

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

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 Thomas R. Mulroy

Commercial Calendar I

**PLAINTIFF’S MOTION TO CERTIFY INTERLOCUTORY APPEAL UNDER
ILLINOIS SUPREME COURT RULE 304(a) AND/OR RULE 308;
AND TO STAY THIS MATTER PENDING SUCH APPEAL**

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East (“Trustees”), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC and MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., moves this Court to certify an interlocutory appeal relating to this Court’s Order of July 31, 2019 (the “Order”), granting partial summary judgment in favor of Defendant, Lyons Township High School District No. 204 (“LT”), on LT’s Second Affirmative Defense (Statute of Limitations), and to exercise its discretion to stay this matter while such appeal is pending. In support of this Motion, the Trustees state as follows:

I. INTRODUCTION

This Court’s Order, which limits the Trustees to asserting claims arising only within the five years prior to the Trustees filing suit, eliminates one of the Trustees’ three claims in this action, and significantly reduces the value of the remaining two. The effect of the Order is to reduce the Trustees’ claims from roughly \$4.7 million to \$1.5 million. As a result, a significant

amount of evidence (including fact testimony, expert testimony, and documents), will not be introduced at trial.

If the Trustees do not prevail at trial, they anticipate taking an appeal of the final judgment, including this Court's Order, as a matter of right. A successful appeal will necessarily result in a remand for a new trial so that such evidence can be presented. Importantly, the same outcome will be produced *even if the Trustees prevail at trial*. If the Trustees prevail at trial their claim will have been reduced by \$3.2 million (from \$4.7 million to \$1.5 million), and so the Trustees will still take an appeal as a matter of right and a successful appeal will, again, require a new trial. Permitting an interlocutory appeal of this Court's Order will result in a short delay of this action while the appeal is pending but will advance the ultimate resolution of this lawsuit by eliminating the risk of a second, post-appeal trial. Such a second trial would be a waste of this Court's and the parties' resources.

II. BACKGROUND

The Trustees commenced this action on October 26, 2013 seeking a declaratory judgment authorizing the Lyons Township School Treasurer ("Treasurer") to make certain bookkeeping entries to address unlawful financial benefits a *former* Treasurer provided to LT effective during Fiscal Years 1993 through 2013. The effect of the relief the Trustees seek would benefit the other school districts that the Treasurer serves by undoing the \$4.7 million in unlawful financial benefits provided to LT and allocating that \$4.7 million among the other districts for their use.

Although set forth in a single declaratory action, the Trustees' Verified Amended Complaint is expressly subdivided into three distinct claims: (a) LT's failure to pay its proportionate share of the Treasurer's expenses, totaling \$2,628,807 (¶¶ 24-37); (b) the over-allocation of investment income to LT, totaling \$1,574,636.77 (¶¶ 38-47); and (c) LT's failure to

pay for its own audit and related accounting expenses, totaling \$511,068.60 (¶¶ 48-60). (A copy of the Verified Amended Complaint is attached as Exhibit 1.) The record is replete with the parties' agreement that each claim is distinct.

In May 2017, LT filed a Motion for Partial Summary Judgment based upon its Second Affirmative Defense, arguing that this lawsuit was subject to the five-year "catchall" statute of limitations set forth in 735 ILCS 5/13-205. The Trustees filed a Response to that Motion arguing that their action invoked certain, well-recognized exceptions to the statute of limitations, including that they were enforcing a "public right." and that the Treasurer was holding the applicable public funds in trust. LT has never argued that there are *no* exceptions to the statute of limitations; instead arguing only that the Trustees action did not fit within those exceptions.

On February 20, 2018, Judge Hall denied LT's Motion for Partial Summary Judgment. (A copy of the Order is attached as Exhibit 2.) Judge Hall found that the "public right" exception to the statute of limitations appeared to be satisfied, stating that "it would seem to me that there is a public interest exemption," and "I think that the Statute of Limitations does not prevent the trustees from pursuing this." (A copy of the Report or Proceedings from this hearing is attached as Exhibit 3, see 7:4-5; 9:11-14.) Judge Hall did, however, grant to LT the right to make further argument on that issue at trial. (See Ex. 2.)

On July 29, 2019, days after this matter was transferred to this Court, LT filed its "Motion for Reconsideration of LT's Partial Summary Judgment Motion on the Statute of Limitations Issue" (the "Motion for Reconsideration"). On that same day, the Trustees filed their "Motion for Judgment as a Matter of Law on Defendant's Second Affirmative Defense: Statute of Limitations (Alternatively, Motion to Reconsider)" (the "Motion for Judgment as a Matter of Law"). The parties made substantially the same arguments that they had made during their

earlier briefings. For LT, this meant that LT argued that none of the exceptions to the statute of limitations applied. For the Trustees, this meant that they argued that judgment as a matter of law should be entered in their favor on the statute of limitations issue – in essence, Judge Hall should have denied LT’s motion *with prejudice*.

On July 31, 2019, this Court entered its Order (a) granting LT’s Motion for Reconsideration and holding that the five-year statute of limitations applies to the Trustees’ action, and (b) denying the Trustees’ Motion for Judgment as a Matter of Law. (A copy of this Order is attached as Exhibit 4.) This Court also denied the Trustees pending Motion for Summary Judgment that addressed the remaining issues in this action *other than* the statute of limitations, without prejudice to make the arguments contained therein at trial. (See Ex. 4.)

