

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

2015 JUN -5 PM 2:15

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

Plaintiff,)

vs.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT NO. 204)

Defendants)

No. 13 CH 23386

Judge Sophia H. Hall
Calendar 14

NOTICE OF FILING

TO: Charles A. LeMoine, Rosa M. Tumialán, Stephen M. Mahieu
Dykema Gossett PLLC
10 S. Wacker Drive, Suite 2300
Chicago, IL 60606

PLEASE TAKE NOTICE that on June 5, 2015, I have filed with the Clerk of the Circuit Court of Cook County, Illinois, the following: **TOWNSHIP TRUSTEES' MOTION TO DISMISS FIRST AMENDED VERIFIED COUNTERCLAIM**, a copy of which is hereby attached and served on you.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

By: 
One of its attorneys.

Gerald E. Kubasiak
Barry P. Kaltenbach
Gretchen M. Kubasiak
KUBASIAK, FYLSTRA, THORPE & ROTUNNO, P.C.
20 South Clark Street, 29th Floor
Chicago, Illinois 60603
(312) 630-9600 (Phone)
(312) 630-7939 (Fax)
Firm No. 48237

PROOF OF SERVICE

The undersigned, an attorney, certifies that copies of the following documents:

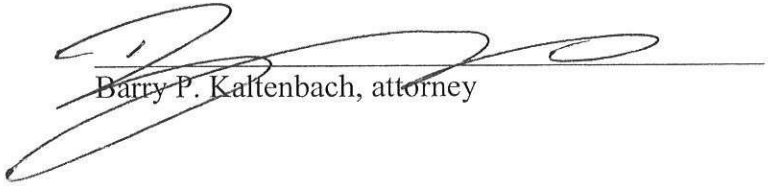
**TOWNSHIP TRUSTEES' MOTION TO DISMISS FIRST AMENDED
VERIFIED COUNTERCLAIM**

has been served upon:

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

as follows:

- by personal service on June 5, 2015 before 4:00 p.m.
- by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 20 S. Clark Street, Chicago, Illinois, on June 5, 2015 before 4:00 p.m.
- by facsimile transmission from 20 S. Clark Street, Suite 2900, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 630-7939, consisting of ____ pages on June 5, 2015 before 4:00 p.m., the served [party/parties] having consented to such service.
- by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on June 5, 2015 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
- by _____, on June 5, 2015 before 4:00 p.m., the served [party/parties] having consented to such service.


Barry P. Kalttenbach, attorney

II. DISMISSAL IS WARRANTED UNDER SECTIONS 2-615 AND 2-619 OF THE CODE OF CIVIL PROCEDURE

Township Trustees brings this Motion pursuant to Section 5/2-619.1 of the Code of Civil Procedure, which authorizes utilizing both Sections 5/2-615 and 5/2-619 in a single motion. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶31. The First Amended Verified Counterclaim fails because it purports to assert the existence of a contract that, even if properly alleged, could not exist under the School Code. The pleading thus lacks legal sufficiency, warranting dismissal under Section 2-615. In support of a few arguments, Township Trustees relies upon additional facts set forth in the attached Affidavit of Dr. Susan Birkenmaier, the current Treasurer. Arguments reliant upon these facts are specifically noted as being brought under Section 2-619. Regardless of the relevant Section, however, only well-pled facts are accepted as true. *Id.* The law does not accept as true conclusions of fact unsupported by underlying allegations of specific fact, or conclusions of law. *Id.*

III. COUNT I SUFFERS FROM NUMEROUS PLEADING DEFECTS AND THE 1999 AGREEMENT IT SEEMINGLY IS PREMISED UPON WOULD BE UNENFORCEABLE UNDER ILLINOIS LAW

In its original Verified Counterclaim, District 204 alleged the existence of two contracts through which the Treasurer purportedly discharged District 204's statutory obligations. District 204 referred to the first of these as the "1993 Agreement." In this alleged contract, the Township Trustees purportedly agreed that it would pay for the cost of the annual audit which Section 5/3-7 of the School Code, 105 ILCS 5/3-7, obligates District 204 to undertake. District 204 referred to the second contract as the "1999 Agreement." In this alleged contract, the Township Trustees