

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

LYONS TOWNSHIP TRUSTEES OF SCHOOLS,)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,)	
)	
Plaintiff and Counter-Defendant,)	No. 2018 CH 08263
)	
v.)	
)	Judge Eve M. Reilly
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT 204,)	Calendar 7
)	
Defendant and Counter-Plaintiff.)	

**LT’S RESPONSE TO
THE TTO’S MOTION TO DISMISS LT’S COUNTERCLAIM**

Introduction

Counter-Plaintiff Lyons Township High School District 204 (“LT”), by its counsel, respectfully asks this Court to deny the Motion of Counter-Defendant Lyons Township Trustees Of Schools Township 38 North, Range 12 East (“the TTO”), to strike LT’s Counterclaim. The Counterclaim concerns the mismanagement of tens of millions of dollars in public school funds. It is carefully drawn, highly detailed, and puts the TTO on full notice of LT’s claims. While the TTO wants to avoid public scrutiny and accountability for its actions, there are no proper grounds for dismissing the Counterclaim.

This the second of two cases in which the TTO has sued LT. In both cases, LT asserted counterclaims against the TTO. LT is a public high school located in Lyons Township. LT is one of several school districts within the jurisdiction of the TTO, an outmoded form of government mostly eliminated state-wide decades ago, but retained in some townships in suburban Cook County for political reasons. The TTO consists of three non-employee Trustees, who authorize the

TTO's functions, an employee Treasurer who handles the day-to-day operations of the TTO, and other clerical employees.

The TTO is charged by statute with serving as LT's fiscal agent, and the TTO holds and invests over \$40,000,000 in public funds belonging to LT. LT's membership in the TTO is mandated by statute and costs LT about \$300,000 a year. LT receives nothing of value in return.

The parties' relationship has been rocky for decades, in large part due to the theft by the TTO's former treasurer of over a million dollars in school funds; the lack of accounting controls and financial expertise at the TTO that enabled this criminal conduct; and the TTO's current misuse of, and refusal to fully account for, LT's investment funds. Based on a recently enacted state law, LT finally will be able to leave the TTO once the parties' lawsuits are over.

In the Complaint filed in this case, the TTO sued LT under Section 8-4 of the School Code. The TTO claimed that Section 8-4 required LT to pay the TTO for certain invoices that its Treasurer sent to LT for the years 2014-17. There is no dispute that LT refused to pay parts of those invoices. One reason was that the invoiced expenses improperly included millions of dollars in attorneys' fees and litigation costs that the TTO incurred in suing LT. The TTO asserted that LT violated Section 8-4 by refusing to pay the disputed amounts to the Treasurer.

In LT's Counterclaim, LT accuses the TTO of a series of violations of the School Code, and seeks monetary damages and declaratory judgments. LT accused the TTO of violating Section 8-4 of the School Code by billing LT for improper expenses. LT also accused the TTO of violating Sections 8-5, 8-6, and 8-7 of the School Code by, among things, failing to credit LT with its full investment earnings; failing to record and account for LT's investment earnings; and failing to provide LT with access to the TTO's books and records. In addition, LT asserted a breach of fiduciary duty claim against the TTO based on, among other things, the TTO's misuse of LT's

funds, which include unauthorized borrowing to fund the TTO's operations; the TTO's unauthorized use of LT's funds to support another educational entity known as West 40; and the TTO's mismanagement of LT's investment earnings.

LT does not raise these accusations lightly, and it recognizes that these are serious charges. However, LT has an obligation to its students, parents, and community residents to force the TTO to account for and correct its ongoing misuses of millions of dollars in public school funds.

In response, the TTO filed a motion to dismiss LT's Counterclaim ("the Motion"). The gist of the Motion is that even though the TTO sued LT for violating Section 8-4 of the School Code, LT has no legal right to sue the TTO for violating Sections 8-4 through 8-7 of the School Code.

