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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2013CH23386

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

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12)	
EAST,)	
)	No. 13 CH 23386
Plaintiff,)	
)	Judge Thomas R. Mulroy
vs.)	Commercial Calendar I
)	
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT NO. 204,)	
)	
Defendants.)	

PLAINTIFF'S MOTION TO RECONSIDER

Plaintiff, Lyons Township Trustees of Schools, Township 38 North, Range 12 East ("Trustees"), by the undersigned counsel, THE QUINLAN LAW FIRM, LLC and MILLER, CANFIELD, PADDOCK AND STONE, P.L.C., requests this Court reconsider earlier rulings with respect to three of the affirmative defenses asserted by Defendant, Lyons Township High School District No. 204 ("LT"), wherein this Court: (a) found that the five-year statute of limitations applies to the Trustees' claim for declaratory judgment, (b) denied the Trustees' motion for summary judgment on LT's affirmative defense of laches, and (c) denied the Trustees' motion to dismiss LT's affirmative defense asserting the voluntary payment doctrine. The Trustees request that this Court dismiss all three affirmative defenses because they are not applicable to a public body, such as the Trustees, in this action.

Alternatively, if this Court determines it cannot reach a determination as to laches and the voluntary payment doctrine as a matter of law, but instead requires a full trial on the merits before deciding on the applicability of such defenses, the Trustees request that based upon this same logic this Court reconsider its ruling applying the statute of limitations as a matter of law

and permit the Trustees to offer evidence at trial as to why the Trustees fit within exceptions to the statute of limitations as applied to public bodies. In support of this Motion, the Trustees state as follows:

I. ILLINOIS LAW AS APPLIED TO PUBLIC BODIES

Illinois courts have consistently exempted public bodies from, or applied special rules to, the application of legal theories such as waiver, estoppel, apparent authority, the voluntary payment doctrine, laches and the operations of statutes of limitation. The rationale for treating public bodies differently is generally stated by the Illinois Supreme Court and the Appellate Court as being that where public funds are at stake the public should not suffer because of the actions or inactions of public employees.

For example, in *City of Shelbyville v. Shelbyville Restorium, Inc.* 96 Ill. 2d 457, 459 (1983) and *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 472 (1989), the Supreme Court held that the statute of limitations was wholly inapplicable against public bodies where they were asserting a public right. The Supreme Court's rationale was that the public should not suffer because of the negligence of its officers and agents in failing to promptly assert causes of action.

For this same reason, the Supreme Court has expressed "considerable reluctance to impose the doctrine of laches to actions of public entities unless unusual or extraordinary circumstances are shown." *Van Milligan v. Board of Fire & Police Comm'rs*, 158 Ill. 2d 85, 90 (1994). This is because "laches may impair the functioning of [a public body] in the discharge of its government functions, and valuable public interests may be jeopardized or lost by negligence, mistakes, or inattention of public officials." *Id.*

The desire of Illinois courts to protect the public from the improper, unlawful or unauthorized actions of public employees means that public entities and the public employees

who represent them are not treated the same as entities and persons in the private sector. The Supreme Court has explained that if the unauthorized actions of public employees could bind public bodies, public bodies would be “helpless to correct errors” and “escape the financial effects of frauds and thefts by unscrupulous public servants....” *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 35-36.

For this reason, for example, the doctrine of apparent authority is wholly inapplicable to public employees; all persons dealing with public employees are charged with knowing the actual authority of that employee. *Id.* See also *Schivarelli v. CTA*, 335 Ill. App. 3d 93, 102 (1st Dist. 2005) (holding the failure of CTA employees to pursue payments over a fourteen-year period did not waive the rights of the CTA to recover payments long overdue).

