELECTRONICALLY FILED  
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2013-CH-23386  
PAGE 7 of 13

ILCS 5/8-7 states that the treasurer “shall be the only lawful custodian of all school funds and shall ... safely keep, according to law, ... moneys ... belonging to any school district” – but, again, says nothing about holding the school district’s funds in trust.

The TTO’s Account, in contrast, is a Trust Account and not an agency/custodial account. As the TTO admits in the Amended Complaint, the TTO’s Account is used “to hold funds belonging to multiple districts.” *Id.* ¶ 22.<sup>3</sup> The TTO also acknowledges that it controls the TTO’s Account. *Id.* ¶ 22.<sup>4</sup> Furthermore, the TTO admits that it has no funds of its own: the TTO “does not have a tax base or any other source of revenue.” TTO Summary Judgment Response, p. 3.

**5. ONLY LT CAN AUTHORIZE PAYMENTS FROM LT’S ACCOUNT**

There also is no dispute in this case that only LT can authorize the disbursement of funds from LT’s Account. The TTO has admitted this fact repeatedly. In the Amended Complaint, the TTO admits that the Treasurer was statutorily obligated to make payments from an Agency Account of a school district **only upon receiving “a lawful instruction to the Treasurer to issue payment” from the school district.** *Id.* ¶ 10, 20, 21. As a practical matter, this meant that LT issued checks for payroll and accounts payable recipients, and submitted those checks to the TTO. The TTO then stamped the Treasurer’s signature onto LT’s checks. Sellers Dep. Trans., attached hereto as Supp. SJ Ex. 1, p. 20. The TTO does not claim that it is authorized to make payments from LT’s Agency Account other than on LT’s orders.

Accordingly, under the undisputed facts of this case, there can be no legitimate question that the LT Account is an Agency Account and not a Trust Account. In the *District 5* Case, the

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<sup>3</sup> The TTO alleges, *id.*, that it maintains multiple bank accounts for the TTO’s operations. For purposes of this motion only and for ease of reference, LT refers to them collectively and singularly as the TTO’s Account.

<sup>4</sup> LT notes that this is why LT has a counterclaim for breach of fiduciary duty against the TTO: because the TTO took insurance claim proceeds into the TTO’s Trust Account that belong in part to LT, but then failed to credit LT’s Agency Account. LT’s counterclaim involves recent transactions and is not subject to a limitations issue.



township treasurer could pay out funds in District 1's account only on District 1's orders. This fact demonstrated that District 1 controlled its funds, even while the township treasurer managed them. Thus, the Supreme Court decided that the disputed money that the treasurer paid into District 1's account **"was not a trust fund in [District 1's] hands."**

District 1's account is the same type of Agency Account as LT's Account, and for the same reasons, neither is a Trust Account. In other words, once the TTO credited tax revenues, investment income, and other money to LT's Account, those funds became LT's money in LT's hands and ceased to be LT's funds being held in trust.

## **6. THE TTO'S DEMANDS TRANSFERS FROM LT'S AGENCY ACCOUNT**

The TTO admits that it has no power to debit LT's Account to compensate the TTO for the claims asserted in this case. While the three separate claims of the TTO arose in different ways, the bottom line in all of these claims is the **TTO's demand for Court-ordered transfers from current funds held in LT's Account.**

With respect to the **audit payment claim**, the TTO's Amended Complaint alleges that from 1993-2012, the TTO improperly paid \$511,068.60 to the accounting firm Baker Tilly and its predecessors ("Baker Tilly") for the costs of LT's annual audits. *Id.* ¶ 54. These disputed payments came from the TTO's Trust Account. SJ Ex. 12, p. 29-30. The TTO's internal records list these payments as vendor expenses of the TTO. SJ Ex. 13-14. As compensation for this claim, TTO's Amended Complaint demands that this Court **authorize it to debit the disputed amount "from an Agency Account** holding funds allocable to [LT]." *Id.* p. 11-12.

LT notes that the application of the five-year statute of limitations will reduce the TTO's audit payments claim from \$511,068.60 to \$164,435.35. SJ Ex. 13.

With respect to the **investment interest claim**, the TTO alleges that “from “1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to [LT].” SJ Ex. 11, ¶ 44. The TTO later reduced this claim to \$1,427,442.04. SJ Ex. 15.