Although there was no court reporter present for this hearing and a memorandum opinion did not issue, this Court questioned whether the Trustees’ position was truly whether no limitations period applicable. When the Trustees responded affirmatively, this Court stated that it had a due-process concern if no limitations period whatsoever applied, and inquired how far back the Trustees contended they could delve in pursuit of their claims. The Trustees responded that the claims went back only to 1993 (roughly twenty years prior to filing suit in 2013) and that one of the cases the Trustees relied upon permitted claims as far back as twenty-four years to be asserted. (This case was *Trustees of Schools v. Arnold*, 58 Ill. App. 103 (4th Dist. 1895).) This Court then stated it was granting LT’s Motion for Reconsideration.¹ This Court did not explain that it found that the Trustees had failed to prove that their action fell within an exception to the statute of limitations.

¹ The Trustees anticipate preparing a bystander’s report in accordance with Illinois Supreme Court Rule 323(c) to document this Court’s oral ruling.

The Illinois Supreme Court has held that at least two exceptions exist to the statute of limitations. The first exception was set forth in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883), and *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876), wherein the Supreme Court held the statute of limitations was not applicable because the public funds at issue were being held in trust. The second exception was most recently set forth in *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989), and *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983), wherein the Supreme Court held no statute of limitations applied because the government-plaintiff was seeking to enforce a “public right.”

The effect of this Court’s July 31, 2019 Order is to bar entirely the Trustees’ second claim, that LT was over-allocated \$1,574,636.77 in investment income, and to greatly reduce the amount in controversy with respect to its first and third claims. The parties readily agree on this point. The further effect is that certain witnesses (both fact and expert witnesses) and documents relating to the second claim are no longer relevant and there would be no cause to introduce such evidence at trial. Likewise, the evidence relevant to the first and third claims has greatly diminished, because those claims may look back only five years prior to filing suit. Because none of this evidence will be introduced at trial, any successful post-trial appeal by the Trustees will necessarily result in a remand for a new trial.

III. ARGUMENT

A. Appeal Under Illinois Supreme Court Rule 304(a) Is Proper.

Illinois Supreme Court Rule 304(a) provides that

If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a

finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party.

For purposes of Rule 304(a), a "claim" is "not limited only to causes of action, but includes a more flexible and reasonable meaning." *Heller Fin., Inc. v. Johns-Byrne Co.*, 246 Ill. App. 3d 754, 764 (1st Dist. 1992) (citing *Ariola v. Nigro*, 13 Ill. 2d 200 (1958) (internal quotations omitted)). A "claim" is defined to include "any right, liability or matter raised in an action." *Heller*, 246 Ill. App. 3d at 764 (citing *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 465 (1990) (internal quotations omitted)).

This Court's Order constitutes a final judgment as to the Trustees' second claim, that LT was over-allocated \$1,574,636.77 in investment income, because such over-allocations occurred more than five years prior to the date the Trustees' filed suit. As a result, there is nothing left to be tried with respect to the second claim. Upon this Court's finding that there is no just reason for delaying appeal of the Order, the Trustees will be able to avail themselves of an interlocutory appeal under Rule 304(a).

There are two compelling reasons why an interlocutory appeal is particularly appropriate here. First, in the event the Trustees prevail at trial on their remaining claims, they will then be entitled to take an appeal of this Court's Order as a matter of right. A successful post-trial appeal will necessarily result in a remand for a new trial, because the effect of this Court's Order is to render as not relevant the evidence relating to the Trustees' second claim and so the trial will not encompass the second claim. Likewise, the trial will not encompass the full extent of the first and third claims, because the Trustees are permitted to pursue those claims only for the five years prior to their commencing this action. In short, a considerable amount of evidence will not be introduced, and so the Appellate Court would have no option other than to remand for a new trial.

Second, most respectfully, it is evident that two different judges within the Circuit Court of Cook County, Illinois have ruled on this matter in opposing fashion. Judge Hall ruled in February 2018 that LT was *not* entitled to judgment as a matter of law on the statute of limitations, stating on the record that it appeared to her that the Trustees had established the “public right” exception was applicable to this action. (See Exhibit 3.) In contrast, on July 31, 2019, this Court ruled that, as a matter of law, there was no exception to the statute of limitations. A clear resolution of this issue from the Appellate Court should be obtained prior to proceeding to trial, particularly where there is the very real threat of a second trial should the Trustees be correct that Illinois recognizes exceptions to the statute of limitations and that such exceptions are applicable to this action, even where some of the claims stretch back as far as twenty years.

For these reasons, the Trustees respectfully request that this Court enter an order finding that there is no just reason for delaying appeal of its Order of July 31, 2019. As discussed in Part III(C) below, the Trustees also request that this Court exercise its discretion to stay this matter while such appeal is pending.

B. Appeal Under Supreme Court Rule 308 Is Proper.

Section (a) of Illinois Supreme Court Rule 308 provides for interlocutory appeals by permission in the following circumstances:

When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of an order or thereafter on the court’s own motion or on motion of the party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

Certification under Rule 308(a) is appropriate where “substantial ground for difference of opinion” exists and an interlocutory appeal “may materially advance the ultimate termination of the litigation....” *Yarbrough v. Nw. Mem'l Hosp.*, 2017 IL 121367, ¶ 21. This Court’s Order raises a question of law, the resolution of which may materially advance the ultimate termination of this action.

