

FIRM I.D. NO. 42297

FILED-1

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

2013 APR 24 AM 11:40
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.

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

Plaintiff/Counter-Defendant,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendant/Counter-Plaintiff.

CLERK
DOROTHY BROWN

Case No. 13 CH 23386

Hon. Sophia H. Hall

Jury Trial Demanded

**LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204'S
FIRST AMENDED VERIFIED COUNTERCLAIM**

Defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 ("District 204"), asserts the following first amended verified counterclaim against plaintiff/counter-defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST (the "TTO"):

THE PARTIES

1. District 204 is a public school district organized under the laws of the State of Illinois, with a principal office located in LaGrange, Cook County, Illinois.
2. The TTO is a local public entity organized under the laws of the State of Illinois, consisting of three elected Trustees, a Treasurer, and support staff, with a principal office located in LaGrange Park, Cook County, Illinois.
3. District 204, at all times herein relevant, provided educational and extracurricular instruction and enrichment to thousands of students living in LaGrange, Western Springs, Burr Ridge, Countryside, Hodgkins, Indian Head Park, LaGrange Highlands, LaGrange Park, McCook, Brookfield, and Willow Springs.

BACKGROUND

4. The township trustee model under which the TTO operates no longer exists in the vast majority of Illinois townships.

5. The services the TTO provides to some member school districts overlap extensively with services school districts are providing, or are otherwise capable of providing for themselves, in a more efficient and effective manner.

6. The Trustees of the TTO are unsalaried and do not work full time in their capacity as Trustees.

7. Instead, the Trustees of the TTO select and supervise a salaried Treasurer.

8. The TTO's Treasurer carries out the day-to-day operations of the TTO and manages the Treasurer's office. The Treasurer supervises support staff and interfaces with member school districts regarding services the TTO provides.

9. During all times herein relevant up to 2012, Robert Healy ("Healy") served as the TTO's Treasurer.

10. The TTO's Trustees previously selected and supervised Healy as Treasurer.

11. During all times herein relevant up to 2012, the TTO's Trustees generally provided Healy with substantial discretion to conduct the business of the Treasurer's office.

12. During all times herein relevant up to 2012, the TTO's Trustees did not handle day-to-day communications with member school districts.

13. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, served as the TTO's main point of contact for member school districts regarding Treasurer's office activities.

14. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, was the TTO's primary point of contact with member school districts regarding the TTO's monthly, quarterly, and annual financial activities, including the preparation of *pro rata* share billing, investment interest distributions, and auditing expense payments for its member school districts.

15. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, attended numerous school board and committee meetings on behalf of the TTO.

16. During all times herein relevant up to 2012, Healy, as the TTO's Treasurer, prepared and provided the Trustees with written memoranda and other communications summarizing certain of his meetings with member school districts' school boards or committees.

17. Throughout the past several decades, TTO member school districts have voiced concerns to the TTO and its Treasurer that the TTO was charging member school districts for services the TTO was not providing, providing inefficiently or ineffectively, or was otherwise relying on member school districts to provide in whole or in part.

18. In addition to District 204, LaGrange School District 102, LaGrange School District 105, and the LaGrange Area Department of Special Education have all publicly expressed support for withdrawing from the TTO.

19. Prior to fiscal year 1999, District 204 has voiced concerns to the TTO on behalf of its stakeholders that the TTO has not provided services to District 204 commensurate with the *pro rata* expenses the TTO was charging District 204 for services on an annual basis.

20. Historically, since at least 1993, District 204 had been providing services for itself that the TTO otherwise would have provided on District 204's behalf, including accounts payable and payroll services.

21. The TTO, through its Treasurer, agreed it was appropriate to pay District 204's audit expenses, which the TTO would have incurred if it provided accounts payable and payroll services instead of District 204.

22. The parties' course of dealing since at least 1993 has demonstrated the TTO's agreement and obligation to pay for District 204's audit expenses arising from the services District 204 provided that benefitted the TTO.

23. Since 1993, any auditing expense payment the TTO made for services provided to District 204 involved the release of funds to a third-party auditing firm. The TTO no longer held those funds paid to the third-party auditing firm in trust once those payments were made.

24. On information and belief, the TTO previously included all member school district audit expenses in determining each member school district's *pro rata* share of annual operating expenses.

25. On information and belief, the TTO included such audit expenses in *pro rata* share invoices it submitted to District 204 during fiscal years 1993 through and including 2012.