This claim is based on the TTO’s analysis of the entries posted to the general ledger that the TTO maintains for LT’s Account, as well as the balances listed for LT’s Account. SJ Ex. 12, p. 100. According to the TTO’s analysis, the TTO made the last alleged overpayment to LT’s Account in fiscal year 2009. SJ Ex. 15. As compensation for this claim, the TTO’s Amended Complaint requests Court authorization to “**reallocate**” **money that the TTO previously “allocated to [LT].”** SJ Ex. 11, p. 12.

LT notes that the application of the five-year statute of limitations will reduce the TTO’s interest allocation claim from \$1,427,442.04 to zero. This is because under the TTO’s analysis, LT actually was under-allocated interest during the five-year limitations period. SJ Ex. 15.

With respect to the **pro rata expenses claim**, the TTO alleges that from 2000-12, LT failed to pay the total amounts of the annual invoices that the TTO issued to LT. These invoices were for LT’s pro rata share of the TTO’s operating expenses. SJ Ex. 11, ¶ 32-34. As this Court is aware, this dispute concerns the legitimacy of an agreement between the parties concerning offsets to the expense invoices. Under this agreement, LT applied the annual costs of performing its own business services (which the TTO otherwise would have performed) as offsets against the TTO’s invoices. SJ Ex. 9, ¶ 3-31.

For purposes of this motion, though, what is relevant – and undisputed – is that any net payments LT made to the TTO (that is, a payment on the invoice, less the offset) were made from checks drawn on LT’s Account. LT issued these checks for the Treasurer’s signature and made them payable to the TTO. SJ Ex. 16, p. 6; SJ Ex. 12, p. 22-23; Supp. SJ Ex. 1, p. 20. Thus,

payments on the TTO's expense invoices came – or, did not come – from LT's Agency Account. As compensation for this claim, TTO's Amended Complaint demands that this Court **authorize the TTO to debit the disputed amount “from an Agency Account** holding funds allocable to [LT].” *Id.* p. 12.

LT notes that the application of the five-year statute of limitations will reduce the TTO's pro rata expense claim from \$2,628,807 to \$1,080,160. SJ Ex. 17.

Thus, the TTO's three claims in this case, and its demands for relief, can be portrayed graphically as follows:

### Court-Ordered Payments That TTO Demands



#### 7. THE TTO DOES NOT SEEK TO RECOVER MONEY HELD IN TRUST

The undisputed facts of this case demonstrate that the parties are not fighting over a pool of money that the TTO received and still is holding in trust, pending any crediting or spending. On the contrary, as explained above, the TTO's claims all concern monies that the TTO credited to LT's Account long ago; or paid to outside parties on LT's orders; or simply did not receive from LT's Account.

ELECTRONICALLY FILED  
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2013-CH-23386  
PAGE 10 of 13

Accordingly, this case is fundamentally different from the *City of Lincoln* Case. As discussed above, in that case, the City was able to avoid the statute of limitations because it was asserting a right to receive tax revenues that the County still held in trust for the City in the County Treasury. In order to prevail on its held-in-trust argument, the TTO – like the City of Lincoln – would have to be making a claim on disputed funds that the TTO still held in trust in the TTO’s Trust Account.<sup>5</sup> **Although the undisputed facts show otherwise, here is how the TTO’s theoretical avoidance of the statute of limitations could be represented graphically:**

### Statute of Limitations Inapplicable Only If...



**8. LT ORDERED THE SPENDING OF ANY DISPUTED FUNDS YEARS AGO**

Finally, LT notes that the Supreme Court in the *District 5* Case based its holding, in part, on its conclusion that the disputed tax revenues that the township treasurer had collected years earlier, and paid into District 1’s account, had been “paid out, on [District 1’s] orders.” 105 Ill. at 655. In other words, District 5 filed suit 7 to 10 years after the treasurer collected and distributed the funds at issue, and therefore those funds no longer were being held in District 1’s account. Instead, they had long ago been paid out for District 1’s operations.

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<sup>5</sup> LT does not understand the TTO to be arguing that because the TTO receives tax revenues earmarked for LT on an annual basis, the TTO is seeking compensation in this case from the newly received funds briefly held in trust before being credited to LT’s Account. That circular reasoning would allow the held-in-trust exception to swallow the statute of limitations rule, and would contradict the holdings in both the *District 5* Case and the *City of Lincoln* Case.

ELECTRONICALLY FILED  
1/22/2018 1:48 PM  
2013-CH-23386  
PAGE 11 of 13

ELECTRONICALLY FILED  
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2013-CH-23386  
PAGE 12 of 13

As in the *District 5* Case, the TTO’s deposit of disputed funds into LT’s Account occurred many years ago. The TTO has only one claim involving disputed funds actually paid into LT’s Account, and that is the investment interest claim. The TTO admits that the last alleged overpayment of interest into LT’s Account occurred in fiscal year 2009. SJ Ex. 15. The total of all of the alleged overpayments, running from 1995-2009, is about \$1.5 million.

