

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

FILED FEB 26 11:27

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

Plaintiff,)

vs.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204)

Defendants)

No. 13 CH 23386
Judge Sophia H. Hall
Calendar 14

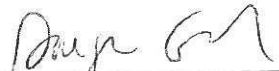
NOTICE OF FILING

TO: Charles A. LeMoine; Rosa A. Tumialán; Stephen M. Mahieu
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606

PLEASE TAKE NOTICE that on February 26, 2014, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **Plaintiff's Response to Defendant's Motion to Dismiss**, a copy of which is hereby attached and served on you.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 
One of its attorneys.

Gerald E. Kubasiak
Douglass G. Hewitt
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.
Two First National Plaza
29th Floor
20 South Clark Street
Chicago, Illinois 60603
(312) 630-9600 (Phone)
(312) 630-7939 (Fax)
No. 48237

PROOF OF SERVICE

The undersigned, an attorney, certifies that copies of the following documents:

Plaintiff's Response to Defendant's Motion to Dismiss

has been served upon:

Charles A. LeMoine
Rosa A. Tumialán
Stephen M. Mahieu
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606

as follows:

- by personal service on February 26, 2014 before 4:00 p.m.
- by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 20 S. Clark Street, Chicago, Illinois, on February 26, 2014 before 4:00 p.m.
- by facsimile transmission from 20 S. Clark Street, Suite 2900, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 630-7939, consisting of ____ pages on February 26, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.
- by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on February 26, 2014 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
- by _____, on February 26, 2014 before 4:00 p.m., the served [party/parties] having consented to such service.



Douglass G. Hewitt, attorney

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

FILED-3

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TOWNSHIP TRUSTEES OF SCHOOLS)
TOWNSHIP 38 NORTH, RANGE 12)
EAST,)
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Plaintiff,)
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vs.)
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LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204)
)
Defendants)

No. 13 CH 23386
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PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISMISS

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Trustees”), submit the following response to Defendant, Lyons Township High School District No. 204’s (“District 204”), Motion to Dismiss.

I. INTRODUCTION

District 204 argues that the Trustee’s Verified Complaint for Declaratory Relief (“Complaint”) is barred by the doctrine of *laches* and/or the statute of limitations and, therefore, should be dismissed pursuant to 735 ILCS 5/2-615 and 2-619 respectively. District 204 further contends that the Complaint should be dismissed pursuant to 735 ILCS 5/2-606 for failure to attach invoices submitted to District 204 and/or dismissed pursuant to 735 ILCS 5/2-615(a) for failure to plead various evidentiary facts. Each of Defendant’s arguments, however, ignore controlling precedent and specific allegations contained within the Complaint. Under substantial Illinois authority, including Supreme Court decisions, *laches* does not apply to suits brought by a governmental entity, such as the Trustees, except in extraordinary circumstances that are not found here. Similarly, the statute of limitations does not bar the Trustees’ claim because it is an

action brought by a public entity seeking to enforce “public rights.” §2-606 does not require that invoices submitted to District 204 be attached to the Complaint, because the claims asserted are not “founded upon” a written instrument, rather they are founded upon a statute: the Illinois School Code, 105 ILCS 5/1-1 *et seq.* Finally, the Complaint provides more than sufficient detail to enable District 204 to frame an Answer and, therefore, a more definite statement of the Trustees’ claim is unnecessary.¹

II. FACTUAL ALLEGATIONS

Pursuant to the School Code, 105/ ILCS 5/8-7, the Lyons Township Treasurer (the “Treasurer”) is appointed by the Trustees to act as the sole custodian of public funds held on behalf of the school districts located within Lyons Township (the “Districts”), as well as two additional cooperatives and a medical self-insurance cooperative (Complaint, ¶ 4).

Section 5/8-4 of the School Code, 105 ILCS 5/8-4 provides, in part, “Each...township high school district...shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expense of the treasurer’s office, which compensation and expenses shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of the funds as belong to each such elementary school district or high school district” (Complaint, ¶ 5).

Under §5/8-4 of the School Code, each of the participating members, including District 204, is required to pay their proportionate share of the Treasurer’s compensation and expenses of the Lyons Township School Treasurer’s Office (“TTO”) (Complaint, ¶ 6).

¹ District 204’s Motion to Dismiss contains several “facts” that are neither alleged in the Complaint nor supported by an affidavit or other evidentiary material. These “facts” are not properly considered in connection with District 204’s *laches* argument, as that portion of the Motion to Dismiss is brought under §2-615. Many, if not all, of the “facts” are utterly irrelevant to the arguments advanced in the Motion to Dismiss and have apparently been included for some other purpose.

In fiscal years June 30, 2000 through June 20, 2002, the TTO office submitted annual invoices to District 204 for its pro rata billings that totaled \$538,430.74 and District 204 paid the TTO a total of \$98,185.75 (Complaint, ¶ 10).

Between fiscal year June 30, 2003 and fiscal year June 30, 2011, the TTO submitted annual invoices to District 204 for its pro rata billings that total \$1,835,083.40 (Complaint, ¶ 11). Between fiscal year June 30, 2003 and the present, District 204 failed to pay any portion of its share of its pro rata billings (Complaint, ¶12).

The duties of the Treasurer include allocation of interest earned on investment of funds held on behalf of the districts. During the period including the fiscal year of June 30, 1995 through the fiscal year ended June 30, 2012, District 204 was allocated and paid \$1,380,496.53 in principal and interest on investments that it was not entitled to receive (Complaint, ¶ 14).

During the fiscal years ended June 30, 2007 through June 30, 2012, Baker Tilly and/or its predecessor-in-interest were engaged to provide audit and other professional services to District 204 (Complaint, ¶ 15). Between 1993 and 2011 and at District 204's request, the TTO paid Baker Tilly \$473,174.85 for audit services rendered to District 204 that was owed by District 204 and not the TTO (Complaint, ¶16).

III. ARGUMENT

A. The Doctrine of Laches Does Not Apply to the Trustee's Claims.

District 204's contention that the Trustees' claims are barred by *laches* ignores substantial precedent, including Supreme Court decisions, holding that *laches* only bars actions brought by governmental entities under compelling circumstances. The TTO is a governmental entity. As noted by the Supreme Court, "There is considerable reluctance to impose the doctrine of *laches* to actions of public entities unless unusual or extraordinary circumstances are shown." *Van Milligan v. Board of Fire and Police Comm'rs*, 158 Ill. 2d 85, 90 (1994). The reasoning