In granting LT’s Motion for Reconsideration, this Court found that due-process concerns prevented application of any exception to the statute of limitations, at least in this case where the Trustees’ claims are based upon conduct occurring roughly twenty years prior to their commencement of suit. This Court did not, respectfully, explain its decision as resting on the facts presented, and that as a matter of law, none of the exceptions to the statute of limitations applied. As discussed above, the Illinois Supreme Court has held that at least two exceptions to the statute of limitations exist, (a) where public funds are being held in trust, and (b) where the plaintiff is pursuing a “public right.” *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653, 656 (1883); *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989); *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983).

To the extent this Court’s concern was how *far back* any such exception may validly apply, an exception permitting an action existing twenty-four years prior was found permissible by the Appellate Court in *Trustees of Schools v. Arnold*, 58 Ill. App. 103 (4th Dist. 1895). Likewise, in *A, C & S*, the Supreme Court’s decision noted that the school districts which brought suit filed their actions following enactment of the Asbestos Abatement Act being in 1985 and that the school districts had purchased asbestos products dating as far as 1946, meaning

that “public right” exception found to exist in that case permitted claims stretching over approximately forty years. 131 Ill. 2d at 437, 439.

The Trustees request, therefore, that this Court certify the following questions of law for interlocutory appeal:

1. Where the plaintiff, a governmental entity, is holding public funds in trust for public use by all the school districts in a Township, and the claims over those funds extend back up to approximately twenty years prior to the commencement of the suit, does an exception to the statute of limitations, as set forth in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653 (1883) and *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876), apply?
2. Where the plaintiff, a governmental entity, is asserting claims concerning public funds, which extend up to approximately twenty years prior to the commencement of suit, does the “public right” exception to the statute of limitations, as held by the Illinois Supreme Court in *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989) and *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983), apply?

Upon such certification, the Trustees will promptly file an Application for Leave to Appeal with the Appellate Court in accordance with Illinois Supreme Court Rule 308.

While the Trustees respectfully submit that this Court’s ruling is at odds with the cited decisions of the Supreme Court, the ruling is also at odds with Judge Hall’s prior ruling in this case from February 2018. Accordingly, there appears to be substantial ground for difference of opinion respecting whether an exception to the statute of limitations may exist in this case. Moreover, having this question answered now will materially advance the *ultimate* termination of this action, even while imposing a short delay now.

As explained above, if this matter proceeds to trial based upon the Court’s current ruling, the Trustees will be able to appeal this Court’s Order as a matter of right and a successful appeal of that Order will render necessary the need for a new trial that will encompass all three claims at issue. Permitting an interlocutory appeal under Rule 308 now, while imposing some delay, will

advance the *ultimate* termination of the litigation because once the certified question is answered this matter may proceed to trial on all of the issues presented. There will be no risk that the matter will be remanded for a new trial based upon evidence and claims that are currently excluded by this Court's Order.

C. This Court Should Stay This Action Pending Interlocutory Appeal.

This Court should grant this Motion and permit the Trustees to proceed with an interlocutory appeal under Illinois Supreme Court Rule 304(a) and/or Rule 308. Providing such interlocutory appeal is granted, this Court should also exercise its discretion under Rule 305(b) to stay further proceedings in this action pending such appeal. Permitting interlocutory appeal *without* staying further proceedings would be ineffectual because the primary reason for permitting an interlocutory appeal is to avoid the risk of having to try this action twice.

Illinois Supreme Court Rule 305(b) provides that:

the court may also stay...the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just.

This Court is vested with discretion to stay further proceedings while an interlocutory appeal is pending. *In re Estate of Michalak*, 404 Ill. App. 3d 75, 99 (1st Dist. 2010). Such discretion should be exercised in favor of a stay should this grant permit interlocutory appeal. Indeed, the Trustees do not request certification of an interlocutory appeal *absent* this Court's exercise of discretion to also stay this action while such appeal is pending. Absent a stay, an interlocutory appeal would serve little point, because it is probable that the trial of this matter will occur before the Appellate Court will have an opportunity to issue an opinion.

LT will not suffer any undue prejudice from a stay of this matter while such appeal is pending and the Trustees represent that they will seek an expedited review of this matter from

the Appellate Court under Illinois Supreme Court Rule 311(b). While this Court has discretion to condition a stay upon “such terms as are just,” beyond the Trustees’ representation that they will seek an expedited appeal from the Appellate Court, no other terms are necessary or appropriate.

IV. CONCLUSION

WHEREFORE, for the reasons stated herein, the Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court:

(a) enter an order providing that there is no just reason for delaying appeal of its Order of July 31, 2019; and/or

(b) entering an order stating that this Court’s Order of July 31, 2019, granting LT’s Motion for Reconsideration, involves questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation, and identifying the questions of law as:

1. Where the plaintiff, a governmental entity, is holding public funds in trust for public use by all the school districts in a Township, and the claims over those funds extend back up to approximately twenty years prior to the commencement of the suit, does an exception to the statute of limitations, as set forth in *School Directors of District No. 5 v. School Directors of District No. 1*, 105 Ill. 653 (1883) and *Board of Supervisors v. City of Lincoln*, 81 Ill. 156 (1876), apply?

2. Where the plaintiff, a governmental entity, is asserting claims concerning public funds, which extend up to approximately twenty years prior to the commencement of suit, does the “public right” exception to the statute of limitations, as held by the Illinois Supreme Court in *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428 (1989) and *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457 (1983), apply?

and should this Court grant either relief,

(c) enter an order staying further proceedings in this action while such interlocutory appeal is pending, or until further order of this Court,

along with providing such other relief as may be appropriate or necessary.

