

FIRM I.D. NO. 42297

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

TOWNSHIP TRUTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST,

Plaintiff,

v.

LYONS TOWNSHIP HIGH SCHOOL DIST. 204,

Defendants.

No. 13 CH 23386

Hon. Sophia H. Hall

NOTICE OF MOTION

To: Gerald E. Kubasiak
Douglas G. Hewitt
Kubasiak Fylstra Thorpe & Rotunno, PC
Two First National Plaza, 29th Floor
20 South Clark Street
Chicago, IL 60603
Fax: 312-630-7939

2014 JAN 31 11:00 AM
CLERK OF COURT

PLEASE TAKE NOTICE that on **February 10, 2014 at 10:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Sophia Hall, or any judge sitting in her stead, in the courtroom usually occupied by him in Room 2301 of the Richard J. Daley Center, and then and there present **Defendant's Motion to Dismiss**, a copy of which is attached hereto.

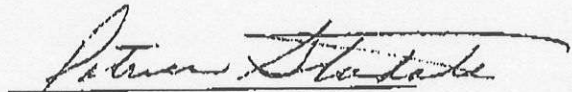
Name: Charles A. LeMoine
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Address: 10 South Wacker Drive
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Attorney for: Defendant
City: Chicago, Illinois 60606

PROOF OF SERVICE BY FACSIMILE

The undersigned, a non-attorney, on oath state that I mailed a true and correct copy of this Notice of Routine Motion, and Routine Motion together with a copy of the document therein mentioned, upon all counsel of record by fax on January 31, 2014, before 4:00 p.m.

(X) Under penalties as provided by law pursuant to ILL.REV.STAT. CHAP 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.



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Plaintiff,

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Defendants.

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MOTION TO DISMISS

Defendant, LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204 (~~the~~ District 204), by and through its undersigned attorneys, respectfully moves this Honorable Court pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1) for an order dismissing the Verified Complaint for Declaratory Relief (the "Complaint") filed by plaintiff, TOWNSHIP TRUSTEES OF SCHOOLS, TOWNSHIP 38 NORTH, RANGE 12 EAST ("Plaintiff"), and in support thereof states as follows:

INTRODUCTION

Plaintiff filed its Complaint on October 16, 2013, alleging that District 204 failed to pay its purported share of the compensation and expenses of the Lyons Township School Treasurers Office (the "TTO") for fiscal years 2000 to the present, asserting that District 204 was not entitled to receive principal and interest on investments Plaintiff allegedly paid to District 204 for fiscal years 1995 through 2012, and claiming District 204 failed to pay annual auditing expenses for fiscal years 1993 through 2011. *See* Complaint, attached as **Exhibit A**. Tellingly, Plaintiff omits any mention of the fact that District 204 and the TTO entered into an agreement in approximately 1999 under which District 204 received credits for performing many of the duties

the TTO previously used as the basis for billing District 204 (which duties the School Code did not specify as necessary for the TTO or Plaintiff to undertake on behalf of member school districts). The parties agreed, in exchange for District 204's efforts, that District 204 was entitled to financial credits (sometimes referred to as "cost chargebacks") as a setoff against monies otherwise due to the TTO. The parties' course of conduct over the ensuing years conformed with this agreement until Plaintiff suddenly, and without proper notice, purported to terminate the agreement. What is more, Plaintiff now seeks a double recovery from District 204; not only did Plaintiff benefit from District 204's provision of substantial financial services over the past decade, but now Plaintiff seeks a declaration that District 204 is also required to pay the TTO for services District 204 never received. Plaintiff is not entitled to any such recovery.

Also glaringly absent from the Complaint is any mention of Plaintiff's former Treasurer, Robert G. Healey ("Healey"), who ran the TTO from July 1988 until September 2012. Plaintiff filed suit against Healey in Case No. 12 L 11323, previously pending in the Law Division of the Circuit Court of Cook County, alleging that he secretly misappropriated nearly \$1 million in funds the TTO collected from member school districts, including District 204. The court entered a judgment against Healey in the amount of \$908,400.62 on July 18, 2013. The Cook County State's Attorney's Office also filed felony charges against Healey for alleged embezzlement resulting from Plaintiff's lack of oversight. Plaintiff now seeks to blame District 204 for Plaintiff's own lack of oversight of Healey's activities notwithstanding the fact that District 204's agreement with the TTO has greatly benefitted Plaintiff.

While Plaintiff's claims are both misleading and without merit, the doctrine of laches applies to bar any recovery sought in the Complaint. In addition, the applicable five-year statute of limitations bars Plaintiff's claims relating to monies allegedly owed by, or purportedly