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

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COOK COUNTY, IL
2013CH23386

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

9003298

Plaintiff,)

No. 13 CH 23386

vs.)

Hon. Jerry A. Esrig

Commercial Calendar S

**LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204,)**

Defendant.)

**PLAINTIFF’S REPLY TO DEFENDANT’S
FIFTH CONSOLIDATED AFFIRMATIVE DEFENSE**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (the “Trustees”), by their undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, for their Reply to the Fifth Consolidated Affirmative Defense asserted by Defendant, Lyons Township High School District No. 204 (“LT”), state as follows:

Procedural Statement

Through its order of March 18, 2020, the Court dismissed Count I of LT’s “Consolidated Counterclaim” (entitled “Setoff”) and held that the Court would deem Count I as having been pleaded as LT’s Fifth Affirmative Defense, without the need for LT to formally replead its Affirmative Defenses. The Trustees Reply below, therefore, corresponds to the allegations as set forth in Paragraphs 1 through 40 of LT’s Consolidated Counterclaim.

Reply to Fifth Affirmative Defense

1. LT is a public school district organized under the laws of the State of Illinois with a principal office located in LaGrange, Cook County, Illinois. LT is sometimes is called “District 204” or “204.”

Reply: The Trustees admit the allegations of Paragraph 1.

2. The TTO is a local public entity organized under the law of the State of Illinois with a principal office located in LaGrange, Cook County, Illinois.

Reply: The Trustees admit the allegations of Paragraphs 2.

3. The TTO has three elected Trustees. The Trustees select a Treasurer.

Reply: The Trustees state that they “appoint” (not “select”) a Treasurer, but otherwise admit the allegations of Paragraph 3.

4. The Treasurer manages the TTO’s operations on a daily basis, supervises the TTO’s employees and outside service providers, and interfaces with the school districts and educational entities that are members of the TTO.

Reply: The Trustees deny the allegations of Paragraph 4.

5. The Treasurer is an officer and employee of the TTO.

Reply: The Trustees admit that the Treasurer is an employee of the Trustees and further state that the School Code provides only that the Treasurer is “ex-officio clerk of the board.” The Trustees deny the remaining allegations within Paragraph 5.

6. LT is a member district of the TTO. LT’s membership in the TTO is mandated by state statute.

Reply: The Trustees admit the allegations of Paragraph 6.

7. The TTO holds the funds, received through tax revenues and other sources, belonging to LT as well as the other members school districts and educational entities associated with the TTO (“the Other Districts”). The TTO pools the funds of the member districts together and invests those funds on behalf of LT and the Other Districts.

Reply: The Trustees state that the School Code provides that the Treasurer is the “only lawful custodian” of the funds, but otherwise admit the allegations of Paragraph 7.

8. LT incorporates by reference the allegations in paragraphs 1-7 above.

Reply: The Trustees incorporate their replies to Paragraphs 1-7.

9. Since at least the 1980s, LT has performed its own business and accounting functions – essentially, accounts payable, payroll, accounting computer services, and check preparation – through the employment of its own highly skilled and experienced personnel.

Reply: The Trustees deny the allegations of Paragraph 9, except to admit that LT has chosen, voluntarily, to perform some business and accounting functions. The Trustees lack knowledge as to whether this was the case “[s]ince at least the 1980s,” and lack knowledge as to what LT means by describing its personnel as “highly skilled and experienced.”

10. LT has not allowed the TTO to perform LT’s business functions for several legitimate reasons: (a) the TTO and its staff have a low level of skill and experience; (b) the TTO’s computer systems have been incompatible with LT and have been unable to handle the volume and complexity of LT’s high school operations; (c) the TTO’s operations have been beset by errors and problems; (d) the TTO has refused to provide information and transparency

to its member districts about finances, investments, and transactions; and (e) the TTO has a history of public corruption and political cronyism.

Reply: The Trustees deny the allegations of Paragraph 10, except to admit that LT has, voluntarily, chosen to perform some business and accounting functions.

11. LT's performance of its own business functions has meant that the TTO did not have to hire and pay for additional employees in order to perform LT's business functions.

Reply: The Trustees deny the allegations of Paragraph 11.

12. Throughout the relevant period in this case until about August 2012, the TTO Treasurer was Robert G. Healy ("Healy").

Reply: The Trustees admit the allegations of Paragraph 12.

13. During the 1990s, the TTO sent LT an annual invoice for LT's pro rata share of the TTO's claimed salaries and expenses. The invoices in those years were substantial, in the range of \$150,000 to \$200,000. This meant that in those years, LT paid the direct costs of its own business functions, plus an approximately 25 percent share of the TTO's services, which LT did not use.