Respectfully submitted,

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

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

William J. Quinlan
wjq@quinlanfirm.com
Gerald E. Kubasiak
gekubasiak@quinlanfirm.com
Gretchen M. Kubasiak
gmkubasiak@quinlanfirm.com
The Quinlan Law Firm, LLC
231 S. Wacker Drive, Suite 6142
Chicago, Illinois 60606
(312) 212-8204
Firm No. 43429

Barry P. Kaltenbach
kaltenbach@millercanfield.com
Miller, Canfield, Paddock & Stone, P.L.C.
225 West Washington, Suite 2600
Chicago, Illinois 60606
(312) 460-4200
Firm No. 44233

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2019, I electronically filed PLAINTIFF’S MOTION TO CERTIFY INTERLOCUTORY APPEAL UNDER ILLINOIS SUPREME COURT RULE 304(a) AND/OR RULE 308; AND TO STAY THIS MATTER PENDING SUCH APPEAL 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

EXHIBIT

1

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. Sophia H. Hall

Calendar 14

VERIFIED AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, by its undersigned counsel, KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C., for its Verified Amended Complaint for Declaratory Relief against the defendant, Lyons Township High School District No. 204, states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Township Trustees”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange Park, Cook County, Illinois.

2. Defendant, Lyons Township High School District No. 204 (“District 204”), is a corporate entity organized under the laws of the State of Illinois with its principal office in LaGrange, Cook County, Illinois.

3. District 204 is subject to the personal jurisdiction of this Court because it is an entity organized under the laws of the State of Illinois.

FILED DATE: 8/7/2019 1:07 PM 2013CH23386

4. Venue is proper in Cook County because District 204 has its principal office in Cook County and because the transactions, or some part thereof, out of which the cause of action alleged herein arose occurred in Cook County.

THE ROLE OF THE TOWNSHIP TRUSTEES AND TREASURER

5. Pursuant to the Illinois School Code, 105 ILCS 5/1 *et seq.* (the “School Code”), and more particularly Section 8-1 thereof, the Township Trustees, who are elected by and responsible to the voters within Lyons Township, have appointed the Lyons Township School Treasurer (the “Treasurer”) to serve as the statutorily-appointed treasurer for the school and other educational districts within Lyons Township for which the Township Trustees are responsible.

6. These school and other educational districts for which the Township Trustees are responsible, and for which the Treasurer provides financial services, include District 204 and: Western Springs School District 101; LaGrange School District 102; Lyons School District 103; Cook County School District 104; LaGrange School District 105; Highlands School District 106; Pleasantdale School District 107; Willow Springs School District 108; Indian Springs School District 109; Argo Community High School District 217; LaGrange Area Department of Special Education, which serves students from fifteen area school districts; Intermediate Service Center #2, which serves forty school districts in western Cook County; Lyons Township Elementary School District Employee Benefits Cooperative; and the Lyons Township Elementary School District Employee Benefits Cooperative.

7. The above school districts contain thirty-eight schools servicing almost 20,000 students.

8. The districts within Lyons Township comprise a Class II county school unit within the meaning of the School Code.

9. The duties of the Township Trustees and the Treasurer are set out in Articles 5 and 8 of the School Code, respectively.

10. As alleged more specifically herein, the obligation of the Treasurer is, in pertinent part, to take custody of public funds for the benefit of the districts it serves (with such funds coming from property taxes and other sources), invest those funds for the benefit of these districts, and pay such amounts to those persons and entities as it is lawfully instructed to pay by the districts it serves, whether such payments are for payroll or other purposes.

11. The obligation of the Treasurer to serve the financial needs of these districts, including managing the public funds upon which they depend and paying their bills, enables the districts to fulfill one of the most important public obligations of government: the obligation to educate. It is the public policy of the State of Illinois, as expressed through Article X, Section I of its Constitution, that “[a] fundamental goal of the People of the State is the educational development of all persons to the limits of their capabilities.”

12. Pursuant to Section 8-17 of the School Code, the Treasurer is to receive public funds, including property taxes, and hold those funds for the benefit of the school and other educational districts it serves in furtherance of their obligation to provide for the education of students within Lyons Township.

13. Pursuant to Section 8-7 of the School Code, the Treasurer is, “the only lawful custodian of all school funds.”

14. Section 8-6 of the School Code requires that the Treasurer “have custody of the school funds and shall keep in a cash book separate balances.”

15. In accordance with Section 8-6, the Treasurer is required to maintain cash balances, by fund, for each district which it serves and the Treasurer is obligated to reconcile such balances with the respective cash balances shown by each district.

16. Section 8-17 of the School Code also imposes upon the Treasurer the responsibility for all receipts, disbursements, and investments arising out of the operation of all the school districts being served by the Treasurer.

17. With respect to paying such amounts as each district may owe, Section 8-16 of the School Code requires that the Treasurer make payment on behalf of the districts it serves out of the funds allocated to such districts, but “only upon an order of the school board signed by the president and clerk or secretary or by a majority of the board”

18. Sections 10-18 and 10-20.19 of the School Code provide further detail as to the procedure to be followed in submitting the above orders for payment. The form of order is specifically provided for in Section 10-18.