First, the TTO's Motion objects to being sued as "the TTO," and claims that the Counterclaims are impermissibly vague in identifying the responsible party. The TTO contends that "the Trustees" are not part of the same organization as "the Treasurer." The TTO fails to inform this Court that it has referred to itself as "the TTO" for many years in the First Case pending before Judge Hall, as recently as the last motion the TTO filed in that case. The TTO also fails to mention that it has brought claims in both cases with LT explicitly on behalf of both the Trustees and the Treasurer. The TTO does not inform this Court that LT's (second amended) counterclaims in the First Case, while involving different claims, are asserted against the TTO – and the TTO answered that counterclaim, without raising any legal sufficiency argument.

Second, the Motion contends that LT has no legal right to pursue the TTO for violating the School Code. This lack of standing argument is a breathtaking position, given that the School Code provides specific rights and protections to LT as a school district, and that the TTO itself is suing LT under the School Code on behalf of its Treasurer. The TTO claims that there is no private right of action under the School Code, yet LT is not a private party. Just as the TTO can sue LT for

allegedly violating Section 8-4 of the School Code, so too can LT sue the TTO for allegedly violating Sections 8-4 through 8-7 of the School Code. Moreover, lack of standing is a Section 2-619 argument for which the TTO bears the burden of proof.

Third, the TTO objects to LT's prayers for relief. The TTO's objection extends well beyond the bounds of Section 2-615, as it is rooted in the TTO's false narrative – set forth in its Complaint – that the TTO is a “zero-sum operation.” This is a contention that LT can and will disprove with overwhelming evidence in this case. There is nothing wrong with asking this Court to fashion a remedy that does not require LT to pay 25% of a money judgment made in its favor.

Fourth, the TTO argues that LT did not sufficiently allege the presence of a fiduciary duty to LT. That position is not supported by applicable law, and there is no problem with LT's pleading. The allegations as to the TTO's duty are detailed, and supported by ample and specific factual allegations in the Counterclaim. In addition, the Counterclaim contains similar allegations of a fiduciary duty as contained in the counterclaim in the First Case, which the TTO acknowledged as sufficient when it answered that counterclaim.

Fifth, the TTO contends that in the First Case, LT's counterclaims seek recoveries that are duplicative of claims raised in the Counterclaim in this case. This contention is entirely incorrect. LT carefully crafted the Counterclaim in this case to not duplicate any pending claims in the First Case. While there are some common facts alleged in these counterclaims, the grounds for the causes of action and the relief sought in LT's two counterclaims are entirely distinct.

Argument

I. THE STANDARD FOR A SECTION 2-615 MOTION TO DISMISS

“In reviewing the sufficiency of a complaint [or counterclaim], we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. We also construe

the allegations in the complaint in the light most favorable to the [counter-]plaintiff. Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery.” *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429 (2006).

II. THE TTO IS THE PROPER COUNTER-DEFENDANT IN THIS CASE.

In the first footnote the Motion (at 1), the TTO criticizes LT for using the acronym “the TTO” to refer to the Plaintiff and Counter-Defendant, which the TTO claims “creates some confusion.” The TTO would rather be called “the Trustees.” This is a remarkable assertion for a party that, for many years in litigation between the same parties in the First Case, referred to itself over and over as the TTO. The last motion that the TTO filed in the First Case was a motion for summary judgment in which the TTO defined itself, and referred to itself, as “the TTO.” Here is the opening paragraph of that motion:

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“TTO”), by its undersigned counsel, for its Second Revised Motion for Summary Judgment (the “Motion”) against the defendant, Lyons Township High School District No. 204 (“LT”), states as follows:

I. INTRODUCTION

The TTO is entitled to a declaratory judgment that LT: (a) failed to pay \$511,068.60 for

Moreover, the TTO has repeatedly – in both cases – acknowledged that it is acting on behalf of its Treasurer, who is an employee of the TTO and who handles the TTO’s day-to-day operations. In the TTO’s Complaint in this case, the only plaintiff is the TTO. The TTO’s Treasurer is not a plaintiff. The Complaint bases its entire claim on Section 8-4, which is part of Article 8 of the School Code. Article 8, and Section 8-4, specifically govern the Treasurer. Section 8-4 requires the TTO to make certain payments to the Treasurer. The TTO’s prayer for relief in the Complaint ask this Court to declare that LT failed to pay monies to the Treasurer, and to allow the Treasurer

to take the alleged monetary damages from LT's agency funds held by the Treasurer. Motion, Ex. 1, p. 6.

