

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

TOWNSHIP TRUSTEES OF SCHOOLS)	
TOWNSHIP 38 NORTH, RANGE 12)	
EAST,)	
)	No. 13 CH 23386
Plaintiff,)	
)	Judge Jerry A. Esrig
vs.)	
)	Commercial Calendar S
LYONS TOWNSHIP HIGH SCHOOL)	
DISTRICT NO. 204)	
)	
Defendants.)	

BRIEF SUMMARY OF PLAINTIFF’S TRIAL BRIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (“Trustees”), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, hereby provides this abbreviated summary of key points from its Trial Brief filed in this matter. (References to “LT” herein are to Defendant.)

Trustees Claim 1: LT did not pay its pro-rata bill for Fiscal Years 2000 through 2019.

Factual Predicate

- Section 8-4 of the School Code mandates that LT “shall pay” its pro-rata share of the Treasurer’s compensation and expenses of office. 105 ILCS 5/8-4.
- The formula for the pro-rata share is statutorily formulated in an equitable manner, so that the wealthier districts pay the greatest share, regardless of any other considerations.
- For Fiscal Years 2000 through 2012, LT asserts it had a contract (or some sort of understanding) that permitted LT to not pay that portion of its pro-rata bill equal to the amount it was spending on its own business employees.
- For Fiscal Years 2013 through 2019, LT asserts it should not have to pay for expenses with which it disagrees.
- It is undisputed the amount in controversy is \$3,289,247.93.

Argument

- LT's non-payment violates Section 8-4.
- It is undisputed there is no signed contract; there is just a memorandum from LT setting forth a proposal that the Treasurer would pay for certain of LT's employees; but neither LT nor Healy did what was proposed.
- No contract can override Section 8-4; and what the parties actually did, whatever the intent might have been, violated Section 8-4.
- The result was the most inequitable outcome possible because it meant that the wealthiest district, LT, paid the smallest share (often, LT paid nothing).
- The purported contract would not comply with the Intergovernmental Cooperation Act, nor would what LT actually did comply with the Act, because the Boards of each party did not approve what happened, and the "contract" does not "set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." 5 ILCS 220/5.
- The proposal on its face was for a single fiscal year (FY 2000); the minutes establish the Trustees never again considered any other similar proposal.
- LT says the purported contract was "perpetual," but it would have been unlawful for the Trustees to enter into a perpetual contract.
- Neither the Trustees nor LT actually voted to enter into a contract with the other.
- With respect LT's failure to pay its pro-rata bills for Fiscal Years 2013 through 2019, courts do not second-guess the business judgment of public bodies discretionary spending; each other district has paid its pro-rata bills in full.

Trustees Claim 2: Former Treasurer Robert Healy paid LT's audit and accounting expenses

Factual Predicate

- During the period 1993 through 2012, the then-Treasurer paid LT's audit and accounting expenses totaling \$550,566.62 from 112 invoices; this means that all of the other districts were billed (and paid) a pro-rata share of LT's audit and accounting expenses.
- During this same period, each of the other districts paid for their own audit and accounting expenses, excepting 4 invoices.

Argument

- Section 8-4 of the School Code states that each district shall pay a pro-rata share of the *Treasurer's* expenses; it does not authorize the Treasurer to include on its pro-rata bill LT's expenses; so what Healy did violated Section 8-4.
- Section 3-7 of the School Code, fairly read, provides that each district should pay for its own audit. 105 ILCS 5/3-7; so what Healy did also violated Section 3-7.
- LT's argument that Healy actually paid for all the audits of all of the districts is not a defense, it would just magnify Healy's errors; and this argument is not supported by the reports of the public office.

Trustees Claim 3: Healy over-allocated investment income to LT

Factual Predicate

- Healy allocated income to each district from the pooled investments on a quarterly basis during Fiscal Years 1995 through 2012, based on their percentage ownership of the pooled investments.

Argument

- Jim Martin, an expert witness, analyzed Healy's allocations and opines that when making allocations of income, Healy over-allocated \$1,427,442.04 to LT.
- This necessarily means that the other districts did not get their share of this \$1,427,442.04 in allocated income.
- LT's argument that documents do not permit a complete reconstruction of the total income earned during this period is a red herring, because there is no dispute that LT was over-allocated income based on a percentage basis; further, the Fiscal Year 2012 audit states the total amount of undistributed income as of the close of that fiscal year.

Trustees Claim for Prejudgment Interest:

- Investment income is allocated to the districts on the basis of fund balances. By not paying its pro-rata bill (as well as having been over-allocated income by Healy), LT's fund balance has been inflated in an increasing amount over the last 20 years; this has a compounding effect with each inflated allocation causing the next allocation to be inflated further, to the direct detriment of the other districts.
- To remedy this, the Court should assess prejudgment interest under the Interest Act on LT's unpaid pro-rata bills, and on an equitable basis on the over-allocations of interest.

LT's Affirmative Defenses:

- *Laches* is not applied against public bodies absent exceptional circumstances because “valuable public interests may be jeopardized or lost by negligent, mistake or inattention of public officials;” the facts here do not support the application of *laches* in any event.
- The Trustees fit within two recognized exceptions to the statute of limitations: (a) they are enforcing a “public right” as the Supreme Court defines that phrase; and (b) the applicable funds are being held in trust by the Treasurer. If a limitations period is applied, it should commence from the time that LT failed to pay its pro-rata bills, as that is the wrongful conduct at issue.
- The voluntary payment doctrine is not typically applied against public bodies; and the doctrine is inapplicable under the facts present.
- LT’s defense of setoff is just another attempt to enforce the unlawful agreement at issue in the Trustees pro-rata claim.

LT's Counterclaim:

- The Trustees have discretion to make business decisions based on what is best for the voters who elected them and for all of the districts in Lyons Township; this is not properly described as a fiduciary duty owed to LT.
- The Trustees did not breach any fiduciary duty and LT suffered no damages:
 - The Trustees applied the \$1,040,000 recovered from Healy’s fidelity bonds to the benefit of all the districts.
 - How the Treasurer allocates income is a prudent business practice and unallocated income remains within the Agency Fund, of which each district has a share; unallocated income does not “go” anywhere.
 - The Trustees pledged a CD as collateral for a bank loan to West 40 because it was in the best interest of Lyons Township and the districts as a whole; the loan was repaid in full and the income earned from the CD remained within the Agency Fund at all times.
 - LT’s claim that the Trustees have incurred unreasonable attorneys’ fees is untenable; it would require a trial on the conduct of this litigation and the fees are *prima facie* reasonable because all of the other districts have paid their pro-rata bills in full; they are a proper expense of the Treasurer’s office even though the Treasurer is not the named plaintiff.

Respectfully submitted,

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

By: /s/ Barry P. Kaltenbach
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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, I electronically filed **BRIEF SUMMARY OF PLAINTIFF'S TRIAL BRIEF** 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