Reply: The Trustees admit that during the 1990s the Treasurer sent to LT an annual invoice for LT's pro rata share and that during this time period LT's pro rata share ranged between approximately 21 to 25 percent. The Trustees deny the remaining allegations of Paragraph 13.

14. In 1999, the inequity in LT's payment for services that it did not use became the subject of discussions between LT and the TTO.

Reply: The Trustees deny that there was anything inequitable about LT's payment obligations, as LT's payment obligations were imposed by the School

Code, and otherwise deny the allegations of Paragraph 14 except to admit that in 1999 there were discussions between LT and Healy regarding LT's pro rata invoices.

15. On May 28, 1999, Healy attended the meeting of the Finance Committee of the Board of Education for LT. According to the minutes, the Finance Committee "directed Mr. Healy and Dr. Beckwith to work during the summer months to prepare options for the Board of Education to review that would provide more equity in the services provided the District."

Reply: The Trustees admit the quoted language appears in the referenced documents. The Trustees deny that LT's Board was empowered to "direct" Healy to undertake such discussions and deny any implicit allegations within Paragraph 15.

16. On July 27, 1999, the Board of Trustees for the TTO held a regular meeting. As reflected in the minutes, "There was a discussing regarding Lyons Township High School and the problems the district has with the Pro Rata billing system. The Trustees discussed with Treasurer Healy several options to improve relations with the high school. Some of the items discussed are for the Treasurer's office to assume more duties, possibly fund certain business functions, computer sharing and legislation."

Reply: The Trustees admit the quoted language appears in the referenced document. The Trustees deny any implicit allegations within Paragraph 16.

17. On August 18, 1999, Healy wrote Beckwith a letter ("the 8/8/1999 Letter"), which he copied on the TTO Trustees, concerning the "Pro-Rata Billing System." Healy said that the letter was "[i]n response to our most recent discussion regarding the possibility of instituting certain measures to balance the efforts of our respective staffs." Healy said that he was presenting "proposed possible solutions."

Reply: The Trustees admit the quoted language appears in the referenced document, deny any implicit allegations with Paragraph 17, and specifically deny that Healy stated he was presenting proposed possible solutions.

18. The first proposal in the 8/18/1999 Letter was “Deviation from Pro-Rata Billing.” Healy said that the first proposal would involve LT not paying its pro rata share of the TTO’s expenses and having the other districts absorb LT’s share. Healy said this proposal would require the Other Districts to sign an intergovernmental cooperation agreement, and said that was “highly unlikely.”

Reply: The Trustees admit that the quoted language appears in the referenced document. The Trustees deny that LT fairly summarizes the section of the document from which it quotes.

19. The second proposal in the 8/18/1999 Letter was “Funding by Township School Treasurer of Some District Functions.” Healy recommended this proposal to LT. Healy explained, “If the responsibilities for the Accounts Payable and Payroll production were 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.”

Reply: The Trustees admit that the quoted language appears in the referenced document. The Trustees deny any implicit allegations within Paragraph 19 and specifically deny that Healy recommend this proposal to LT.

20. In the 8/18/1999 Letter, Healy explained why the TTO Board of Trustees was likely to approve the second proposal: “I would expect that when the Trustees of Schools take 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 districts."

Reply: The Trustees admit that the quoted language appears in the referenced document, but denies any implicit allegations within Paragraph 20 and denies that Healy explained why the Board of Trustees was likely to approve the second proposal. The Trustees affirmatively aver that the Treasurer's office cannot "fund" any other public body because neither the Treasurer's office nor the Trustees have a source of funds independent of the public bodies they serve.

21. In the 8/18/1999 Letter, the TTO's second proposal made no mention of an intergovernmental cooperation agreement or seeking the consent of the Other Districts.

Reply: The Trustees admit that Healy did not include his personal opinion on whether he believed an intergovernmental cooperation was necessary in this portion of the referenced document, but the Trustees affirmatively aver that whether such an agreement was necessary is a question of law. The Trustees deny any implicit allegations within Paragraph 21.

22. On September 29, 1999, the LT Finance Committee met with Healy and considered the TTO's proposals. The Finance Committee proceeded with the second proposal in the 8/18/1999 Letter. The Finance Committee, according to the minutes, "directed Dr. Beckwith to work with Mr. Healy to further define the costs of the business office that can be charged to the Treasurer's office. These changes could include salaries for the accounts payable, payroll and computer services staff.... Mr. Healy indicated the Township Board of Trustees is supportive of this method."