Likewise, in the Amended Complaint in the First Case, the TTO brings a series of claims on behalf of the Treasurer. In the first claim, the TTO accuses LT of failing to pay, in years prior to this case's time period, pro rata expenses invoices that the Treasurer issued under Section 8-4 for the Treasurer's compensation and expenses. Motion, Ex. 3, ¶ 26-29.

The TTO's second claim in the First Case alleges overpayment of investment income by the Treasurer to LT. The TTO bases this claim on Sections 8-7 and 8-8 of the School Code, which governs the management of school funds by the Treasurer. *Id.* ¶ 38-40. The TTO claims that "the Treasurer erroneously allocated" too much interest to LT. *Id.* ¶ 44 (emphasis added). In its third claim, the TTO seeks from LT about \$500,000 that "the Treasurer improperly advanced" for LT's audit expenses. *Id.* ¶ 54 (emphasis added). The TTO alleges that "[t]he Treasurer has requested that" LT reimburse this amount. *Id.* ¶ 55 (emphasis added).

In the final paragraph of all three claims in the First Case, the TTO states that "the Treasurer brings this action ..." *Id.* ¶ 37, 47, 60 (emphasis added). In the prayer for relief in the First Case, the TTO seeks relief on behalf of the Treasurer, and asks that the Treasurer be allowed to deduct money from LT's agency funds. *Id.* p. 11-12. Again, the Treasurer is not a party to the First Case.

Furthermore, the fact that the TTO in Lyons Township consists of the Trustees and their designated Treasurer is borne out by the TTO's own website, which is located at www.lyonstto.net. That website contains a main heading of Lyons Township Trustees of Schools, and a subheading entitled Lyons Township School Treasurer's Office. The website also contains a page entitled "Trustees & Treasurer."

The point of this explanation is that the TTO’s own pleadings and public website recognize that the Treasurer is an integral part of the TTO’s organization. The TTO cannot assert claims and seek relief on behalf of its Treasurer, and even claim that the Treasurer is asserting claims against LT through the TTO, and then turn around and criticize LT for treating the Treasurer as part of the TTO’s organization for purposes of the Counterclaim.

Certainly, the School Code contains separate provisions that apply to the parts of the TTO’s organization. There are provisions that apply to the township trustees of schools, and provisions that apply to the township treasurer. Yet, the School Code also has separate provisions that apply to the different parts of LT. As set forth in the chart below, there are School Code provisions that apply to LT’s Board of Education, to its Superintendent, and its Principal. Yet, the TTO and LT are the proper parties that can sue and be sued for purposes of this case.

THE TTO

Township Trustees (School Code Sec. 5-1 *et seq.*)
 ↓
 Treasurer (Sec. 8-1 *et seq.*)
 ↓
 Other Employees

LT

Board of Education (Sec. 10-10 *et seq.*)
 ↓
 Superintendent (Sec. 10-21.4)
 ↓
 Principal (Sec. 21.4a)
 ↓
 Other Employees

Just as the TTO has the right to attack the decisions of LT’s Board of Education not to pay the TTO’s improper expenses by suing LT, so too can LT refer to the Trustees and the Treasurer as part of an organization commonly called – even by the TTO and its Treasurer themselves – as the TTO (or LTTO). As the TTO itself recognizes, the township treasurers are employees who come and go – indeed, there have been four Treasurers since 2012.

LT further notes that its counterclaim in the First Case asserted two counts against the TTO. The TTO answered both of those counts and never claimed that they somehow should have been directed toward the Treasurer, or “the Trustees,” instead of the TTO.