26. District 204, at all times herein relevant, including fiscal years from 1999 through 2012, was still providing services the TTO otherwise would have provided, including accounts payable and payroll services.

27. District 204's concerns regarding overpayment and billing for services the TTO provided for other member school districts, but not District 204, were the subject of numerous meetings between District 204's school board, or committees thereof, and the TTO's Treasurer's office.

28. One such meeting occurred on May 28, 1999, between members of District 204's Finance Committee and Healy, who attended on behalf of the TTO, wherein District 204 Finance

Committee members voiced concerns that District 204 was not receiving 26% of the services the TTO delivered annually even though District 204's investment funds comprised 26% of the total investment funds the TTO managed.

29. At the May 28, 1999, meeting, the parties discussed various options for how to remedy the TTO's unnecessary duplication of District 204's services. One option discussed was the TTO and District 204 reaching agreement to ensure that the TTO was only charging District 204 for services the TTO actually provided to District 204.

30. At the May 28, 1999, meeting, the parties agreed that Healy, on behalf of the TTO, and Lisa Beckwith ("Beckwith"), District 204's Treasurer, on behalf of District 204, would work together over the summer of 1999 to prepare options for review regarding achieving equity in the services the TTO provided to District 204 as compared to certain other member school district.

31. The TTO and District 204 worked together over the summer of 1999 to develop options for review regarding achieving equity in the services the TTO provided to District 204.

32. On or about August 18, 1999, Healy, on behalf of the TTO, wrote to Beckwith that:

If the responsibilities for the Accounts Payable and Payroll production [of District 204] were to be returned to the School Treasurer's office it would mean higher operating costs for the Treasurer's office in the form of salaries and benefits for increased staff and higher related expenses to accommodate the increase in work load.

I would expect that when the Trustees of Schools takes into consideration these necessary increases, they would logically conclude that a partial funding by the Treasurer's office to cover District 204's costs for the business functions District 204 now performs would be reasonable. Especially in light of the fact that the Treasurer's office is currently performing the same business functions for the eleven other school districts.

33. Healy's August 18, 1999, correspondence included courtesy copies to the TTO's Trustees, who are mentioned in the correspondence.

34. On September 29, 1999, Healy, on behalf of and with the authority of the TTO, again met with District 204's Finance Committee.

35. At that September 29, 1999, meeting, Healy provided District 204's Finance Committee with information concerning charges District 204 was incurring that could properly be charged to the TTO.

36. Some of those charges discussed during the September 29, 1999, meeting included accounts payable, payroll, computer services staff, computer processing, reconciliation, the printing of checks, and other similar costs.

37. Healy represented to District 204's Finance Committee during the September 29, 1999, meeting that the TTO's Trustees had knowledge and were supportive of the proposal.

38. During the fall of 1999, the TTO and District 204 continued refining the agreement regarding the cost allocation of the TTO's and District 204's services.

39. On February 29, 2000, District 204 finalized the terms of their agreement. Thereafter, District 204 provided the TTO, through its Treasurer, with a list of responsibilities that would become the direct cost and responsibility of the TTO's office, including: (a) payroll and accounts payable bank reconciliation; (b) the cost of balancing monthly totals between the TTO and District 204; (c) the cost of printing checks and envelopes for accounts payable, payroll, imprest, and student activities; (d) auditing expenses; and (e) the annual salary and benefit costs for a District 204 Programmer Analyst, Accounts Payable Bookkeeper, and Payroll Bookkeeper.

40. As further evidence that the parties had reached an agreement, on February 29, 2000, District 204 advised the TTO that it would send an invoice to the TTO's Treasurer in May of 2000 with receipt of funds expected prior to the close of the fiscal year ending June 30, 2000.

41. The TTO, through its authorized agent, Healy, adopted and accepted the agreement on or around March 22, 2000, with the agreement being first applied to the 1999 fiscal year.

42. On information and belief, Healy had actual authority, either express or implied, on behalf of the TTO to enter into the agreement with District 204. On information and belief, Healy discussed the agreement relating to District 204's services with the Trustees, and the trustees approved the agreement prior to March 22, 2000. District 204 inquired about Healy's authority, and was repeatedly informed that Healy had discussed the agreement with the TTO's Trustees, that the TTO's Trustees had knowledge of the nature and details of the agreement, and that they supported and approved it. In addition, the TTO's Trustees were copied on letters or memoranda Healy exchanged with District 204 regarding the negotiations and the details of the agreement.