One of the most basic principles of law is that where a person receives funds to which he had no legal right, equity and good conscience dictates that the funds must be returned. *Bd. of Ed. of City of Chicago v. Holt*, 41 Ill. App. 3d 625, 626 (1st Dist. 1976). For the repeated public policy reasons set forth above, courts in Illinois historically have permitted public bodies to recover funds to which a recipient did not have a legal right, regardless of private-sector defenses such as the voluntary payment doctrine. See, e.g., *City of Chicago v. McKechney*, 205 Ill. 375, 434-35 (1903) (holding City could recover overpayment under construction contract); *City of Chicago v. Weir*, 165 Ill. 582, 590-91 (1897) (holding same); *Deford-Goff v. Dept. of Pub. Aid*, 281 Ill. App. 3d 888, 892 (4th Dist. 1996) (permitting Department to pursue claim to recover overpayment); *Holt*, 41 Ill. App. 3d at 627 (holding Board could recover salary paid to retired teacher even though Board should have known that teacher resigned); see also *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 482, 493 (1994) (commenting without concern on the holding of *Holt*).

The concept that different rules of law apply to a public body's attempt to recover funds for the public good is not unique to Illinois. Courts in other jurisdictions have permitted public bodies to recover funds unlawfully paid to a recipient, even where a private plaintiff might have been unable to recover those same funds. *See, e.g., U.S. v. Wurts*, 303 U.S. 414, 415 (1938) (permitting recovery where a public official "wrongfully, erroneously, or illegally" paid public monies); *U.S. v. Lahey Clinic Hosp., Inc.*, 399 F.3d 1, 15 (1st Cir. 2005) ("government has broad power to recover monies wrongfully paid"); *Harrold v. Glickman*, 206 F.3d 783, 789 (8th Cir. 2000) ("common law permits the government to recover funds that its agents wrongfully or erroneously paid"); *Old. Rep. Ins. Co. v. Fed. Crop. Ins. Corp.*, 947 F.2d 269, 275 (7th Cir. 1991) (government has "common law right to recover improperly paid funds"); *U.S. v. Dekalb Cnty.*, 729 F.2d 738, 741 n.4 (11th Cir. 1984) ("voluntary payment of public money made by public officers under no mistake of fact is not the equivalent in law of such payment by an individual"); *DiSilvestro v. U.S.*, 405 F.2d 150, 155 (2d Cir. 1968) ("It is, of course, well established that parties receiving monies from the Government under a mistake of fact or law are liable *ex aequo et bono* to refund them...."); *State ex rel. Zoeller v. Aisin USA Mfg., Inc.*, 946 N.E.2d 1148, 1157 (Ind. 2011) (recouping public funds is handled differently than recouping private funds); *State ex rel. Callaway v. Axtell*, 393 P.2d 451, 454 (N.M. 1964) (explaining voluntary payment doctrine "is subject to an exception where public monies are involved"); *Arkansas Real Estate Co. v. Arkansas State Hwy. Comm'n*, 371 S.W.2d 1, 3 (Ark. 1963) ("that rule – of inability to recover a voluntary payment – does not apply to the State and its agencies."); *State ex rel. Jarrell v. Walker*, 117 S.E.2d 509, 512 (W. Va. 1960) ("there is a generally recognized exception to the [voluntary payment doctrine] where payment is made by a public officer"); *City of St. Louis v. Whitley*, 283 S.W.2d 490, 492 (Mo. 1955) ("case is not

governed by the general rules applicable to the conduct and transactions of private individuals” as it involves “public officials entrusted with the expenditure of public funds”); *Township of Normania v. Yellow Medicine Cnty.*, 286 N.W. 881, 883 (Minn. 1939) (doctrine “has no application to unauthorized payment of public funds”).

One or both parties have filed dispositive motions in this matter addressing each of LT’s affirmative defenses of the statute of limitations, laches and the voluntary payment doctrine. During the course of its rulings over a few months, this Court found as a matter of law that the Trustees did not fit within any of the “public body” exceptions to the statute of limitations, but this Court also found that it could not make any ruling as a matter of law with respect to laches or the voluntary payment doctrine. The Trustees submit this Court should find that none of these affirmative defenses are applicable to the Trustees attempts to recover millions of dollars for the direct benefit of the other public school districts in Lyons Township. Accordingly, the Trustees ask this Court to reconsider its prior rulings on this matter.