LT does not know why the TTO suddenly is trying to set itself apart from the Treasurer – the very person who runs the day-to-day operations of the TTO. It might have something to do with insurance coverage, or it might not. But LT is well within its rights to hold the TTO responsible for violations of the same School Code provisions that are the grounds for all of the TTO’s own claims, even if those provisions directly relate to the Treasurer. The Counterclaim more than sufficiently alleged the actual, close relationship between the TTO and its Treasurer, Counterclaim ¶ 3-9, and these allegations must be accepted as true at this stage of the case.

III. LT HAS STANDING TO SUE UNDER THE SCHOOL CODE.

In the Motion, the TTO claims that LT has no legal right to file suit for violations of Sections 8-4 through 8-7 of the School Code. The TTO argues (Motion at 2) that LT “does not have a private right of action under the School Code,” based on cases that apply to private individuals suing under the School Code. The TTO’s argument is mistaken for several reasons.

First, the TTO’s argument really is a standing argument that must be brought under Section 2-619, and for which the TTO bears the burden of proof. According to the Supreme Court, “Lack of standing is an ‘affirmative matter’ that is properly raised under section 2-619(a)(9).” *Glisson v. City of Marion*, 188 Ill.2d 211, 220 (1999). The party asserting this defense has the “burden to plead and prove lack of standing. Even in the Federal courts, ... it has been noted that controversies regarding standing are best resolved by motions for summary judgment rather than motions for judgment on the pleadings.” *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill.2d 462, 494 (1988).

Second, there can be no real question here that LT has standing to seek relief under Sections 8-4 through 8-7 of the School Code. According to the Supreme Court, “The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing suit. The doctrine assures that issues are raised only by those parties with a real interest in the outcome of the controversy. This court has set forth the general principle that standing requires some injury in fact to a legally cognizable interest in *Greer v. Illinois Housing Development Authority* The claimed injury may be actual or threatened, and it must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. Moreover, in the context of an action for declaratory relief, there must be an actual controversy between adverse parties, and the party requesting the declaration must possess some personal claim, status or right that is capable of being affected by the grant of such relief.” *Glisson*, 188 Ill.2d at 221.

In our case, LT has standing because Section 8-4 through 8-7 expressly grant rights to school districts like LT to receive investment income; to examine books and records; and to be billed only for legitimate expenses. The TTO’s failure to adhere to these statutes has caused direct injury to LT, as alleged in detail in the Counterclaim. Again, if the TTO has standing to sue LT under Section 8-4 for allegedly unpaid invoices, the TTO has the same right to object to being mischarged in those invoices.

Third, the TTO’s argument that LT has no private right of action under the School is based on a misunderstanding of this legal principle. “[T]he doctrine of standing also precludes a plaintiff from bringing a private cause of action based on a statute unless the statute expressly confers standing on an individual or class to do so.” *Cebertowicz v. Baldwin*, 2017 IL App (4th) 160535, ¶ 15 (citing *Glisson*, 188 Ill.2d at 222, emphasis added). LT is not an individual or a class of

individuals, or a private entity of any kind. LT is a public governmental entity. Yet the two cases that the TTO cites in this argument (Motion at 6) concern the right of individual schoolchildren and a job-seeking individual to sue a school district under the School Code.

In the Supreme Court’s decision in *Lewis E. v. Spagnolo*, 186 Ill.2d 198 (1999), a class of school children tried to sue a school district and others. The class “challenges the adequacy of the education being provided to them . . .” *Id.* at 201. The class attempted to shoehorn their complaints into a variety of constitutional provisions and statutes, including the School Code. The Court found that the students “have not pled any specific acts or omissions by the defendants that violate official duties imposed on them by the School Code.” *Id.* at 230. The Court determined that these private citizens had no rights under the School Code, and that they had to bring a mandamus action against school officials “to compel compliance with their official duties.” *Id.* at 232.