Yet, it is an undisputed matter of public record – of which the Court can take judicial notice<sup>6</sup> – that that LT spends tens of millions of dollars annually to run a very large high school system. For example, LT’s expenditures in fiscal year 2010 – just after the last alleged overpayment of interest in fiscal year 2009 – were \$68.8 million, and in fiscal year 2011 were \$70.0 million.<sup>7</sup> More recently, LT’s expenditures in fiscal year 2014 were \$71.5 million, and in fiscal year 2015 were \$73.0 million.<sup>8</sup> There can be no question that the alleged \$1.5 million in overpayments that the TTO credited to LT’s Agency Account from 1995 to 2009 were long ago paid out to vendors, employees, and other payees out of LT’s Account on LT’s orders, just like the disputed tax revenues in the *District 5* Case.

**Conclusion**

For all of the reasons set forth in this brief and in LT’s other summary judgment briefs, the controlling Illinois law set forth in the *District 5* Case and the other cited precedents require a

<sup>6</sup> “Judicial notice is proper where the document in question is part of the public record and where such notice will aid in the efficient disposition of a case.” *Vill. of Riverwoods v. BG Ltd. P’ship*, 276 Ill.App.3d 720, 724 (1<sup>st</sup> Dist. 1995).

<sup>7</sup> See page 14 of LT Audit Report at [www.lths.net/cms/lib03/IL01904810/Centricity/Domain/6/Audit%20FY11.pdf](http://www.lths.net/cms/lib03/IL01904810/Centricity/Domain/6/Audit%20FY11.pdf).

<sup>8</sup> See page 10 of LT Audit Report at [www.lths.net/Page/11493](http://www.lths.net/Page/11493).

decision that the disputed funds in this case are not still held in trust; that the statute of limitations exception for rights belonging to the general public also is inapplicable to the facts of this case under the controlling precedent; and that the TTO's claims therefore are subject to the five-year limitations period set forth in 735 ILCS 5/13-205.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

By s/Jay R. Hoffman  
*Its Attorney*

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Attorney No. 34710

ELECTRONICALLY FILED  
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2013-CH-23386  
PAGE 13 of 13

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

TOWNSHIP TRUSTEES OF SCHOOLS )  
TOWNSHIP 38 NORTH RANGE 12 )  
EAST )

Plaintiffs, ) No. 13 CH 23386

vs. )

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204, )

Defendants. )

The deposition of DAVID SELLERS, taken before JO ANN LOSOYA, C.S.R., pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 225 West Washington Street, Chicago, Illinois commencing at 1:00 p.m. on November 23, 2016.

1  
2 Witness  
3 DAVID SELLERS  
4 By Mr. KALTENBACH

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EXHIBITS

Deposition Exhibit	Page	Line
Exhibit No. 1.....	34	8
Exhibit No. 2.....	76	4
Exhibit No. 3.....	84	19
Exhibit No. 4.....	91	5
Exhibit No. 5.....	96	22
Exhibit No. 6.....	119	11

\*\*\*ORIGINAL EXHIBITS RETAINED BY COUNSEL\*\*\*

PRESENT:

MILLER CANFIELD PADDOCK & STONE, PLC  
MR. BARRY P. KALTENBACH  
225 West Washington Street  
Suite 2600  
Chicago, Illinois 60606  
(312) 460-4200  
Appeared on behalf of Plaintiffs.

HOFFMAN LEGAL  
MR. JAY R. HOFFMAN  
20 North Clark Street  
Suite 2500  
Chicago, Illinois 60606  
(312) 899-0899  
jay@hoffmanlegal.com  
Appeared on behalf of Defendants.

REPORTED BY: JO ANN LOSOYA  
LICENSE #: 084-002437

(Witness sworn at 1:15 p.m.)

