

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

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

**No. 13 CH 23386
Hon. Thomas R. Mulroy
Commercial Calendar I**

7335675

**PLAINTIFF’S REPLY TO DEFENDANT’S
CONSOLIDATED AFFIRMATIVE DEFENSES**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (the “Trustees”), by their undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, for their Reply to the Consolidated Affirmative Defenses asserted by Defendant, Lyons Township High School District No. 204 (“LT”), state as follows:

First Affirmative Defense: Laches

1. The laches doctrine applies when a party’s failure to timely assert a right causes prejudice to the adverse party. The two fundamental elements of laches are lack of due diligence by the party asserting the claim and prejudice to the opposing party.

Reply: The Trustees state that Paragraph 1 contains an allegation of law to which no reply is necessary.

2. The evidence supporting a laches defense against a public entity must present unusual or extraordinary circumstances.

FILED DATE: 11/12/2019 4:21 PM 2013CH23386

Reply: The Trustees state that Paragraph 2 contains an allegation of law to which no reply is necessary.

3. The TTO lacked due diligence in pursuing both its Pro Rata Expense Claim and the Audit Payments Claim (which are the remaining claims of the TTO in this case).

Reply: The Trustees deny the allegations of Paragraph 3.

4. On the Pro Rata Expense Claim, the TTO – including its Trustees and Treasurer – knew in 2000 that the TTO’s Trustees voted in 2000 to accept LT’s proposal that the TTO pay the costs of LT’s business functions; that LT was setting off these costs against the TTO’s pro rata expenses invoice; that the TTO accepted the net payments LT made, after setoff, as satisfying LT’s obligations under Section 8-4 of the School Code; that the Trustees approved the Treasurer’s reports and expenses that included these transactions and setoffs; and that LT was providing its own business services and thereby saving the TTO the costs of hiring additional personnel to perform LT’s business functions.

Reply: The Trustees deny the allegations of Paragraph 4.

5. On the Audit Payments Claim, the TTO – including the Trustees and Treasurer – knew at least as early as 1993 that the TTO selected the auditor for LT’s annual audits and paid the costs of the annual audits of LT.

Reply: The Trustees deny the allegations of Paragraph 5.

6. Despite its long-standing knowledge of the operative facts of its claims, the TTO chose not to file suit against LT until 2013.

Reply: The Trustees admit they filed this lawsuit in 2013, but otherwise deny the allegations of Paragraph 6.

7. The TTO’s long delay in filing suit caused prejudice to LT.

Reply: The Trustees deny the allegations of Paragraph 7.

8. On the TTO's Pro Rata Expense Claim, but for the TTO's lack of diligence in filing suit, LT could have chosen to shift its business functions over to the TTO. Also, absent the setoff arrangement, LT could have sought legislative action at an earlier time to remove LT from the TTO's operation. Additionally, in reliance on this arrangement, LT continued to pay the salaries of several business office employees who performed work that the TTO otherwise would have had to perform at the TTO's expenses.

Reply: The Trustees deny that they were not diligent in filing this lawsuit and deny that LT suffered prejudice as the result of any purported lack of diligence. The Trustees deny any remaining allegations, except to admit that LT chose to incur costs to operate its own business office both before and after the purported "arrangement."

9. On the Audit Payments Claim, due to the TTO's lack of diligence in filing suit, LT used Baker Tilly as its auditor only because the TTO selected that firm and paid for its audit work. Had the TTO filed suit earlier, LT could have competitively bid out its audit services in order to save money and could have switched to a more capable auditing firm.

Reply: The Trustees deny the allegations of Paragraph 9, except to admit that LT was always free to engage any qualified auditor it wished to engage.

10. During the TTO's long delay in filing suit, LT relied on its financial arrangements and long course of dealings with the TTO in formulating budgets, allocating resources, and managing its public funds.

Reply: The Trustees deny the allegations of Paragraph 10.