The TTO also offers a brief quote from *Collins v. Bd. Of Educ.*, 792 F.Supp.2d 992 (N.D. Ill. 2011), for the proposition that there is no private right of action under the School Code. In *Collins*, an individual unsuccessfully applied for a job with a school district. That individual sued several school board members for allegedly violating their oaths of office taken under the School Code by not hiring her. *Id.* at 996, 1000. The Court noted that the School Code’s purpose “is not to protect the free speech rights of applicants for employment.” *Id.* at 1001.

The TTO’s argument that LT should be treated the same as the private citizens in the *Spagnolo* and *Collins* – and differently from the TTO – is unreasonable and without legal foundation. LT is not asserting any private right of action under the School Code. Instead, LT is seeking to enforce, through its rightful standing under the School Code, rights expressly granted to LT under the School Code. There is no need to scour the statute for any sort of “implied” rights,

as with implied rights of action. LT's rights are expressly set forth in the statutory provisions of the School Code.

What is especially concerning about the Motion is that the TTO, which is supposed to serve as LT's fiscal agent, essentially contends that the TTO can fail to pay very large amounts in investment income to LT, as expressly required by statute, and that LT is powerless to do anything about the misappropriation of its school funds. And that LT is powerless to contest the improper nature of the expenses charged in the Treasurer's annual invoices. The TTO's standing argument is legally unsupported and should be rejected.

IV. LT'S REQUESTS FOR DECLARATORY RELIEF ARE APPROPRIATE.

The TTO objects to certain aspects of the relief that LT seeks in the Counterclaim. These objections are based on the TTO's incorrect factual assertions, which are not part of the record and which are beyond the scope of a Section 2-615 motion.

In particular, the TTO objects (Motion at 7), to LT's request that the Court fashion a remedy that does not require LT to pay approximately 25% of a judgment entered in its favor. The TTO's objection is based on its recurring theme of being a "zero-sum office," which LT debunked through the discovery process in the First Case, and will do so again in the present case. The TTO argues that it receives no tax revenues, has no money of its own, and has only one way to pay judgments, by charging all of the school districts under its jurisdiction. *Id.* The TTO's argument is based entirely on the Motion's recitation of the TTO's own allegations in the Complaint, *id.* at 3, which are not accepted as true for purposes of a motion to dismiss the Counterclaim (unless expressly admitted by LT).

In the Counterclaim, LT alleged multiple, compelling facts that contradict the TTO's "zero-sum office" argument. In 2013, the TTO revealed that it "located" over a million dollars in

undistributed investment earnings, but failed to inform the districts of the amount of the found earnings – and distributed only a minority of those earnings to the districts. Motion, Ex. 4, ¶ 13-15. LT also alleged that the TTO improperly controls large sums of uncredited funds because the TTO regularly fails to credit school districts with the full amount of their investment earnings, and refuses to properly account for these uncredited funds. *Id.* ¶ 16-17. LT also alleged that nothing in the School Code “authorizes the TTO to seize earnings and/or assets belonging to LT and the Other Districts and use those assets to pay the TTO’s Attorneys’ Fees, to offset against claimed underbillings of expenses in past years, or to reduce the TTO’s claimed deficits.” *Id.* ¶ 48. As the Counterclaim explains, and as LT will demonstrate through the discovery and investigative process in this case – including a forensic audit – the TTO has engaged in a wide range of wrongful conduct and improper accounting that is contrary to its “zero-sum office” position.

Under these circumstances, LT has every right to support its claim for relief with factual information at the appropriate time to fashion a remedy that is just and fair. The TTO cannot defeat this request by relying on unproven allegations in its own Complaint, and a partisan reading of the applicable School Code provisions. This is particularly true where the TTO is refusing to produce much of the documentation that LT requested in its document requests, in another aspect of its efforts to avoid the bright lights of public accountability.