WHEREUPON:

DAVID SELLERS,  
called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. KALTENBACH:

**Q. Thank you. Mr. Sellers, just to avoid the apparent confusion my office created on the record, could you please state your name, please?**

A. David Sellers.

**Q. Thank you. Mr. Sellers, have you been deposed before?**

A. Yes.

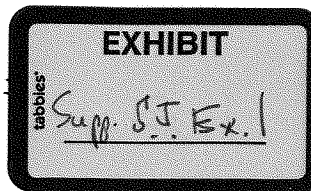
**Q. I'm not going to run through everything. If at some point you need to take a break to use the washroom, to get more water or coffee, please let us know, we will take a short break to do that.**

**If you don't understand a question that I ask you or you don't hear the question, please let me know. Because if you answer it, I will necessarily assume it was both intelligible to you and that you heard it. Is that fair?**

A. Yes.

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2013-CH-23386  
PAGE 2 of 3

1 A. Yes.  
2 **Q. In terms of a little bit of a road map, I**  
3 **want to start by talking about the audit issue, the**  
4 **payment of audit fees.**

5 What is your knowledge of that issue  
6 in this case?

7 A. I understand there's a disagreement as to  
8 why the township treasurer paid the auditing firm  
9 each year that completed the annual independent  
10 audit for Lyons Township High School.

11 MR. HOFFMAN: Let me caution the witness  
12 and say I think what Barry is getting at is what you  
13 personally know and recall from your time as  
14 business manager and he's not asking you for  
15 information about the dispute that you received  
16 perhaps from Chuck LeMoine or from me.

17 MR. KALTENBACH: I'm not asking you to  
18 review --

19 MR. HOFFMAN: That's attorney/client  
20 privilege.

21 MR. KALTENBACH: I'm not asking you to  
22 reveal communications you had with Mr. LeMoine and  
23 Mr. Hoffman. My question was to try to get a big  
24 picture of what your understanding is.

1 you?

2 A. Sure.

3 **Q. Great. When you were hired as the**  
4 **director of the business services back in 2003, was**  
5 **Baker Tilly or its predecessors firms the one that**  
6 **did the annual audit for District 204?**

7 A. Yes.

8 **Q. And did they do that audit every year**  
9 **while you were director of business services?**

10 A. Yes.

11 **Q. Did you have an understanding when you**  
12 **were hired of who paid for that audit?**

13 A. Yes.

14 **Q. What was your understanding?**

15 A. The accounts payable person who was  
16 responsible for A through M would receive an  
17 invoice, and upon receipt of an invoice from the  
18 auditing firm, let's say Baker Tilly, that would be  
19 sent over to the Lyons Township School Treasurer's  
20 office for payment.

21 **Q. And then it was your understanding that**  
22 **the treasurer would pay that invoice?**

23 A. Yes.

24 **Q. Was it your understanding that the**

1 MR. HOFFMAN: Are you asking what he  
2 understands the claim to be in the lawsuit or what  
3 he understands --

4 MR. KALTENBACH: He's answered my  
5 question. That's all I wanted to have a sense of.

6 MR. HOFFMAN: That's fine.

7 BY MR. KALTENBACH:

8 **Q. Mr. Sellers, you understood that each**  
9 **year by requirement of the school code Lyons 204 had**  
10 **an audit done, correct?**

11 A. Correct.

12 **Q. And the identity of the accounting firm**  
13 **that did it, the name changed over time, but it**  
14 **seems the firm more or less was the same. It went**  
15 **to Gurrie to Virchow Krause to Baker Tilly. Are you**  
16 **familiar with that?**

17 A. Correct.

18 **Q. While you were there in the capacity of**  
19 **director of business services, was it Virchow Krause**  
20 **and then Baker Tilly?**

21 A. I believe so. There might have been a  
22 year when it was Gurrie.

23 **Q. Just to make it easier, let's refer to**  
24 **the auditors as Baker Tilly. Does that work for**

1 **treasurer was paying that invoice out of the**  
2 **treasurer's fund as opposed to District 204 funds?**

3 MR. HOFFMAN: Objection, lack of  
4 foundation as to what treasurer's funds mean.

5 BY THE WITNESS:

6 A. I didn't know. I did not -- I didn't  
7 take time to learn where the funds were being drawn  
8 from to pay for that bill.

9 **Q. Okay. Do you understand that there are**  
10 **certain accounts where the money in those accounts,**  
11 **even though the treasurer may be the signatory, that**  
12 **money is, in essence, 204's funds?**

13 A. Could you repeat that question?

14 **Q. Sure. For instance, if 204 needs to pay**  
15 **its employees or a pay a vendor, are you aware there**  
16 **certain accounts that 204 may issue checks on to**  
17 **make those payments, and although the treasurer may**  
18 **be the signatory on those checks, the money is**  
19 **essence being drawn on what is thought of as**  
20 **District 204's funds?**

21 A. Correct. And in that sense, the payment  
22 for the services of an independent auditor would not  
23 be reflected as an expenditure in the Lyons Township  
24 High School general ledger.



