

FILED - CH
CLERK OF THE CIRCUIT COURT
CHANCERY DIVISION
2014 SEP 19 PM 3:13

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

TOWNSHIP TRUTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST,

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

CLERK
DOROTHY BROWN

Case No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF FILING

TO: Gerald E. Kubasiak
Douglas G. Hewitt
Kubasiak Fylstra Thorpe & Rotunno, PC
Two First National Plaza, 29th Floor
20 South Clark Street
Chicago, IL 60603
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PLEASE TAKE NOTICE that on **September 15, 2014**, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, defendant's **Reply in Further Support of Motion to Reconsider Order of June 18, 2014**, a copy of which is served upon you.

Name: Charles A. LeMoine
Rosa A. Tumialán
Stephen M. Mahieu
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Address: 10 South Wacker Drive
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Attorney for: Defendant
City: Chicago, Illinois 60606

PROOF OF SERVICE

The undersigned, a non-attorney, states on oath that she served a copy of the foregoing Notice of Filing and Reply in Further Support of Motion to Reconsider Order of June 18, 2014 to the above counsel of record at the above mailing address by depositing a copy of same in the U.S. mail at 10 South Wacker Drive, Chicago, Illinois 60606, postage prepaid, before 5:00 p.m. on September 15, 2014.

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109 I certify that the statements set forth herein are true and correct.



FILED - CH
CLERK OF THE CIRCUIT COURT
CHANCERY DIVISION

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

2014 SEP 15 PM 3:14

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

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DISTRICT
204,

Defendants.

CLERK
DOROTHY BROWN

No. 13 CH 23386

Hon. Sophia H. Hall

**REPLY IN FURTHER SUPPORT OF MOTION TO RECONSIDER
ORDER OF JUNE 18, 2014**

Plaintiff attempts to avoid dismissal of its claims for reimbursement of auditing expenses and interest payments by advancing new arguments that directly contradict the allegations of the Complaint. Notwithstanding Plaintiff's assertions to the contrary, the Complaint seeks reimbursement of the auditing expenses Plaintiff long ago paid to Baker Tilly and also demands reimbursement of principal and interest that Plaintiff paid out to District 204. The Complaint does *not* allege, as Plaintiff contends, that the funds were merely *allocated* to District 204 from an accounting standpoint, but rather plainly alleges "District 204 was allocated *and paid*" those funds. Illinois law provides that once Plaintiff paid out funds to third parties—here, Baker Tilly and District 204—any claim relating to those payments became subject to the statute of limitations. Plaintiff also relies on unpled facts in seeking to avoid dismissal of its claims relating to reimbursement of District 204's so-called "pro-rata share" of Plaintiff's expenses. Once again, at the motion-to-dismiss stage, Plaintiff can look only to the allegations of its complaint. Those allegations do not establish that Plaintiff's activities involved a general public interest.

The Court previously erred in applying the law and denying the motion to dismiss. As

such, District 204 has a valid basis for seeking reconsideration of the June 18, 2014 order. Plaintiff urges this Court to ignore the fact-pleading standard applicable in this matter, and insists that it be allowed to proceed with only vague and unsupported claims. The Court should consider only the facts pled in the Complaint. Those facts establish that the bulk of Plaintiff's claims are time-barred.

I. THE STATUTE OF LIMITATIONS BEGAN RUNNING ON CLAIMS RELATING TO PLAINTIFF'S ALLEGED AUDIT EXPENSE PAYMENTS AS THOSE FUNDS LEFT PLAINTIFF'S CONTROL.

Plaintiff's claims for reimbursement of audit expenses it paid more than five years before filing suit are time-barred and must be dismissed. Plaintiff allegedly paid Baker Tilly for auditing services over a period of twenty-one years, with Plaintiff releasing funds to Baker Tilly for those services during each of those years. (Compl. at ¶16.) At the moment those funds left Plaintiff's control with each payment, Baker Tilly took control of the funds and Plaintiff was plainly no longer holding them in trust. Any claim relating to the payment of those funds became subject to the five-year statute of limitations at the time the funds were released.

Plaintiff insists that it "continues[s] to hold in trust" all of the funds at issue in this lawsuit. (Resp. at 2.) Plaintiff repeatedly reiterates that all funds "are and remain to this day in the hands of the Treasurer." (Resp. at 4, 8.) That argument directly contradicts the allegations of the Complaint, wherein Plaintiff alleges that it "*paid* Baker Tilly \$473,174.85 for audit services rendered to District 204" (Compl. at ¶16 (emphasis added).) Either Plaintiff paid Baker Tilly the total amount alleged in the Complaint *or* those monies "are and remain to this day in the hands of the Treasurer" (Resp. at 4.) Both of Plaintiff's positions cannot be true. To the extent Plaintiff paid Baker Tilly for the auditing expenses, a fact upon which the Verified Complaint relies, those payments triggered application of the statute of limitations. *See School Directors of*

District No. 5. v. School Directors of District No. 1, 105 Ill. 653, 655-56 (1883). To the extent Plaintiff now insists that it did not make payments to Baker Tilly, that argument must be rejected because it contradicts the factual allegations of the Verified Complaint.¹

Plaintiff attempts to distinguish *School Directors* by claiming that it is not seeking reimbursement from District 204 for the Baker Tilly expenses, but rather prays for a judgment “allocat[ing] public funds in the Treasurer’s hands.” (Resp. at 7.) First, as discussed above, Plaintiff is alleged to have already paid Baker Tilly for the auditing expenses, such that those funds are not even conceivably still in Plaintiff’s custody. Second, Plaintiff’s argument about the judgment it seeks directly contradicts the Complaint. Indeed, the prayer for relief specifically seeks a judgment that District 204 “is *legally obligated to pay* the Township Trustees the sum of \$473,174.85 that was paid by the TTO for audit services rendered by Baker Tilly on behalf of District 204.” (Prayer for Relief, ¶G (emphasis added).) Plaintiff is absolutely seeking a judgment relating to District 204’s payment obligations and not simply an allocation of funds. *School Directors* makes clear that once funds are paid out—here, by Plaintiff to Baker Tilly, and in *School Directors* by the township treasurer to District 1—any claim relating to those funds becomes subject to the statute of limitations. The payments to Baker Tilly that took place prior to October 17, 2008 are time-barred.

II. PLAINTIFF’S INTEREST PAYMENTS TO DISTRICT 204 ARE ALSO SUBJECT TO THE STATUTE OF LIMITATIONS.

Plaintiff also seeks to avoid dismissal of its claims for supposed overpayments of principal and interest to District 204 by arguing facts that contradict those alleged in the

¹ Once paid to Baker Tilly, there can be no rational argument that Plaintiff continued holding those funds in trust. Like the parties in *School Directors*, there is no trust relationship between Plaintiff and Baker Tilly.