Alternatively, however, if this Court believes it needs to “hear all of the evidence at trial” to determine whether laches or the voluntary payment doctrine might afford LT a defense, then there is no good reason why this Court should not “hear all of the evidence at trial” before determining whether the Trustees fit within an exception to the statute of limitations. Accordingly, if this Court is not inclined to dispose of LT’s affirmative defenses in their entirety, the Trustees request that this Court reverse its prior ruling on the statute of limitations and permit a full trial on the merits of the Trustees’ claims.

II. THIS COURT’S DECISION TO IMPOSE A LIMITATIONS PERIOD

The Trustees commenced this action seeking a declaratory judgment authorizing the Treasurer to make certain bookkeeping entries to address unlawful financial benefits a *former*

Treasurer provided to LT during Fiscal Years 1994 through 2013. The Trustee also seek to recover monies LT refuses to pay, in contravention of the School Code, during Fiscal Years 2014 through 2018. Absent any limitations period, a successful recovery by the Trustees would permit a dozen other school districts in Lyons Township to receive the direct financial benefit of roughly \$5.25 million.

In May 2017, LT filed a Motion for Partial Summary Judgment based upon its affirmative defense that the Trustees' claims were limited by the five-year "catchall" statute of limitations. On February 20, 2018, after extensive briefing and oral argument, Judge Sophia Hall found that the Trustees appeared to be enforcing a "public right" as the Supreme Court has interpreted that phrase, **meaning that the Trustees would be exempt from any statute of limitations**. Judge Hall declined to make any ruling as a matter of law, however, and instead determined she would determine whether the exception existed only after hearing all of the evidence at trial. (A copy of this Order is attached as Exhibit 1; a copy of the Report of Proceedings is attached as Exhibit 2.)

Immediately after this action was re-assigned to this Court, LT moved to reconsider Judge Hall's ruling, and this Court granted that motion on July 31, 2019 and held that it would apply the five-year statute of limitations to the Trustees' claims. (A copy of this Order is attached as Exhibit 3.) The effect of this ruling is to reduce the potential recovery by roughly \$3.2 million. The Trustees submit that this Court should reconsider its ruling of July 31, 2019 and decline to impose any limitations period in this action. Alternatively, the Trustees submit this Court should decline any ruling as a matter of law, and should determine only after trial whether the Trustees fit within one or more exceptions to the statute of limitations, including perhaps most appropriately the "public right" exception.

In *Shelbyville*, a single political entity (the City of Shelbyville) sued a homebuilder for the homebuilder's failure, thirteen years earlier, to abide by its annexation agreement and construct certain roadways in a subdivision. 96 Ill. 2d at 458. The City had, at its own expense, constructed some of those streets and repaired others. *Id.* at 458-59. The City sought money damages to compensate it for the work it had done and that still remained to be done. *Id.* Despite the fact that a single political entity was suing for breach of an annexation agreement, the Court held that the limitations period did not apply because the City was enforcing a "public right." *Id.* at 464. The Court's reasoning was that if the City could not recover the funds it would "affect the city's finances and may impair its ability to build or oversee the construction or maintenance of streets within its jurisdiction in the future." *Id.*

Here, the Trustees are a single body politic, but unlike the City of Shelbyville, this suit is effectively on behalf of the other districts and public schools the Treasurer serves. Those other public school districts in Lyons Township will receive the direct financial benefit should the Trustees prevail. Certainly, the Treasurer is not charged with building and maintaining streets; but this does not distinguish this case from *Shelbyville*. The Treasurer is charged with managing the public funds of the districts, and those districts are charged with educating roughly 20,000 students in their care. Reallocating the total amount of \$5.25 million in public funds at issue in a proper manner permits the other districts to use that money to fulfill their obligation to provide public school education. This is enforcing a "public right" in accord with *Shelbyville*'s holding.