43. On information and belief, the TTO's Trustees, after approving the agreement, delegated authority to Healy to enter into, and perform under, the agreement on behalf of the TTO. The parties' course of dealing over the ensuing years confirmed Healy's actual authority and the TTO's Trustees' ratification and approval of the agreement.

44. On information and belief, the TTO's Trustees authorized Healy to enter into many other agreements on behalf of the TTO throughout Healy's employment as Trustee.

45. The TTO's unreasonable delay in filing any claim against District 204 has caused District 204 extreme prejudice, including prejudice due to the passage of time, the fading of

witnesses' memories, and the unavailability of documents and other information that would have existed had the TTO acted with reasonable diligence and brought its claim in a timely manner.

46. In the alternative, the TTO's Trustees purposely and intentionally cloaked or provided Healy, as the TTO's Treasurer and the primary interface for communications between the TTO and District 204, with apparent authority to enter into the agreement with District 204. Based on the prior course of conduct relating to Healy's authority and representations alleged herein, District 204 reasonably believed Healy had apparent authority to act on behalf of the TTO in negotiating and assenting to the agreement with District 204.

47. District 204 reasonably relied on Healy's representations, as agent of the TTO, regarding the parties' agreement, and substantially changed its position by not making changes in staffing, by not adjusting its annual budgets, by approving other expenditures, and by not taking steps to withdraw from the TTO.

48. No statute or ordinance restricted or prohibited the parties from entering into the agreement.

49. The parties acted in accordance with this agreement for more than twelve years.

50. During each of those years, District 204 provided the TTO with a detailed breakdown of expenditures District 204 incurred in performing services the TTO otherwise would have had to perform.

51. The TTO reviewed and accepted that breakdown each year, and District 204 was permitted to offset these expenditures against its annual *pro rata* share of the TTO's expenses.

52. Had District 204 not performed these services, the TTO would have incurred increased salary, benefit, supply, and vendor costs in order to perform those services on District

204's behalf, which would have resulted in additional costs to the other TTO member school districts.

53. District 204 performed the agreed services in a manner that was more efficient and cost effective for taxpayers than if the TTO had performed those services on District 204's behalf.

54. In the years District 204's *pro rata* share of the TTO's expenses exceeded the value of the services District 204 performed on behalf of the TTO, District 204 caused its funds to be paid to the TTO to cover the remaining portion of its fair share of *pro rata* expenses.

55. In the years the value of the services District 204 performed on behalf of the TTO exceeded District 204's fair share of *pro rata* expenses of the TTO, District 204 would not owe the TTO any additional payment for *pro rata* expenses for that year.

56. Through providing services, and, when appropriate, causing payments to be made to the TTO, District 204 funded its complete *pro rata* share of the TTO's expenses each and every year through the fiscal year ending June 30, 2012.

57. The parties' course of dealing each year for more than twelve years confirmed the terms of their agreement, as well as their understanding, approval, and meeting of the minds regarding this agreement at all times herein relevant.

58. Pursuant to 105 ILCS 5/5-20, at all times herein relevant, the TTO was obligated, "[a]t each regular meeting, and at such other meetings as they may think proper," to "examine all books, notes, mortgages, securities, papers, moneys and effects of the corporation, and the accounts and vouchers of the township treasurer or other township school officer, and shall make such order for their security, preservation, **collection, correction of errors**, if any, and for their proper disposition, as may be necessary" (emphasis added).

59. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that the parties' agreement regarding audit expenses and *pro rata* share payments was terminated.

60. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 of any dispute regarding the parties' agreement regarding audit expenses and *pro rata* share calculations, offsets, or payments.

61. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer attempt to collect any amounts past due from District 204 for audit expenses or *pro rata* share calculations, offsets, or payments.

62. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer notify District 204 of any error regarding audit expenses or *pro rata* share calculations, offsets, or payments.

63. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that the TTO or its Treasurer's office was disputing any payment by or offset to District 204.

64. At no time during the 1993 through 2012 fiscal years did the TTO or its Treasurer inform District 204 that any auditor for the TTO had questioned or disputed any aspect of the parties' agreement regarding audit expenses and *pro rata* share calculations, offsets, or payments.