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1/22/2018 1:48 PM  
2013-CH-23386  
PAGE 3 of 3

1 Q. Okay. It was coming from funds -- it was  
2 an expense of the treasurer's office in that case?  
3 A. Correct.  
4 Q. That was your understanding of how the  
5 auditor was actually getting paid?  
6 A. Right. I would never see an expenditure  
7 in one of our general ledger accounts. That belongs  
8 to Lyons Township High School reflective of that  
9 payment.  
10 Q. Got it. And so when you took over, did  
11 you discuss that payment arrangement with Mr. Huang,  
12 your predecessor?  
13 A. No.  
14 Q. Did you discuss it with anyone else other  
15 than Mr. Huang within District 204?  
16 A. Yes. I believe that I was apprised of  
17 the longstanding practice by an accounts payable  
18 clerk.  
19 Q. An accounts payable clerk at 204?  
20 A. Correct.  
21 Q. What did she -- what did he or she tell  
22 you?  
23 MR. HOFFMAN: Very good.  
24 BY THE WITNESS:

1 Q. Did you discuss the issue of the  
2 treasurer maybe paying for the Baker Tilly audit  
3 with Robert Healy at all?  
4 A. Only after it came into question. So, it  
5 was fairly late in Mr. Healy's employ.  
6 Q. I think -- if I'm remembering correctly,  
7 I think he left at the end of the summer of 2012.  
8 Would it have been, let's say, in 2012 that you had  
9 that discussion with Mr. Healy?  
10 A. I would -- yes. I believe so.  
11 Q. What was that -- is there a specific  
12 discussion that stands out in your mind or were  
13 there may be multiple discussions that ran together?  
14 A. I just asked Bob, you pay for everybody's  
15 audits, right? And the answer he gave me was yes.  
16 Q. And by everybody's, you meant all the  
17 other school districts within Lyons?  
18 A. Correct.  
19 Q. Within the treasurer's control?  
20 A. Right. It was a simple question and I  
21 got a simple answer.  
22 Q. Why did you ask that of Mr. Healy in  
23 2012?  
24 A. I think that was subsequent to the issue

1 A. This is what we always do.  
2 Q. Who was that person?  
3 A. Deb Cook, accounts payable specialist.  
4 Q. Who hired Baker Tilly to do the annual  
5 audit?  
6 A. I don't know. The auditor for all of the  
7 members of the school treasurer cooperative was the  
8 same. And William F. Gurrie was bought by Virchow  
9 Krause and then Baker Tilly bought out Virchow  
10 Krause. The inception of the relationship between  
11 the Lyons Township School treasurer's office and  
12 William F. Gurrie, I have no idea how many years it  
13 goes back, but I assumed it went back very many  
14 years considering one of the schools in our area is  
15 called Gurrie.  
16 Q. Fair enough. But did Baker Tilly or its  
17 predecessors send an engagement letter to 204 each  
18 year?  
19 A. Yes.  
20 Q. And did that go to you?  
21 A. Yes.  
22 Q. And did you sign that on behalf of 204 to  
23 hire Baker Tilly?  
24 A. Yes.

1 being raised as to whether or not there was a firm  
2 agreement or something like that. I mean, I don't  
3 really remember exactly, but I believe it was after  
4 there was some controversy.  
5 Q. Other than what Mr. Healy told you on  
6 that, that is to say his answering your question, do  
7 you have any other independent knowledge of whether  
8 the treasurer, in fact, paid for the audits of all  
9 the other school districts?  
10 A. No.  
11 Q. So, other than the conversation with  
12 Mr. Healy that you just mentioned, do you recall any  
13 other conversations with Mr. Healy on the topic of  
14 the treasurer paying for audits?  
15 A. No.  
16 Q. Do you recall -- and I say conversations,  
17 let me broaden that a little bit. I will say  
18 communications as well. I don't want to overlook an  
19 email or a letter, although I think we probably  
20 would have seen it.  
21 Do you recall having any  
22 communications with Mr. Healy other than the  
23 conversation you just discussed?  
24 A. Not with Mr. Healy.

**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on January 22, 2018, he caused the foregoing pleading to be served by email on the following attorneys:

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s/Jay R. Hoffman

# Chancery DIVISION

## Litigant List

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Case Number: 2013-CH-23386

Page 1 of 1

### Plaintiffs

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Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
TOWNSHIP TRUSTEE SCHOOLS			0000	

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Total Plaintiffs: 1

### Defendants

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Defendant Name	Defendant Address	State	Unit #	Service By
LYONS TWP H S			0000	
NON PARTY			0000	

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Total Defendants: 2