Six years after *Shelbyville*, the Supreme Court again addressed the concept of "public rights" in *A C & S*, and set forth a three-factor test to determine whether a "public right" was being asserted. In *A C & S*, thirty-four school districts sought to recover the cost of repairing or replacing asbestos-containing materials. 131 Ill. 2d at 436. The defendants argued a "public

right” was not involved because the work would involve only a select number of school buildings. *Id.* at 472-74.

The Supreme Court explained that a “public right” need not be an interest affecting the entire State; rather a plaintiff need only show a “sufficient interest in the general public.” *Id.* at 474. The Court also set forth the three-factor test to help determine whether a public right is involved: (i) the effect of the interest on the public; (ii) whether there is an obligation on the public body to act; and (iii) the extent to which public funds must be expended. *Id.* at 476 (citing *Shelbyville*, 96 Ill. 2d at 464-65). Each of these three factors, examined below, support the Trustees’ position.

With respect to the first factor, the Trustees effectively bring this lawsuit on behalf of all of the other districts. LT has repeatedly argued that the fact that it received unlawful benefits does not harm anyone except the Trustees, but simple logic proves this argument false. The Trustees and the Treasurer do not have their own source of funds and so every penny unlawfully given to LT necessarily comes from the other school districts in Lyons Township. The Trustees and the Treasurer cannot go into their own pockets to make whole other districts because they have no pockets of their own. With respect to this first factor, Judge Hall agreed with the Trustees, stating “the effect of the interest on the public, the handling of that money does have an interest in the public in terms of the monies available to address the operation of the schools.” (Ex. 2 at 8:19-23.)

With respect to the second factor, LT has previously argued that the School Code does not require the Trustees to have filed this lawsuit. The issue, however, is not whether state law obligates a *lawsuit*, but rather whether state law obligates the problem be addressed. In neither *Shelbyville* nor *A C & S* did the statutes at issue require the political bodies to file a lawsuit.

Rather, it imposed upon them an obligation to take actions (repairing roads and remediating asbestos), and the public bodies filed suit to recoup the funds at issue in those actions.

The Treasurer also has statutory obligations. The Treasurer is “the only lawful custodian of all school funds...and *shall* demand receipt for and safely keep” those funds. 105 ILCS 5/8-7 (emphasis added). The Treasurer also has a statutory duty to “[b]e responsible for receipts, disbursements and investments arising out of the operation of the school district under his supervision.” 105 ILCS 5/8-17(a)(9). If the public funds in the former Treasurer’s care were not properly handled, then the Trustees and the Treasurer have an obligation to take action to “escape the financial effects of frauds and thefts by unscrupulous public servants....” *Patrick Engineering*, 2012 IL 113148, ¶ 35-36. With respect to this second factor, Judge Hall again agreed with the Trustees, explaining “[t]here is an obligation of the governmental unit to act on behalf of the public, it appears....” (*Id.* at 9:6-8.)

With respect to the third factor, in *A C & S* the Supreme Court noted that “defendants correctly point out that almost any time a governmental entity is involved there will be some fiscal impact.” 131 Ill. 2d at 476. Because of this, the Court explained the third factor must be given a “realistic application.” *Id.* The Court found that the extent of public revenues being implicated was sufficient to support a public right because “[w]e are not dealing with small sums of money; rather, the cost of these abatement projects will run into the millions.” *Id.* In total, the Trustees seek here to address roughly \$5.25 million in public funds (with roughly \$3.2 excluded by this Court’s current ruling on the limitations period). As in *A C & S*, the amounts at issue here are not “small sums” but also “run into the millions.”

Once again, Judge Hall agreed with the Trustees, explaining that “there is a lot of money involved here. So I think that the Statute of Limitations does not prevent the trustees from

pursuing this.” (*Id.* at 9:11-14.) Ultimately, while not so holding as a matter of law, Judge Hall denied LT’s Motion for Partial Summary Judgment, finding that “it would seem to me that there is a public interest exemption....” (Ex. 2 at 7:4-5.)