65. At no time from 1993 through 2012 did the TTO provide any written objection to District 204 regarding its audit expenses or *pro rata* share calculations, offsets, or payments.

66. At no time from 1993 through 2012 did the TTO provide any verbal objection to District 204 regarding its audit expenses or *pro rata* share calculations, offsets, or payments.

67. At no time from 1993 through 2012 did the TTO file any legal or quasi-legal claim against District 204 regarding its audit expenses or *pro rata* share calculations, offsets, or payments.

68. Pursuant to 105 ILCS 5/17-1, *et seq.*, District 204 examined its finances and passed annual budgets in reliance on the parties' agreement.

69. Healy resigned as the TTO's Treasurer on or about August 31, 2012.

70. It was discovered, after a 2012 investigation by the Better Government Association—not through any initiative of the TTO's Trustees—that Healy had improperly siphoned funds from the Treasurer's office for unearned sick, vacation, and personal days, among other improper allocations.

71. Healy's misappropriation of funds the TTO collected from member school districts, including District 204, over a number of years totaled over \$1 million.

72. One of the TTO's three Trustees resigned after the reporting of Healy's wrongdoing.

73. The TTO filed a civil suit against Healy in 2012, alleging he converted school district funds, breached his fiduciary duty to the TTO, and committed fraud with regard to certain transfers of school district funds from 2007 through 2011.

74. The TTO obtained a judgment against Healy in the civil suit on July 18, 2013, in the amount of \$908,400.62.

75. Healy was criminally charged in 2013 with the theft of over \$1 million in member school districts' funds from the TTO. Healy pled guilty to those charges on March 18, 2015, and was sentenced to nine years in prison.

76. District 204 had no knowledge of Healy's alleged criminal wrongdoing until after he resigned as Treasurer.

77. The TTO has recovered approximately \$1 million or more in fidelity bond proceeds and other insurance coverage relating to Healy's misappropriations of funds belonging to member school districts.

78. The TTO has not disbursed to member school districts, including District 204, the approximately \$1 million or more in payments received from fidelity bond proceeds and other insurance coverage.

79. The TTO has entered into a standstill agreement with its auditor, Baker Tilly Virchow Krause, LLP ("Baker Tilly"), wherein parties have agreed for a period of time not to file suit against each other and to waive any statute of limitations defense.

80. Baker Tilly or its predecessor firm served as the TTO's auditor during the relevant fiscal years up through and including 2012.

81. On information and belief, during that time period, the TTO billed member school districts, including District 204, for purported *pro rata* share expenses not permitted by law.

82. For example, the TTO billed member school districts for thousands of dollars in services provided by a public relations firm. Those services were solely for the benefit of the elected Trustees of the TTO, and were not authorized under Illinois law.

83. The TTO also spent thousands of dollars on investment advisors whose services, on information and belief, were duplicative, unnecessary, and not authorized under Illinois law.

84. In addition, the TTO has failed to provide member school districts, including District 204, with documentation detailing the nature, amount, and need for each expense included in the TTO's *pro rata* share billings for fiscal years 1999 through 2012.

85. Furthermore, the TTO did not implement any budget for the relevant fiscal years up to and including 2012.

COUNT I
(BREACH OF CONTRACT)

86. District 204 repeats and realleges paragraphs 1 through 85 above as this paragraph 86 of Count I as though fully set forth herein.

87. District 204 and the TTO entered into a valid, binding, and enforceable agreement in place during fiscal years 1999 through 2012 regarding the calculation of District 204's *pro rata* share of the expenses of the TTO.

88. District 204 and the TTO had a meeting of the minds regarding the terms of the parties' agreement.

89. District 204 relied on Healy's actual and apparent authority as Treasurer, under the supervision of the TTO, to negotiate, enter into, and perform under the agreement.

90. District 204 fully performed all of its obligations under the parties' agreement during each and every fiscal year herein relevant.

91. District 204 performed millions of dollars in services during fiscal years 1999 through 2012 on behalf of the TTO, which services the TTO otherwise would have performed on District 204's behalf.

92. As such, District 204's performance of the parties' agreement saved the TTO member districts millions of dollars in expenses during the life of the agreement.

93. During fiscal years 1999 through 2012, the financial value of the services District 204 provided pursuant to its agreement with the TTO exceeded the amount of District 204's purported *pro rata* share of the TTO's expenses by hundreds of thousands of dollars. The TTO has not paid that amount to District 204.