19. Section 10-20.19 also allows a board to choose to substitute a certified copy of the portions of the board minutes, properly signed by the secretary and president, or a majority of the board, showing all bills approved for payment by the board and clearly showing to whom, and for what purpose each payment is to be made by the Treasurer, and to what budgetary item each payment shall be debited. That certified copy provides “full authority” to the Treasurer to make the payments. A voucher system may also be used so long as it provides the same information.

20. In order to make payments as lawfully instructed by the districts which it serves, the Treasurer utilizes what are called “Agency Accounts” at local banks.

21. When a district has provided lawful instruction to the Treasurer to issue payment, the Treasurer effectuates the payment drawing on the appropriate Agency Account.

22. Agency Accounts are funded by transfer from other accounts in the custody of the Treasurer and maintained and utilized by the Treasurer to hold funds belonging to multiple districts and for which there is not an immediate need. The funds in the Agency Account, both before and after they arrive in the Agency Account, remain in the custody of the Treasurer.

23. The districts do not have signatory power on the Agency Accounts, with the exception of certain revolving and flex-spending accounts not at issue in this litigation. The Treasurer has signatory power on the Agency Accounts.

**DISTRICT 204'S FAILURE TO PAY FOR ITS *PRO RATA* SHARE OF THE
TREASURER'S OPERATIONAL EXPENSES**

24. The Treasurer has its own costs to run its office and provide its financial services to the districts it serves, including the Treasurer's compensation and expenses of the Treasurer's office. The Treasurer pays these operating expenses from its General Fund, which is funded through each district's Agency Account as alleged more fully below.

25. Section 8-4 of the School Code requires that each district "shall pay a proportionate share of the compensation of the township treasurer serving such district or districts and a proportionate share of the expenses of the treasurer's office."

26. Pursuant to Section 8-4 of the School Code, each district's *pro rata* share "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 . . . district."

27. This statutory formula obligates the districts with the most money to pay the largest proportion of the costs. For example, if a district is allocated twenty-five percent of all public funds handled by the Treasurer, then it is required by the School Code to pay twenty-five percent of the Treasurer's operating expenses.

28. This statutory formula is mandatory and can only be changed by the General Assembly. No district may unilaterally decide it does not wish to pay its *pro rata* share, nor may any private agreements be made between public bodies in violation of the School Code. A district is required to pay the amount calculated and has no statutory authority to deduct any of its own expenses from its *pro rata* share it owes.

29. In accordance with the statutory requirements of the School Code, on an annual basis the Treasurer determines District 204's *pro rata* share of the Treasurer's operation expenses and submits an invoice to District 204 for payment thereupon.

30. As alleged more particularly above, in order for District 204 to pay these invoices, District 204 would lawfully issue an order or voucher to the Treasurer for payment (or submit a certified copy of the school board minutes approving payments). The Treasurer would then transfer, via check, the funds from the appropriate Agency Account to its General Fund.

31. Prior to fiscal year 2000, District 204 paid the full amount of the invoices submitted for its *pro rata* share.

32. In fiscal years 2000 through 2002, the Treasurer submitted invoices totaling \$538,431 to District 204 for its *pro rata* share. For these fiscal years, however, District 204 paid only \$157,262 for its *pro rata* share.

33. In fiscal years 2003 through 2013, the Treasurer submitted invoices totaling \$2,397,189 to District 204 for its *pro rata* share. District 204, however, failed to pay any portion of the amount it owed, except for one payment of \$149,551.

34. District 204's payment of \$149,551 was for fiscal year 2013 and was made on October 8, 2014, after Township Trustees filed its original Verified Complaint for Declaratory Relief and while Township Trustees were in the process of drafting this Verified Amended

Complaint for Declaratory Relief. District 204's payment was drawn from an Agency Account at the First National Bank of La Grange.

35. In total, for fiscal years 2000 through 2013, the amount of District 204's unpaid *pro rata* share totals \$2,628,807, taking into account the payment just received.

36. District 204's failure to pay its *pro rata* share in full has created a deficit. As custodian for the districts, the Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

37. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts the Treasurer serves will not suffer harm.

THE ERRONEOUS ALLOCATION OF INTEREST TO DISTRICT 204

38. Sections 8-7 and 8-8 of the School Code govern the depositing and investing of school funds.

39. Pursuant to Section 8-7, the Treasurer is “permitted to (i) combine moneys from more than one fund of a single school district for the purpose of investing such funds, and (ii) join with township and school treasurers, community college districts and educational service regions in investing school funds, community college funds and educational service region funds.”

40. Section 8-7 of the School Code further provides, “When moneys of more than one fund of a single school district are combined for investment purposes or when moneys of a school district are combined with moneys of other school districts, community college districts or educational service regions, the moneys combined for such purposes shall be accounted for

separately in all respects, and the earnings from such investment shall be separately and individually computed and recorded, and credited to the fund or school district, community college district or educational service region, as the case may be, for which the investment was acquired.”

41. Pursuant to the authority of the School Code, the Treasurer comingles funds for investment purposes from the districts it serves and allocates the interest earned on these investments among the districts.

42. The Treasurer allocates interest on a quarterly basis or as more frequently as is appropriate.

43. When the Treasurer allocates interest to a particular district (and when the Treasurer allocates the principal amongst the comingled funds) the Treasurer does so by making a journal entry. The Treasurer, in essence, makes an entry in its records that the district has been allocated a certain amount of interest generated by the comingled funds. The Treasurer does not write a check to the district, or otherwise physically turn custody of the interest over to the district. The interest stays in the custody of the Treasurer.