The TTO also contends (Motion at 7) that LT’s prayers for relief should be stricken because the other school districts in the TTO’s jurisdiction are necessary parties. However, “dismissal under section 2-615 for failure to join all necessary parties is warranted only when the existence of indispensable unnamed persons or entities appears on the face of the [counter-]complaint.” *City of Elgin v. Arch Ins. Co.*, 2015 IL App (2d) 150013, ¶ 38.

In the Counterclaim, LT specifically alleged that the TTO is not acting on behalf of the Other Districts, but rather is acting in its own self-interest. *See, e.g.*, ¶ 46. The Other Districts did not authorize the TTO's lawsuits against LT, and they have no role in them. Literally dozens of paragraphs in the Counterclaim detail how the TTO mismanaged the funds of all the school districts in the TTO, and not just LT's. Accordingly, LT has no complaint with the Other Districts, and they are not necessary parties to the Counterclaim.

V. LT PROPERLY ALLEGED THE EXISTENCE OF A FIDUCIARY DUTY.

The TTO argues (Motion at 12) that LT did not sufficiently allege the presence of a fiduciary duty to LT. That position is not supported by applicable law, and there is no problem with LT's pleading. Indeed, the Counterclaims contain the same allegations as to fiduciary duty contained in the counterclaim in the First Case, which the TTO acknowledged as sufficient when it answered that counterclaim instead of moving to dismiss it.

The TTO's argument is another variation on its new theme of trying to separate and distance the Trustees from the Treasurer. As we have seen, the TTO's own pleadings in both of its lawsuits against LT demonstrate that the TTO is an organization that consists of elected part-time Trustees that hire and manage a full-time Treasurer.

In the Counterclaim, LT alleges the existence of an actionable fiduciary duty as follows: "As the fiscal agent for LT, the TTO owed and owes LT a fiduciary duty to manage the funds and investments of LT, distribute earnings to LT, and invoice LT for the expenses of the Treasurer's office in a fair, responsible, open, candid, and professional manner." *Id.* ¶ 53. LT further alleges, "As the fiscal agent of LT, the TTO owed and owes LT a fiduciary duty to respond to LT's reasonable inquiries for information and documentation concerning LT's funds and investments, the distribution of investment earnings to LT, the TTO's internal operations that are funded in part

by LT, the TTO's uses of pooled investment funds that belong in part to LT, and the invoicing from the TTO to LT of the claimed expenses of the Treasurer's office." *Id.* ¶ 54.

Thus, the Counterclaim contains a detailed description of the specific bases and contours of the fiduciary duty that the TTO owed and owes to LT. On a Section 2-615 Motion, these allegations, and all reasonable inferences that can be drawn from them, are taken as correct.

There is no question that Illinois law charges the TTO with serving as the "fiscal agent" of LT. *Lynn v. Trustees of Schools*, 271 Ill.App. 539, 547 (1933) (persuasive authority). There is no dispute that the TTO holds tens of millions of dollars of LT's funds in agency accounts, and is responsible for managing and investing these funds. The Supreme Court long has held that "the fiscal agent, whether of a government, a corporation, or an individual, should be held to the strictest accountability," and that the fiscal agent must "faithful[ly] discharge [] the duties devolving on him in his fiduciary capacity." *Hamilton v. Cty. of Cook*, 5 Ill. 519, 525 (1843) (emphasis added).

As this case progresses, the TTO will be free to try to defend against this count in the Counterclaim by claiming that the Treasurer is responsible for all of the alleged bad acts, and that the Trustees had nothing to do with them. LT, of course, will be happy to present the trier of fact with reams of documents in which the Treasurer refers to his or her organization as the TTO or LTTO, and the TTO insists that the Treasurer can act only with the approval of the Trustees. Again, the allegations of the Counterclaim are detailed and proper, and put the TTO on notice of the claims being made against it.

VI. LT'S TWO COUNTERCLAIMS ASSERT DIFFERENT CLAIMS.

The TTO asserts, based on Section 2-619, that LT's Counterclaim is duplicative of the counterclaim in the First Case. This argument is easily disproven, because there actually is no overlap of the claims raised and relief sought in LT's two counterclaims.