94. The TTO purported to terminate its agreement with District 204 on or about April 19, 2013.

95. The TTO breached the terms of the parties' agreement in one or more of the following ways:

- a. Failed to provide District 204 with timely notice of any termination of the agreement;
- b. Failed to provide District 204 with offsets toward its annual *pro rata* share of expenses; and
- c. Otherwise failed to perform its obligations pursuant to the terms of the parties' agreement.

96. District 204 has suffered damages as a result of the TTO's breach of the parties' agreement, and will continue to suffer damages into the future.

97. Requiring District 204 now to pay past *pro rata* share or audit expenses notwithstanding the parties' agreements and prior course of dealing would cause tremendous harm to District 204's current operations and inflict negative consequences on District 204 taxpayers and students into the foreseeable future.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, prays for: (1) judgment in its favor and against plaintiff/counter defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) an award of damages in an amount to be determined at trial; (3) its costs; and (4) an order granting such further relief as the Court deems just and reasonable.

COUNT II
(DECLARATORY JUDGMENT)

98. District 204 repeats and realleges paragraphs 1 through 97 above as this paragraph 98 of Count II as though fully set forth herein.

99. During the fiscal years of 1995 to present, the TTO has been obligated to pay member school districts, including District 204, their proportionate share of pooled investment interest income.

100. During the fiscal years of 1995 to present, the TTO had no right to withhold investment interest income due and owing any member school district.

101. During the fiscal years of 1995 to present, the TTO had no right to spend or allocate investment interest income due and owing any member school district without that member's authorization.

102. During the fiscal years of 1995 to present, neither District 204, nor any other member district, had any control over the TTO's calculation and allocation of annual investment interest.

103. The TTO has, to date, not provided District 204 or, on information and belief, other member districts, with documents and information necessary to examine the TTO's financial activities generally, or to verify the accuracy of its interest payments to member school districts specifically.

104. On information and belief, at all times herein relevant, the TTO made interest payment allocations to member school districts based on an improper mathematical formula.

105. At all times herein relevant, any interest payment the TTO made to a member school district, including District 204, involved the release of those funds by the TTO to the member school district for its discretionary use.

106. At all times herein relevant, any interest payment the TTO made to a member school district, including District 204, involved the release of those funds by the TTO to the member school district, such that those funds were no longer in the TTO's custody and control.

107. Notwithstanding the TTO's obligation to pay proper investment interest to member school districts, at all times herein relevant, the TTO has underpaid or not paid District 204 interest it is owed on hundreds of millions of dollars of District 204's investments.

108. Prior to Healy's resignation in 2012, the TTO never informed District 204 that the TTO had made any erroneous interest payment to District 204, and District 204 had no knowledge of any such erroneous payment.

109. The TTO claimed for the first time in 2013 that District 204 had previously received improper interest payments.

110. An actual controversy exists between the parties to this action regarding *pro rata* share payments and allocations, audit expense payments, and interest payments.

111. Pursuant to section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701), this Court is vested with the power to declare the rights and liabilities of the parties with respect to the matters alleged herein not otherwise triable by jury.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, prays for: (1) judgment in its favor and against plaintiff/counter defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) a declaratory judgment in District 204's favor and against the TTO, finding that: (a) the parties' contractual agreements are valid and enforceable; (b) the TTO is obligated to reimburse District 204 for the amount by which the value of District 204's services exceeded its fair share of the TTO's Treasurer's *pro rata* share expenses; (c) District 204 is not obligated to reimburse the TTO for audit expenses; (d) the TTO has underpaid District 204 its investment interest currently due and owing; (e) the TTO must pay District 204 its proportionate share of fidelity bond and insurance proceeds received in relation to Healy's purported misconduct; and (f) the TTO must

reimburse District 204 for improper expenditures of the TTO's Treasurer's office, including but not limited to public relations firm and duplicative investment advisor services; and(3) an order granting such further relief as the Court deems just and reasonable.

COUNT III
(ACCOUNTING)

112. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 112 of Count III as though fully set forth herein.

113. District 204 placed trust and confidence in the TTO by, among other things, entrusting it and its Treasurer with access to school district funds and authorizing them to engage in certain financial transactions. As a result of that trust and confidence, the TTO has a special or fiduciary relationship with its member school districts, including District 204.

114. The TTO has acknowledged, including in correspondence dated October 16, 2013, that it is a fiduciary and owes fiduciary duties to member school districts, including District 204.