11. The TTO's long delay in filing suit prevented LT from conducting its defense in this case before critical witnesses like TTO Trustee Joseph Nekola and LT Business Manager Leon Tich died; before many of the TTO's records were lost to flooding, sloppy recordkeeping, and possibly, the criminal conduct of the then TTO Treasurer; and before some recollections faded.

Reply: The Trustees deny the allegations of Paragraph 11.

12. This case presents unusual and extraordinary circumstances that justify the application of the doctrine of laches to bar completely the TTO's claims.

Reply: The Trustees deny the allegations of Paragraph 12.

Replying further, the Trustees state that Courts are particularly reluctant to impose the discretionary doctrine of *laches* against public bodies because such "may impair the functioning of the governmental body in the discharge of its government functions, and valuable public interests may be jeopardized or lost by the negligence, mistakes, or inattention of public officials;" accordingly, *laches* may only be imposed where "compelling circumstances" are present. *Van Milligan v. Board of Fire & Police Comm'rs of Village of Glenview*, 158 Ill. 2d 85, 90-91 (1994). The Trustees assert that this Court should exercise its discretion and decline to apply *laches* in this case because doing so would harm a dozen other school districts, none of whom are as wealthy as LT, and impact their ability to educate their students.

Second Affirmative Defense: Statute of Limitations

13. In its order of July 31, 2019, the Court entered summary judgment in favor of LT's affirmative defense on the statute of limitations when it granted LT's motion for reconsideration on its partial summary judgment motion on the limitations issue and imposed a 5-year statute of limitations on the TTO's claims.

Reply: The Trustees state that the Court’s July 31, 2019 order sets forth the Court’s ruling and that no further reply by the Trustees is necessary.

14. On the TTO’s Pro Rata Expenses Claim, the TTO is barred by the applicable statute of limitations, 735 ILCS 5/13-205, from seeking damages based on any expense that the TTO incurred prior to 10-17-2008, which is 5 years before the date of the filing of this case.

Reply: The Trustees deny the allegations of Paragraph 14.

15. On the TTO’s Audit Payments Claim, the TTO is barred by the applicable statute of limitations, 735 ILCS 5/13-205, from seeking damages based on any payment that the TTO made to Baker Tilly and its predecessors prior to 10-17-2008.

Reply: The Trustees deny the allegations of Paragraph 15.

16. The TTO’s attempt, despite this Court’s ruling, to seek damages based on expenses and payments that pre-date 10-17-2008 is contrary to applicable Illinois law.

Reply: The Trustees deny the allegations of Paragraph 16.

Replying further, the Trustees state that the Illinois Supreme Court has directed that the statute of limitations may not be asserted against a public body in actions involving “public rights.” The rationale is similar to that supporting the general inapplicability of *laches* to public bodies: the public should not suffer because of the negligence of public officers and agents in failing to promptly assert causes of action belonging to the public. *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 472 (1989); *City of Shelbyville v. Shelbyville Restorium, Inc.* 96 Ill. 2d 457, 459-61 (1983). Here, the Trustees seek to take accounting actions for the direct benefit of a dozen other public school districts – the actions provide absolutely no benefit to the Trustees – to permit those districts to better educate the students in their care.

Third Affirmative Defense – Voluntary Payment Doctrine

The Trustees are moving to dismiss this affirmative defense and make no reply at this time.

Fourth Affirmative Defense: American Rule on Recovery of Attorneys' Fees

The Trustees are moving to dismiss this affirmative defense and make no reply at this time.

Respectfully submitted,

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

By: /s/ Barry P. Kaltenbach
One of its attorneys.

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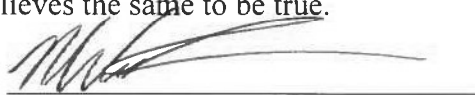
CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2019, I electronically filed **REPLY TO DEFENDANT'S CONSOLIDATED AFFIRMATIVE DEFENSES** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Barry P. Kaltenbach

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in the forgoing pleading are true and correct except as to matters stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that verily believes the same to be true.



Nov 12, 2019
Date