All three factors discussed above establish that the Trustees are enforcing a “public right” as defined by the Supreme Court. Accordingly, this Court should reconsider its earlier ruling and find that the Trustees’ claim is not subject to any statute of limitations. Alternatively, this Court should decline to make a ruling as a matter of law on this issue and permit the Trustees to present all of their evidence and make its ruling only after a full trial on the Trustees’ claims.

III. THIS COURT’S DENIAL OF THE TRUSTEES MOTION FOR SUMMARY JUDGMENT ON LT’S AFFIRMATIVE DEFENSE OF LACHES

In its July 31, 2019 ruling this Court also denied the Trustees request for entry of summary judgment against LT on its affirmative defense of laches. (See Exhibit 3.) As discussed above, there is “considerable reluctance to impose the doctrine of laches to actions of public entities unless unusual or extraordinary circumstances are shown.” *Van Milligan*, 158 Ill. 2d at 90. This is because “laches may impair the functioning of [a public body] in the discharge of its government functions, and valuable public interests may be jeopardized or lost by negligence, mistakes, or inattention of public officials.” *Id.*

The “extraordinary circumstances” in this case is that the former Treasurer, Robert Healy, both embezzled over \$1 million from the public funds in his care while also providing LT with unlawful financial benefits, and escaped detection for over a decade. The failure of prior trustees and the accountants watching over Healy to catch his wrongdoing is precisely the type of “negligence, mistakes or inattention of public officials” that argues against applying laches. Accordingly, the Trustees request that this Court reconsider its earlier rulings and enter summary judgment against LT on its affirmative defense of laches.

If this Court declines to enter summary judgment against LT on this issue, however, then such logic only dictates that this Court should indeed reconsider its earlier ruling on the statute of limitations. If this Court believes it needs to hear all of the evidence presented at trial to determine if laches applies, then this Court should also hear all of the evidence at trial to determine if the statute of limitations applies.

IV. THIS COURT'S DENIAL OF THE TRUSTEES' MOTION TO DISMISS LT'S AFFIRMATIVE DEFENSE OF THE VOLUNTARY PAYMENT DOCTRINE

If the financial benefits Robert Healy afforded LT were unlawful, then equity and good conscience requires that LT return those benefits to the other school districts. LT's assertion of this defense is an attempt to keep monies – belonging to other school districts – to which it never had a right in the first instance. As discussed above, one of the most fundamental principles of law is that a person has no right to retain funds to which he had no right to receive in the first instance. *Holt*, 41 Ill. App. 3d at 626. This principle is most strong where a public body unlawfully disposed of public funds. *See, e.g., Holt*, 41 Ill. App. 3d at 627 (holding Board of Education could recover salary paid to retired teacher even though Board should have known that teacher resigned).

Indeed, this is true throughout the nation. *See, e.g., Dekalb Cnty.*, 729 F.2d at 741 n.4 (“voluntary payment of public money made by public officers under no mistake of fact is not the equivalent in law of such payment by an individual”); *DiSilvestro*, 405 F.2d at 155 (“It is, of course, well established that parties receiving monies from the Government under a mistake of fact or law are liable *ex aequo et bono* to refund them....”); *Callaway*, 393 P.2d at 454 (explaining voluntary payment doctrine “is subject to an exception where public monies are involved”); *State ex rel. Jarrell*, 117 S.E.2d at 512 (“there is a generally recognized exception to the [voluntary payment doctrine] where payment is made by a public officer”); *City of St. Louis*,

283 S.W.2d at 492 (“case is not governed by the general rules applicable to the conduct and transactions of private individuals” as it involves “public officials entrusted with the expenditure of public funds”).

On November 21, 2019, this Court denied the Trustees’ motion to dismiss LT’s affirmative defense that the voluntary payment doctrine, if factually applicable,¹ would bar the Trustees’ efforts to recoup the funds at issue for the other school districts in Lyons Township. (A copy of this Order is attached as Exhibit 4.) Because of the special rules governing a public body’s attempts to recover public funds this ruling was, respectfully, in error and this Court should reconsider its earlier ruling and dismiss LT’s affirmative defense. If Robert Healy broke the law when he gave public funds to LT equity and good conscience mandate that LT returns those public funds to the school districts from whom they were taken. LT is not a private party and should not be afforded the benefit of the voluntary payment doctrine. Accordingly the Trustees request that this Court reconsider its earlier ruling and dismiss LT’s affirmative defense.