115. As such, the TTO is required to act in good faith and in the best interests of its member school districts, including District 204, when incurring expenses, preparing and submitting *pro rata* share invoices, accounting for the funds of member school districts, calculating interest, making interest payments, and making other financial decisions that affect member school districts.

116. At all times herein relevant, the TTO had an obligation to track and record its financial-related activities properly and to keep proper business records to allow each member school district, including District 204, to determine the accuracy of the TTO's representations regarding funds belonging to each member and to make decisions regarding how to allocate those funds.

117. On information and belief, as a result of the TTO's mismanagement and failed oversight, it invoiced and received purported *pro rata* share funds from District 204 relating to expenses the TTO was not legally entitled to incur or charge to member school districts. District 204 also believes that the TTO has failed to pay District 204 proper interest earnings on millions of dollars in investments.

118. Despite numerous requests, the TTO has failed to provide District 204 with requested financial data to verify or refute its claims. Without such information, including books and records, District 204 cannot ascertain what it is owed or the validity of the TTO's alleged claims.

119. Much of the financial data in the TTO's possession is cryptically stored on a database the TTO created and continues to operate using specialty software. The TTO is the only party with knowledge of, and access to, the vast financial contents of that database.

120. District 204 has demanded from the TTO the books, records, and data necessary for conducting an accounting for the period of January 1, 1993 through the present, but the TTO has refused to turn over those books and records.

121. District 204 has requested that the TTO provide a full accounting for the period of January 1, 1993 through the present, but, to date, the TTO has failed to provide the requested accounting.

122. Instead, the TTO has only directed District 204 to public financial statements, which do not provide the data necessary for conducting a complete accounting, including all backup documents and the financial data located on the TTO's financial database.

123. District 204 propounded requests to admit facts on the TTO in an attempt to learn additional information about the basis of the TTO's claims, but the TTO refused to admit or deny many of those requests, claiming that it lacked knowledge.

124. On information and belief, the TTO has never conducted a forensic audit of the books and records that form the basis of its claims in this action, as reflected by its changes in position regarding the amounts the TTO claims District 204 owes it.

125. For example, the original complaint the TTO filed claimed District 204 owed a *pro rata* share payment of \$2,583,531.68, while the amended complaint sought \$2,628,807 in *pro rata* share payments (a difference of \$45,275.32).

126. Similarly, the TTO's original complaint claimed the TTO overpaid interest to District 204 in the amount of \$1,380,496.53, while the amended complaint alleged the interest overpayment was \$1,574,636.77 (a difference of \$194,140.24).

127. The TTO represented to District 204 on March 8, 2013, and again on April 19, 2013, that District 204 owed the TTO audit fees of \$285,900.91, while it later claimed, on October 16, 2013, that District 204 owed audit fees of \$471,147.85 (a difference of \$185,246.94).

128. The original complaint the TTO filed on October 16, 2013, alleged District 204 owed audit fees of \$473,174.85, while the TTO's amended complaint now alleges the amount due is \$511,068.60 (a difference of \$34,893.75).

129. Because the books, records, and other data relating to the TTO's financial activities affecting District 204 are exclusively within the control of the TTO, District 204 has an inadequate legal remedy in that it cannot evaluate the TTO's claims or determine the amount of damages it has suffered as a result of the TTO's misconduct.

130. District 204 is unable to evaluate the merits of the TTO's claims at this time because it does not have necessary and sufficient access to the TTO's books, records, databases, and communications with the TTO's accountants as permitted by law.

131. On information and belief, an accounting would reveal that the TTO owes District 204 hundreds of thousands of dollars relating to *pro rata* share, investment interest payments, and insurance payments.

132. District 204 respectfully requests that the Court enter an order requiring the TTO to make a strict accounting of all assets it holds, all investments it has made, all interest payments it has made to member school districts, all *pro rata* share expenses it has invoiced, and all expenses it has paid that in any way have affected District 204, from January 1, 1993 through the present.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, respectfully requests that this Court enter an order: (1) requiring plaintiff/counter-defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST, to make a strict accounting of all assets it holds, all investments it has made, all interest payments it has made to member school districts, all *pro rata* share expenses it has invoiced, and all expenses it has paid that in any way have affected District 204, from January 1, 1993 through the present; and (2) granting such further relief as the Court deems just and reasonable.