Reply: The Trustees admit the quoted language appears in the referenced document, but deny that the proposals were “the TTO’s proposals,” and deny that the Finance Committee “proceeded with the second proposal.” The Trustees deny any implicit allegations within Paragraph 22.

23. Healy and Beckwith worked out the terms of a written agreement based on the second proposal in the 8/18/1999 Letter. In the February 29, 2000 Memorandum that Beckwith send to Healy (“the 2/29/2000 Memo,” attached as Exhibit A), LT provided the TTO with a proposal of the specific responsibilities that the TTO would assume for the costs of LT’s business functions:

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer’s office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest, and student activities.
- Annual salary and benefits cost for 3 employees as listed below:

[Three job positions listed, with salary and benefit costs specified for each, for a total cost of \$106,403.]

An invoice will be sent to the Township Treasurer in May with a receipt of funds expected prior to the close of the year.

Reply: The Trustees deny that Healy and Beckwith “worked out the terms of a written agreement based on the second proposal,” deny that there was a “written agreement” between the parties, and deny any implicit allegations within Paragraph 23. The Trustees admit the quoted language appears in the referenced documents. The Trustees affirmatively aver that the referenced documents states on its face that it is applicable for the “99-00” fiscal/school year. The Trustees further aver that the parties

never acted in accordance with the procedure described in the memorandum, *i.e.*, the Trustees never included the costs submitted by LT in the annuals costs of the Treasurer’s office, never set off the amounts owed by LT for their pro rata share by these costs, and never issued a payment or credit to LT for these costs.

24. On March 21, 2000, the TTO Trustees had a meeting. The meeting agenda included an item for “8. District 204 Business Office.” The Trustees received the 2/29/2000 Memo in the meeting packet.

Reply: The Trustees admit the allegations of Paragraph 24, with the understanding that by “the TTO Trustees” LT means the Board of Trustees of the Plaintiff.

25. At the March 21, 2000 meeting, according to the minutes, “Healy submitted to the Trustees the proposal from District 204 stating that this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer’s office if Lyons Township High School were to totally utilize the facilities of the Treasurer’s office.”

Reply: The Trustees admit the quoted language appears in the referenced document. The Trustees deny any implicit allegations within Paragraph 25.

26. At the March 21, 2000 meeting, according to the minutes, the TTO Trustees voted unanimously to approve the agreement between LT and the TTO: “A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of School by Cook County High School District \$304. ROLL CALL: Ayes – Joseph Nekola, Russell Hartigan; Nays – None.”

Reply: The Trustees deny the allegations of Paragraph 26, except to admit that the quoted language appears in the referenced document. The Trustees note that LT's allegation that the Trustees voted to "approve" an agreement with LT is contrary to the very language that LT quotes, which states only that the Trustees voted to "accept" a written proposal from LT.

27. On June 14, 2000, Beckwith wrote a memorandum to the LT Board seeking approval of the agreement with the TTO. The memo included the TTO's current pro rata expenses invoice and the 2/29/2000 Memo. Beckwith said that the TTO's payment of \$106,403 for LT's business functions (as detailed in the 2/29/2000 Memo) would be set off against the TTO's pending pro rata expenses invoice of \$165,476. Beckwith asked the LT Board to approve the agreement and authorize the net payment to the TTO.

Reply: The Trustees deny the allegations of Paragraph 27.

28. On June 19, 2000, the LT Board held a meeting. The agenda included a line item for "P. Township Treasurer's Invoice." The minutes state that the Board received the "Township Treasurer's Invoice Exhibit T," which was Beckwith's June 14, 2000 memo. The LT Board provided its approval by a unanimous vote on the consent agenda.

Reply: The Trustees admit that the LT Board of Education held a meeting on June 19, 2000, and that the quoted language appears in the referenced document. The Trustees admit that LT's Board voted to approve payment of a single invoice, but deny any implicit allegation that LT's Board voted to approve any purported agreement with the Trustees. The Trustees deny and remaining allegations within Paragraph 28.

29. On or about July 15, 2000, LT authorized the net payment to the TTO of \$59,073. The TTO accepted this net setoff payment as full payment of the pending pro rata expenses invoice issued to LT.

Reply The Trustees admit that LT approved a payment, but deny the remaining allegations within Paragraph 29. In particular, the Trustees note that the referenced payment in July 2000 was for the Fiscal Year 1999 pro rata invoice, whereas LT's proposal as set forth in Paragraph 23 was proposed to begin with Fiscal Year 2000 – the payment by LT in July 2000 was not in furtherance of or pursuant to LT's own proposal.