Unfortunately, the TTO bases its argument on a vague and inaccurate description of the claims in LT's counterclaim in the First Case. The TTO informs this Court (Motion at 5) that LT's counterclaim in the First Case "asserts that after discovering that Healy had also embezzled funds in his care, the Trustees recovered certain monies from Healy's official surety bonds and misapplied those recovered monies. (See generally Exhibit 4.)"

In fact, LT's counterclaim in the First Case consists of two counts asserted against the TTO. The first count is for Setoff. In that count, LT alleges the existence of an agreement between the parties that LT could set off certain expenses for business functions against the TTO's annual pro rata expense invoices. Motion, Ex. 4, ¶ 11-12. LT alleges that in 2013, the TTO terminated the agreement. *Id.* ¶ 13. LT asks this Court for the application of a setoff against specified invoices covering 2000 through 2012. *Id.* ¶ 14. Thus, Count I of the counterclaim in the First Case has nothing to do with LT's Counterclaim in the present case, which involve post-2012 issues and which do not involve the cancelled setoff agreement.

Count II of the counterclaim in the First Case is a fiduciary duty claim. In that count, LT alleges that the Treasurer stole school funds belonging to LT and the other districts, *id.* ¶ 20; that the TTO received insurance bond proceeds of \$1,040,000 after making claims, *id.* ¶ 22-23; that the TTO refused to credit LT and the other districts with their shares of the bond recoveries, *id.* ¶ 24; and that the TTO claimed it could spend the \$1,040,000 however it chose. *Id.* ¶ 24. In Count II, LT asked the Court to "award LT compensatory damages in the amount of LT's rightful share of the \$1,040,000 payments on the Bonds." *Id.* p. 28.

Therefore, In Count II of the counterclaim in the First Case, LT made a monetary demand for its approximately 25% share of the \$1,040,000 recoveries that the TTO refused to distribute. Nowhere in any of the four counts in the Counterclaim filed in the present case does LT make a

monetary demand against the TTO based on its share of the \$1,040,000 recoveries. There was no reason to repeat this claim, of course, given that LT's monetary claim for about a quarter of a million dollars is covered in the First Case.

What the TTO really bases its position on are the factual assertions that LT made in the Counterclaim in the present case about the bond recoveries, and about the TTO's past failures of management and leadership, without regard to the actual claims being asserted in the Counterclaim. Of course there are some common facts alleged in the two counterclaims. These facts are critical to LT's claims for declaratory relief in the Counterclaim, which seek to rein in the TTO's abuses of its statutory authority. It is important for the Courts in both cases to appreciate the history of mismanagement at the TTO, and how it operates without real accountability or due regard for its role as LT's agent. But as this Court will see from an examination of the two counterclaims, there actually is no overlap between their claims or requests for relief:

Counterclaim in First Case

Count I: Setoff

Setoff of certain costs against expenses in years 2000-12, as parties agreed

Count II: Fiduciary Duty

Payment of LT's share of \$1,040,000 from 2013-14 bond claim recoveries

Counterclaim in Present Case

Count I: Violation of Sec. 8-7

Full credit of investment earnings, since FY2013

Count II: Declaration Based on Sec. 8-5 to 8-7

Declaration of rights requiring the TTO to account for earnings and credit earnings legally

Count III: Declaration Based on Sec. 8-4

Declaration of rights requiring the TTO to bill for expenses legally

Count IV: Breach of Fiduciary Duty

To correct numerous, specified misuses of funds, but NOT including a claim on the bond recoveries, and to correct other specified abuses of authority

Accordingly, the TTO's Section 2-619 motion claiming duplication of claims between LT's two counterclaims is without merit and should be denied.

Conclusion

For the reasons stated in this Response, the TTO's Motion to Dismiss LT's Counterclaim should be denied in its entirety.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

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CERTIFICATE OF SERVICE

Jay R. Hoffman, an attorney, certifies that on February 27, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

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s/Jay R. Hoffman