V. CONCLUSION

WHEREFORE, for the reasons stated herein, the Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court grant this Motion and find that the statute of limitations, laches and the voluntary doctrine are not affirmative defenses applicable to the Trustees’ efforts to recover the public funds at issue in this case, and dismiss those affirmative defenses.

Alternatively, the Trustees request that if this Court determines it needs to hear all of the evidence at trial before making such a ruling on laches and the voluntary payment doctrine, this Court then reconsider its earlier ruling applying a five-year limitations period to this case and

¹ The Trustees contend that, even if this Court permits LT to assert this doctrine, under the facts presented the doctrine would not afford LT a defense.

permit the Trustees to establish at trial that they fall within one or more exceptions to the statute of limitations, including specifically the “public right” exception. The Trustees also request any such other relief that this Court deems appropriate.

Respectfully submitted,

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

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

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2020, I electronically filed PLAINTIFF’S MOTION TO RECONSIDER 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
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) Calendar 14
DISTRICT 204,)
)
Defendant and Counter-Plaintiff.)

ORDER

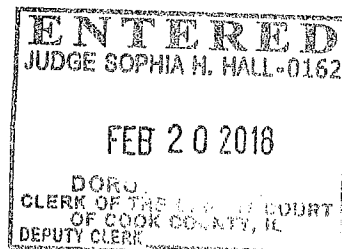
This matter coming to be heard on Defendant Lyons Township High School's ("LT's") Motion for Partial Summary Judgment on the Statute of Limitations Issue, the matter being fully briefed and fully argued by both sides before the Court, IT IS ORDERED:

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:

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EXHIBIT

2

<p>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</p> <p style="text-align: right;">1</p>	<p>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</p> <p style="text-align: right;">3</p>
<p>1 APPEARANCES: 2 MILLER, CANFIELD, PADDOCK AND STONE, P.C. 3 BY: MR. BARRY P. KALTENBACH and 4 MR. GERALD E. KUBASIKA 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</p> <p style="text-align: right;">2</p>	<p>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> <p style="text-align: right;">4</p>



<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.</p> <p>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 11 depositors, like each of the districts, have 12 their own bank account.</p> <p>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 accountholder, 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 21 relationship between the treasurer and the 22 districts is over accounts that are depositing 23 into with the collections.</p> <p>24 So then I'm asking myself how is the</p> <p style="text-align: right;">5</p>	<p>1 trust account happening.</p> <p>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 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.</p> <p>18 Then the operating expenses. How are 19 the operating expenses paid? It would seem that 20 the distribution of the operating expenses are 21 connected to the whether or not the audit 22 payments to -- let me back up.</p> <p>23 Moving to the audit expenses, the audit 24 expenses seem -- of Lyons Township seem to come</p> <p style="text-align: right;">7</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.</p> <p>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.</p> <p>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 style="text-align: right;">6</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.</p> <p>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> <p style="text-align: right;">8</p>



