

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

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

Plaintiff,

vs.

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

Defendant.

No. 13 CH 23386

Judge Jerry A. Esrig

Commercial Calendar S

**PLAINTIFF’S REPLY IN SUPPORT OF ITS
MOTION TO VOLUNTARILY DISMISS INTEREST ALLOCATION CLAIM**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East (the “TTO”), by and through its undersigned counsel, THE QUINLAN LAW FIRM, LLC and MILLER, CANFIELD, PADDOCK & STONE, PLC, hereby submits its Reply in support of its Motion to Voluntarily Dismiss:

LT’s argument that the Court cannot grant a motion to voluntarily dismiss because LT’s counterclaim remains pending relies on language from an Illinois statute no longer in effect. Prior to 1994, 735 ILCS 5/2-1009 and its statutory predecessor contained an express prohibition on voluntary dismissals while a counterclaim remained pending: “[a]fter a counterclaim has been pleaded by a defendant, no [voluntary] dismissal may be had as to him except by his consent.” *Echo Lake Concerned Citizens Homeowners Ass’n, Inc. v. Vill. of Lake Zurich*, 68 Ill. App. 3d 219, 225 (2d Dist. 1979) (quoting 110 Ill. Rev. Stat. § 52 (1977)). Many cases prior to 1994, including *Schmitt v. Motorola, Inc.*, 160 Ill. App. 3d 1059 (1st Dist. 1987), the case upon which LT relies, applied this rule to preclude voluntary dismissals when a counterclaim was pending. These courts, however, explicitly based their rulings on the text of section 2-1009 prior to its amendment. *See, e.g., id.; Echo Lake*, 68 Ill. App. 3d at 225.

Effective January 1, 1994, through Public Act 88-157, Illinois amended Section 2-1009 to expressly remove the prohibition on voluntary dismissals if a counterclaim is pending. (A copy of PA 88-157 showing this change is attached as **Exhibit A.**) Today, Section 2-1009 contains no prohibition on voluntary dismissals related to counterclaims, but rather states that a voluntary dismissal does not affect a pending counterclaim. *See* 735 ILCS 5/2-1009. The case upon which LT relies authority predates this amendment.

Contrary to LT's suggestion, granting a voluntary dismissal here would not violate any prohibition on claim splitting. Claim splitting occurs when a plaintiff voluntarily dismisses part of its case, lets another part of its case proceed to a final judgment, and then refiles that part of its case that was voluntarily dismissed. *Hudson v. City of Chi.*, 228 Ill. 2d 462, 482 (2008). LT's concern about claim splitting is premature, at best. *See id.* More importantly, however, the TTO has already affirmed that it has no intention of refileing its interest allocation claim here in a future lawsuit. Pl.'s Mot., Ex. E ¶ 6. Though the TTO seeks a dismissal without prejudice, it does so because a dismissal on ripeness grounds is not a decision on the merits of the claim. *See Pekin Ins. Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 84.

Next, after making repeated statements about its desire to leave the TTO upon conclusion of this case, LT now suggests for the first time that it may not actually leave the TTO. This speculative change-of-heart, however, does not change the analysis and certainly does not alleviate the Court's concerns about the need to address the interest-allocation issue on a more broad basis. LT likewise speculates that the TTO will lobby the General Assembly to legislatively overturn the statute allowing LT to leave the TTO. (Ignoring the implication that LT lobbied to pass the statute in the first instance.) Lots of things *might* happen in the future, however, and such speculation is not a good reason to deny the motion to voluntarily dismiss the interest allocation claim.

LT also advances varying arguments that take issue with the TTO's ability to properly allocate interest, from its allocation methodology to its recordkeeping. (See Resp. at 5–12.) LT also argues that delaying resolution of this issue until it leaves the TTO would prevent LT from fully presenting its position. *Id.* Nevertheless, should District 204 take issue with the manner in which the TTO allocates interest later, it certainly would be more appropriate to address any issue 204 has at that time.¹ LT's concerns about the TTO potentially violating the School Code are speculative.

Finally, LT's statement that this Court may fix the terms of a dismissal does not explain *why* the Court should either (a) award LT its attorney's fees or expert witness fees or (b) enter an injunction prohibiting the TTO from billing LT for the cost of bringing the investment allocation claim. As explained in the TTO's Motion, courts do not award attorney's fees and expert witness fees when granting voluntary dismissals, because they are not "costs." Moreover, the TTO in good faith presented a viable claim that had the support of an expert witness and survived a motion for a directed finding. LT fails to explain why it is entitled to its requested relief under these circumstances.

Voluntary dismissal of the TTO's interest allocation claim best accommodates the Court's ripeness concerns and promotes judicial economy by reducing the issues for the remainder of the trial and post-trial briefing. The Court recognized that this claim is best fit for resolution as part of preparing for LT's withdrawal from the TTO, when the TTO performs an analysis to determine the amount of money owed to LT and the other districts. Pl.'s Mot. Ex. C, Trial Tr. 90:6–10, 108:17–21, 110:3–4. As the TTO must necessarily perform this analysis regardless of whether it prevails on its interest allocation claim in this lawsuit, voluntary dismissal merely accommodates

¹ Similar to LT's assertion that it may not withdraw from the TTO, LT likewise may not have any objection to the amount of the funds it receives upon withdrawal.

the Court's concerns that the issue may not fully materialize until the TTO takes concrete action. LT's arguments to the contrary misstate the law and speculate about what might, or might, occur.

For the above reasons, the TTO respectfully requests that the Court grant its Motion to Voluntarily Dismiss Its Interest Allocation Claim.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2021, I electronically filed **PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION TO VOLUNTARILY DISMISS INTEREST ALLOCATION CLAIM** 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

1993 Ill. Legis. Serv. P.A. 88-157 (H.B. 1219) (WEST)

ILLINOIS 1993 LEGISLATIVE SERVICE

Eighty-Eighth General Assembly, 1993

Additions are indicated by <<+ Text +>>; deletions by
<<- Text ->>. Changes in tables are made but not highlighted.

PUBLIC ACT 88-157

H.B. 1219

CIVIL PROCEDURE—VOLUNTARY DISMISSAL

AN ACT to amend the Code of Civil Procedure by changing Section 2-1009.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Code of Civil procedure is amended by changing Section 2-1009 as follows:

<< IL ST CH 735 § 5/2-1009 >>

[S.H.A. 735 ILCS 5/2-1009] (735 ILCS 5/2-1009) (from Ch. 110, par. 2-1009)

§ 2-1009. Voluntary dismissal. (a) The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any part thereof as to any defendant, without prejudice, by order filed in the cause. <<-Thereafter->>

<<+(b) The court may hear and decide a motion that has been filed prior to a motion filed under subsection (a) of this Section when that prior filed motion, if favorably ruled on by the court, could result in a final disposition of the cause.+>>

<<+(c) After trial or hearing begins,+>> the plaintiff may dismiss, only on terms fixed by the court (1) upon filing a stipulation to that effect signed by the defendant, or (2) on motion specifying the ground for dismissal, which shall be supported by affidavit or other proof. <<-After a counterclaim has been pleaded by a defendant no dismissal may be had as to the defendant except by the defendant's consent.->>

<<+(d) A dismissal under subsection (a) of this Section does not dismiss a pending counterclaim or third party complaint.+>>

<<+(e)+>><<-(b)->> Counterclaimants and third-party plaintiffs may dismiss upon the same terms and conditions as plaintiffs.

(Source: P.A. 82-280.)

Approved: July 28, 1993

Effective: January 1, 1994

IL LEGIS 88-157 (1993)