44. In fiscal years 1995 through 2012, the Treasurer erroneously allocated \$1,574,636.77 in interest on investments to District 204.

45. This over-allocation to District 204 necessarily means that the other districts which the Treasurer serves have been correspondingly under-allocated investment income. The Treasurer has not incurred a loss – the other fourteen districts it serves have incurred a loss to the detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

46. To the extent District 204 has been over-allocated this interest, it means the other districts have necessarily been under-allocated interest. The Treasurer anticipates that once this interest is able to be properly reallocated among the districts, as examples, LaGrange School District 102 would get allocated approximately \$265,626 in interest and Argo Community High School District 217 would get allocated approximately \$319,077 in interest.

47. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of reallocating interest so that the other districts it serves will not suffer harm.

DISTRICT 204'S NON-PAYMENT OF ITS OWN AUDIT EXPENSES

48. Article 3, Section 7 of the School Code requires that each school district have an audit of its accounts completed at least once a year by a person who is lawfully qualified to practice public accounting in Illinois. Further requirements regarding a school district's obligation to undertake annual audits are included in the Illinois Administrative Code.

49. These audits are ordered by and undertaken for the benefit of each individual district. Each individual district is, therefore, obligated to pay for its own audit expenses. Typically, the auditing firm that each district elects to use submits an invoice to that district and the district arranges for such invoice to be paid in the same way the district would arrange for any other account payable to be paid.

50. Thus, the district would ordinarily issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the Treasurer would sign a check prepared by the district and drawn on that district's Agency Account.

51. Between 1993 and 2012, District 204 engaged Baker Tilly and/or its predecessor-in-interest to provide these audit and other professional services, including, but not limited to, preparation of audited financial statements and independent auditor's reports.

52. District 204's auditors sent their invoices to District 204.

53. Between 1993 and 2012, each district except District 204 paid for its audit through their Agency Account. The Treasurer did not pay for the districts' audits from its General Fund.

54. Between 1993 and 2012, however, the Treasurer improperly advanced money from its General Fund and paid \$511,068.60 for District 204's audit expenses.

55. The Treasurer has requested that District 204 reimburse the costs of District 204's audit expenses from 1993 to 2012, but District 204 has failed and refused to do so.

56. Since 2012, District 204 has paid its own audit expenses.

57. Because the Treasurer's General Fund is funded by the *pro rata* payment of all of the districts the Treasurer serves, the practical effect of District 204's failure and refusal to pay for its own audit expenses is that all of the other districts have to absorb the cost of District 204's audits.

58. In order to reimburse the Treasurer, District 204 would need only issue a lawful order or voucher (or submit a certified copy of the school board minutes approving payment) and the funds would be taken from District 204's Agency Account. The funds at issue remain and have always been within the Treasurer's custody.

59. The Treasurer has not incurred a loss through District 204's failure and refusal to pay for its own audit expenses – the other fourteen districts it serves have incurred a loss to the

detriment of the thirty-eight schools and nearly twenty thousand school children that they are charged with educating.

60. Because of its statutory obligations all of the districts it serves, the Treasurer brings this action seeking declaratory relief for the public purpose of recovering payment from District 204 so that the other districts it serves will not suffer harm.

THE TOWNSHIP TRUSTEES SEEK A DECLARATORY JUDGMENT

61. An actual controversy exists between Township Trustees and District 204 with respect to the disputes alleged herein and, by the terms and provisions of Section 2-701 of the Code of Civil Procedure, this Court is vested with the power to declare and adjudicate the rights and liabilities of the parties hereto and to grant such other and further relief as it deems necessary under the facts and circumstances presented.

WHEREFORE, Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully prays that this Court enter a declaratory judgment in its favor and against the Defendant, Lyons Township High School District No. 204 and that this Court make the following findings as a matter of law:

A. Under Section 8-4 of the School Code, District 204 is required to pay its *pro rata* share of the Treasurer's compensation and expenses;

B. Between 2000 and 2013, District 204 has failed to pay its *pro rata* share of the Treasurer's compensation and expenses as required by Section 8-4 of the School Code; District 204's unpaid share of its *pro rata* share of the Treasurer's compensation and expenses for fiscal years 2000 through 2013 is \$2,628,807, or such other amount as may be proven at trial;

C. The Township Trustees are authorized to have the Treasurer debit \$2,628,807, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to

District 204, or from funds otherwise allocated to District 204, in payment of District 204's *pro rata* share of the Treasurer's compensation and expenses incurred during fiscal years 2000 through 2013;

D. In the fiscal years 1995 through 2012, District 204 was erroneously allocated \$1,574,636.77, or such other amount as may be proven at trial, of interest on investments to which it was not entitled

E. The Township Trustees are authorized to reallocate the \$1,574,636.77 erroneously allocated to District 204 and properly allocate that sum amongst the districts;

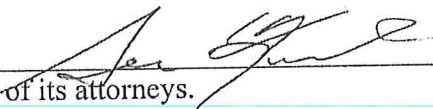
F. District 204 is obligated to pay \$511,068.60, or such other amount as may be proven at trial, in audit expenses that were incurred by the audits that District 204 performed and that was paid by the Treasurer from the Treasurer's General Fund;

G. The Township Trustees are authorized to have the Treasurer debit \$511,068.60, or such other amount as may be proven at trial, from an Agency Account holding funds allocable to District 204, or from funds otherwise allocated to District 204, in payment of District 204's audit expenses; and

H. Such other findings as may be equitable and appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST


By: 
One of its attorneys.