<p>1 issue in the other case that was cited which was 2 the King case, the Champaign County Forest 3 Preserve District Versus King. This is a 4 different situation. And the King facts don't 5 fit this one.</p> <p>6 There is an obligation of the 7 governmental unit to act on behalf of the 8 public, it appears, and the extent to which the 9 expenditure -- my understanding of that language 10 is how much money is involved here. And that 11 extent of expenditure is there is a lot of money 12 involved here. So I think that the Statute of 13 Limitations does not prevent the trustees from 14 pursuing this.</p> <p>15 Now, there are a lot of other questions 16 in the cause of action that I think we still end 17 up having to get to, but this was intended to 18 narrow what's at stake. And based upon what's 19 been presented here, I do not see a basis for it 20 narrowing it.</p> <p>21 MR. KUBASIAK: Thank you, your Honor. 22 You probably don't have too many cases that go 23 back to the 1800s that we have to reply upon.</p> <p>24 THE COURT: And it was fascinating</p> <p style="text-align: right;">9</p>	<p>1 application of the Statute of Limitations 2 without prejudice.</p> <p>3 MR. HOFFMAN: Without prejudice based 4 upon -- well --</p> <p>5 MR. KALTENBACH: The reasoning of the 6 Court.</p> <p>7 MR. HOFFMAN: Subject to proof being 8 presented at trial.</p> <p>9 MR. KALTENBACH: Well, without 10 prejudice.</p> <p>11 MR. HOFFMAN: Without prejudice.</p> <p>12 THE COURT: So that takes care of that. 13 (Whereupon, these were all the 14 proceedings had at this time.)</p> <p style="text-align: right;">11</p>
<p>1 looking at. And I looked at the -- spent a lot 2 of time looking at the District 5, District 1 3 case.</p> <p>4 MR. KUBASIAK: Yes, yes.</p> <p>5 THE COURT: And District 5 District 1 is 6 really kind of different. It doesn't help in a 7 sense, because it was a fight between District 5 8 who already -- where the money had already 9 been -- it was district --</p> <p>10 MR. KALTENBACH: It was District 5's 11 money but given to District 1.</p> <p>12 THE COURT: It was District 5's money 13 given to District 1. And I bet that even the 14 judges who were deciding that one were having 15 difficulty because the language was not totally 16 clear, even in the way they wrote it.</p> <p>17 MR. KALTENBACH: It is archaic.</p> <p>18 THE COURT: Inartfully written is the 19 word for it.</p> <p>20 MR. HOFFMAN: So before the order, your 21 Honor.</p> <p>22 THE COURT: I'm going to deny it.</p> <p>23 MR. HOFFMAN: Without prejudice.</p> <p>24 THE COURT: Summary judgment for</p> <p style="text-align: right;">10</p>	<p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF COOK) 4)</p> <p>5 Gina Callahan, being first duly sworn, 6 on oath says that she is a court reporter doing 7 business in the City of Chicago; and that she 8 reported in shorthand the proceedings of said 9 hearing, and that the foregoing is a true and 10 correct transcript of her shorthand notes so 11 taken as aforesaid, and contains the proceedings 12 given at said hearing.</p> <p>13 <i>Gina Callahan</i> 14 15 Gina Callahan, CSR 16 LIC. NO. 084-003623</p> <p style="text-align: right;">12</p>



EXHIBIT

3

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 TTS 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.

Attorney No.: 34710Name: Jay R. HoffmanAtty. for: Defendant LTAddress: 20 N Clark St. Ste 2500City/State/Zip: Chicago IL 60602Telephone: 312-899-0899

ENTERED:

Dated: August 8, 2019, 9:30 am
for setting of trial.

Judge

Circuit Court-199

Judge Thomas R. Mulroy, Jr.
JUL 31 2019

Judge's No.

EXHIBIT

4

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

TOWNSHIP TEACHERS

v.

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

No. 13 CH 23386

ORDER

This matter coming to be heard on plaintiff's motion to dismiss LT's affirmative defenses #3 and #4, it is hereby ordered:

- ① the motion is denied as to affirmative defense #3
- ② the motion is granted as to affirmative defense #4, but LT is permitted to argue on that in response to the complaint that ~~plaintiff's~~ ^{plaintiff's} litigation fees, or not expenses recoverable from LT under ICS 5/8-4, based on the American Rule on attorneys' fees recovery.
- ③ plaintiff has leave to file its motion to dismiss ~~LT's~~ counterclaim on 11-21-19.

Attorney No.: 44233

Name: BARRY KALTENBACH

Atty. for: PLAINTIFF

Address: 225 W. WASHINGTON #2600

City/State/Zip: CHICAGO IL 60606

Telephone: (212) 460-4200

ENTERED:

Dated: Judge Thomas R. Mulroy, Jr.

NOV 21 2019

Judge Circuit Court - 1941 Judge's No.