30. On September 7, 2000, Healy wrote LT and acknowledged that the TTO's payment of the costs of LT's business functions would continue: "As was done last year the Trustees will continue funding certain business functions. Funding last year totaled \$106,403.00 (which brought the district's net payment to \$59,073.00)."

Reply: The Trustees admit that Healy wrote LT and that the quoted language appears in the referenced document. The Trustees deny the remaining allegations within Paragraph 30, and specifically deny that the Treasurer ever made payments to LT for LT's expenses or recorded any credit acknowledging funding LT's costs.

31. In each subsequent year through fiscal year 2012, the TTO and LT continued and reaffirmed their agreement. LT send the TTO an annual written memo of LT's costs and set those costs off against the TTO's pending pro rata expenses invoice. Those memos are attached hereto as Exhibit B.

Reply: The Trustees admit that LT sent to Healy the memoranda attached as Exhibit B, but the Trustees deny the remaining allegations within Paragraph 31.

32. The TTO received the memos in Exhibit B, never questioned or disputed them, and treated the pro rata expenses invoices, as set off by LT's business expenses listed in those memos, as satisfied. The TTO Trustees regularly approved the reports and expense records of the Treasurer's office, which included the costs and invoice payments associated with the parties' agreement. The LT Board regularly approved the net payments to the TTO.

Reply: The Trustees deny the allegations of Paragraph 32, except to admit that it regularly reviewed certain records of the Treasurer.

33. Until 2013, the TTO viewed the parties' agreement on the payment for LT's business functions as fully consistent with LT's obligations to pay its pro rata share of expenses under Section 8-4 of the School Code.

Reply: The Trustees deny the allegations of Paragraph 33.

34. The parties' agreement on the payments for LT's business functions, and the parties' long course of dealing under that agreement, ended in 2013. On April 19, 2013, the TTO sent a letter to LT denying the existence of the agreement, accusing LT of violating Section 8-4 in past years, and demanding payment from LT of over \$2 million.

Reply: The Trustees admit that they sent a letter to LT on or about April 19, 2013, notifying LT that LT's conduct violated the School Code, but the Trustees deny the remaining allegations within Paragraph 34.

35. LT treated the agreement and course of dealing with the TTO on the payment of LT's business costs as being terminated for fiscal year 2013.

Reply: The Trustees admit that LT stated that LT would treat any purported agreement as having been terminated for fiscal year 2013, but the Trustees deny that there was an agreement between the parties and deny any remaining allegations of Paragraph 35. The Trustees affirmatively aver that LT never acted in accordance the “agreement” LT contends existed.

36. Since fiscal year 2013, LT has resumed paying the TTO for business and accounting services that LT does not and will not use.

Reply: The Trustees admit that since fiscal year 2013 LT has made only partial pro rata payments to the Treasurer, despite the School Code requiring LT to pay its full pro rata share. The Trustees deny any remaining allegations within Paragraph 36.

37. In the Second Amended Complaint’s Pro Rata Expenses Claim, the TTO contends that LT did not pay in full the invoices that the TTO send LT for certain fiscal years. Implicit in this claim is the TTO’s refusal to acknowledge the existence and validity of the parties’ agreement on the payment for LT’s business functions, and the setoff of those costs against the pro rata expenses invoices.

Reply: The Trustees admit that in the Second Amended Complaint the Trustees allege, and LT does not deny, that LT did not pay the annual pro rata invoices at issue. The Trustees deny that the parties had any agreement that excused LT from paying its full pro rata share, and affirmatively aver that any such agreement would have been unlawful, and the Trustees deny any remaining allegations within Paragraph 37.

38. The parties' agreement on the payment for the costs of LT's business services was approved by the parties' respective Boards, reaffirmed in succeeding years, and is legally enforceable.

Reply: The Trustees deny the allegations of Paragraph 38.

39. Under the circumstances of this case, LT is entitled to a setoff in the amount of the costs of LT's business functions against the TTO's claimed damages for the Pro Rata Expenses Claim from the start of the 5-year limitations period through fiscal year 2012, as stated in Exhibit B. This setoff eliminates entirely the TTO's requested damages for the Pro Rata Expenses Claim through fiscal year 2012.

Reply: The Trustees deny the allegations of Paragraph 39.

40. In this Count I for setoff, LT does not seek any affirmative recovery of damages in against the TTO.

Reply: The Trustee admit that LT is not seeking any affirmative recovery.

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 April 1, 2020, I electronically filed **REPLY TO DEFENDANT'S FIFTH AFFIRMATIVE DEFENSE** 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

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 forgoing 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.



Michael Thiessen

4-1-2020

DATE