Gerald E. Kubasiak
gekubasiak@kftrlaw.com
Barry P. Kaltenbach
bkaltenbach@kftrlaw.com
Gretchen M. Kubasiak
gmkubasiak@kftrlaw.com
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.
20 South Clark Street, 29th Floor
Chicago, Illinois 60603
(312) 630-9600 (Phone)
(312) 630-7939 (Facsimile)
Firm No. 48237
Service by e-mail will be accepted.

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Declaratory Relief are true and correct.

Dated: 10-21-14



Michael Thiessen, on behalf of Plaintiff

EXHIBIT

2

IN THE CIRCUIT COURT OF COOK COUNTY
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 HIGH SCHOOL)
DISTRICT 204,)
)
Defendant and Counter-Plaintiff.)
)

ORDER

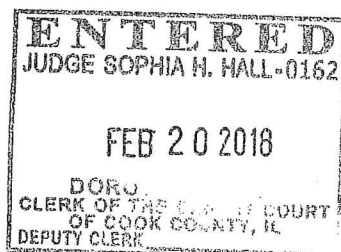
This matter coming to be heard on Defendant Lyons Township High School's ("LT's") Motion for Partial Summary Judgment on the Statute of Limitations Issue, the matter being fully briefed and fully argued by both sides before the Court, IT IS ORDERED:

1. Defendant LT's Motion for Partial Summary Judgment, for the reasons that the Court stated in its oral ruling issued today in open Court, is denied. *without prejudice to proof to be presented at trial.*
2. This case is continued for a status hearing on March 20, 2018, at 9:30 a.m.
3. The ruling date set for March 16, 2018, at 11:00 a.m. is stricken.

By:

Prepared By:

Jay R. Hoffman (Atty. No. 34710)
Hoffman Legal
20 North Clark St., Ste. 2500
Chicago, IL 60602
(312) 899-0899
jay@hoffmanlegal.com



EXHIBIT

3

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - CHANCERY DIVISION
 6 TOWNSHIP TRUSTEES OF SCHOOLS)
 7 TOWNSHIP NORTH, RANGE 12 EAST,)
 8)
 9 Plaintiff/Counter-Defendant,)
 10)
 11 vs.) No. 13 CH 23386
 12)
 13 LYONS TOWNSHIP HIGH SCHOOL)
 14 DIST. 204,)
 15)
 16 Defendant/Counter-Plaintiff.)
 17)
 18 REPORT OF PROCEEDINGS at the motion of
 19 the above-entitled cause before the Honorable
 20 SOPHIA H. HALL, Judge of said Court, at the
 21 Richard J. Daley Center, Room 2301, on the 20th
 22 day of February, 2018, at the hour of 11:00 a.m.
 23 Reported By: Gina M. Callahan, CSR
 24 License No.: 084-003623

1 THE COURT: Okay TTO versus Lyons.
 2 MR. HOFFMAN: Here, Judge. Jay Hoffman
 3 for the defendant LTSD.
 4 MR. KALTENBACH: Good morning. Barry
 5 Kaltenbach for plaintiff TTO and Gerald Kubasiak
 6 is also with me.
 7 THE COURT: Oh. He gave your name?
 8 MR. KUBASIKA: Yes.
 9 THE COURT: All right. The reason I
 10 called you in earlier is that I don't have a
 11 written opinion for you, but I do need to tell
 12 you what's going on with it, just so you have
 13 some idea where I think this is with respect to
 14 the Statute of Limitations.
 15 I'm going to deny the motion for
 16 Statute of Limitations without prejudice because
 17 I think there is some factual matters that may
 18 have a bearing on whether or not a Statute of
 19 Limitations will apply. And it may be that I
 20 just don't have that information and it is
 21 available somewhere else or not.
 22 So this was a motion for partial
 23 summary judgment of the Statute of Limitations
 24 issue. Usually that comes up in a Motion to

1 APPEARANCES:
 2 MILLER, CANFIELD, PADDOCK AND STONE, P.C.
 3 BY: MR. BARRY P. KALTENBACH and
 4 MR. GERALD E. KUBASIAK
 5 Chicago, Illinois 60606
 6 (312) 460-4231
 7 kaltenbach@millercanfield.com
 8 kubasiak@millercanfield.com
 9 On behalf of the Township Trustees;
 10
 11 LAW OFFICES OF JAY R. HOFFMAN, by
 12 MR. JAY R. HOFFMAN
 13 20 North Clark Street, Suite 2500
 14 Chicago, Illinois 60602
 15 (312) 899-0899
 16 jay@hoffmanlegal.com
 17 On behalf of LTSD.
 18
 19
 20
 21
 22
 23
 24

1 Dismiss, but I understand why it didn't happen.
 2 So again repeating, the Court denies
 3 the motion without prejudice.
 4 So the factual issues arise around how
 5 the tax collections are handled. You kind of
 6 leapt into the middle of this, so there is a lot
 7 about just how the money is handled piece by
 8 piece by piece.
 9 So the township, I gather, collects the
 10 taxes. I gather that. Not a great deal of
 11 conversation. I did look at the statute and
 12 maybe I missed it, but the township collects the
 13 taxes. And then the township trustees, the
 14 school trustees, they have a treasurer who is
 15 designated to do all the money handling. And
 16 pursuant to statute, there are various
 17 provisions about how the money that's collected
 18 is to be managed and how the items are
 19 distributed, more in a conclusory fashion
 20 they're supposed to do this. So here's where
 21 the questions come up.
 22 So dealing with the investment income,
 23 the investment income apparently is -- and I'm
 24 going to use this as an analogy because it