COUNT IV
(QUANTUM MERUIT – PLED IN THE ALTERNATIVE)

133. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 133 of Count IV as though fully set forth herein.

134. In the alternative, should the TTO contend the parties did not enter into an express contract or agreement as discussed above, District 204 performed services to benefit the TTO.

135. District 204 did not perform the services to benefit the TTO gratuitously.

136. The TTO accepted District 204's services.

137. To the extent it is deemed that the parties did not enter into a valid contract, no contract exists to prescribe payment for District 204's services.

138. It would be unjust to allow the TTO to retain the benefit of District 204's services without compensating District 204 for those services.

76. The TTO is legally obligated to reimburse District 204 in the amount of the reasonable value of the services it provided that the TTO otherwise would have been obligated to perform on District 204's behalf.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, prays for: (1) judgment in its favor and against plaintiff/counter defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) an award of damages in an amount to be determined at trial; (3) its costs; and (4) an order granting such further relief as the Court deems just and reasonable.

COUNT V
(UNJUST ENRICHMENT – PLED IN THE ALTERNATIVE)

139. District 204 repeats and realleges paragraphs 1 through 109 above as this paragraph 139 of Count V as though fully set forth herein.

140. In the alternative, should the TTO contend the parties did not enter into an express contract or agreement as discussed above, District 204 performed services to benefit the TTO.

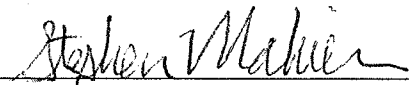
141. District 204 did not perform the services to benefit the TTO gratuitously.

142. The TTO accepted, was enriched by, and unjustly retained a benefit—namely, District 204’s services—to District 204’s detriment.

143. The TTO’s retention of that benefit violates the fundamental principles of justice, equity, and good conscience.

WHEREFORE, defendant/counter-plaintiff, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, prays for: (1) judgment in its favor and against plaintiff/counter defendant, TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST; (2) an award of damages in an amount to be determined at trial; (3) its costs; and (4) an order granting such further relief as the Court deems just and reasonable.

Respectfully submitted,

By: 
One of the Attorneys for Defendant/
Counter-Plaintiff, LYONS TOWNSHIP
HIGH SCHOOL DISTRICT 204

Dykema Gossett PLLC
10 S. Wacker Dr., Ste. 2300
Chicago, IL 60606
Firm ID No. 42297

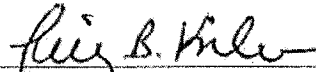
Charles A. LeMoine
clemoine@dykema.com
Tel.: (312) 627-2163
Fax: (866) 563-9208

Rosa A. Tumialán
rtumialan@dykema.com
Tel.: (312) 627-2139
Fax: (866) 491-6704

Stephen M. Mahieu
smahieu@dykema.com
Tel.: (312) 627-2170
Fax: (866) 570-5617

VERIFICATION

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



Lyons Township High School District 204

By: Dr. Timothy Kilrea

Its: Superintendent

Dated: 4/24/2015

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

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

Plaintiff/Counter-Defendant,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendant/Counter-Plaintiff.

2015 APR 24 AM 11:29

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.

CLERK

DOROTHY BROWN

Case No. 13 CH 23386

Hon. Sophia H. Hall

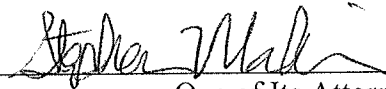
NOTICE OF FILING

TO: Barry P. Kaltenbach
Kubasiak Fylstra Thorpe & Rotunno, PC
Two First National Plaza, 29th Floor
20 South Clark Street
Chicago, IL 60603

PLEASE TAKE NOTICE that on April 24, 2015, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, **Lyons Township High School District 204's First Amended Verified Counterclaim**, a copy of which is served upon you.

LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204

By: _____

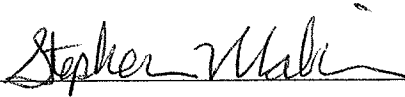


One of Its Attorneys

Charles A. LeMoine
clemoine@dykema.com
Rosa A. Tumialán
rtumialan@dykema.com
Stephen M. Mahieu
smahieu@dykema.com
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606
Telephone: (312) 876-1700
Firm I.D. No. 42297

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused copies of this Notice of Filing and the document referred to therein to be served upon the above-identified individual via U.S. Mail this 24th day of April 2015.

 _____