<p>1 helped me. If the analogy doesn't fit what is 2 happening actually, then let me know. But I 3 think of the treasurer, and I'm going to talk 4 about the trustees as like a bank. They are -- 5 and they have custody like a bank has of monies 6 in their depositor's accounts. 7 So using that as the analogy, the bank, 8 as custodian of the money, has no trusteeship 9 duties as custodian and the depositors like -- 10 this is my understanding of it. And the</p>	<p>1 trust account happening. 2 All right. So now we get to what 3 remains is whether there is a public interest 4 exemption. Yes. And it would seem to me that 5 there is a public interest exemption because, 6 from what I can tell from how the monies are 7 moving, because the district's -- and this case 8 is kind of backwards in a way. But the monies 9 in the district accounts or however they're 10 being moved, the people have an interest in</p>
<p>11 depositors, like each of the districts, have 12 their own bank account. 13 So any money which is to be distributed 14 from the district's bank account is distributed 15 pursuant to the order of the account holder, the 16 district's. And the fact that the treasurer -- 17 let's just use the treasurer for the trustees is 18 a second signer on the account, it is just that 19 because, I guess, there is a real bank that has 20 the monies on deposit. Okay. So -- but the</p>	<p>11 them. So it would seem that whatever is going 12 to happen here, there is a public interest 13 exemption. So it would seem that that doesn't 14 apply based upon what I can see. The investment 15 income is of interest, and that's a different 16 kind of account. I don't know. More 17 information has to be had about that. 18 Then the operating expenses. How are 19 the operating expenses paid? It would seem that 20 the distribution of the operating expenses are</p>
<p>21 relationship between the treasurer and the 22 districts is over accounts that are depositing 23 into with the collections. 24 So then I'm asking myself how is the</p>	<p>21 connected to the whether or not the audit 22 payments to -- let me back up. 23 Moving to the audit expenses, the audit 24 expenses seem -- of Lyons Township seem to come</p>
<p>1 money moved around? So apparently, the statute 2 allows for the treasurer to take the agency 3 accounts and put them into one big account to 4 invest the monies, and then the treasurer will, 5 as the income comes in on the combined 6 investment account which contains the district's 7 money that has already been distributed to the 8 districts, then those monies are distributed. I 9 don't know if there is any trusting around that. 10 It doesn't -- and if it is a trust account, then 11 it would have to be very specific that there is 12 a trust. 13 Let me cut to the chase in a moment. I 14 don't see anything that indicates that the 15 treasurer is holding -- at this point holding 16 any money in trust subject to the treasurer's 17 discretion as to how they might spend things. 18 It just seems to me the treasurer is moving the 19 district's monies according to the statutory 20 requirements. So I'm not seeing that. 21 So that means the issue of the Statute 22 of Limitations, in my view, at this point is not 23 going to be resolved by saying the Statute of 24 Limitations doesn't apply because there is some</p>	<p>1 out of the operating income. And so if the 2 audit expenses were properly paid or not paid, 3 it would affect the percentages that were being 4 distributed from the operating income. Though 5 these two pots of money are treated separately, 6 they are connected, because I think that the 7 only question here is because the audit expenses 8 for Lyons Township is being paid out of -- is 9 being paid as a part of the operating expenses 10 of the treasurer's office, as such, then that 11 affects the portion that everybody is paying to 12 reimburse for the operating expenses. 13 I know this sounds a little confusing 14 as I'm expressing this, but that's because it is 15 not totally clear how the monies are traveling. 16 And in any event, with respect to the elements 17 of the public interest exception as is set up, 18 those elements seem to be based on -- and they 19 look like they are separate ones -- the effect 20 of the interest on the public, the handling of 21 that money does have an interest in the public 22 in terms of the monies available to address the 23 operation of the schools. Clearly, a connection 24 there, unlike the so-called insurance premium</p>



EXHIBIT

4

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Township Trustee

v.

Lyons Township H.S.

No. 13 CH 23386

ORDER

This matter coming to be heard on (1) LT's Motion for Reconsideration of LT's Motion for Partial Summary Judgment on the Statute of Limitations Issue; (2) TTO's motion for judgment as a matter of law on LT's Second Affirmative Defense: Statute of Limitations, and (3) TTO's Motion for Summary Judgment on LT's Claims and LT's Affirmative Defenses, IT IS ORDERED THAT:

1. LT's Motion for Reconsideration is granted; TTO's motion for judgment on statute of limitations defense is denied; and, the Court rules that the 5-year statute of limitations applies to the TTO's claims in this case per LT's motion.
2. TTO's motion for summary judgment on its claims and LT's affirmative defenses is denied without prejudice to proofs to be presented at trial.

34710
 Attorney No.:
 Name: Jay R. Hoffman
 Atty. for: Defendant LT
 Address: 20 N Clark St. Ste 2100
 City/State/Zip: Chicago IL 60602
 Telephone: 312-899-0899

3. The parties will appear in Court on August 8, 2019, 9:30 am for setting of trial.

ENTERED:

August 8, 2019, 9:30 am

Dated: for setting of trial.

Judge Thomas R. Mulroy, Jr.
 JUL 31 2019
 Circuit Court-1919

Judge's No.

FILED DATE: 8/7/2019 1:07 PM 2013CH23386