

Courtroom Number:
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DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018CH08263

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

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

Plaintiff,)

v.)

LYONS TOWNSHIP HIGH SCHOOL)
DISTRICT 204,)

Defendant.)

No. 2018 CH 08263

Judge Diane J. Larsen

Calendar 7

Hearing Date: 2/6/2019 9:30 AM - 9:30 AM

LT'S MOTION TO REVISE BRIEFING SCHEDULE

Defendant and Counter-Plaintiff Lyons Township High School District 204 ("LT"), by its counsel, respectfully asks this Court to modify the briefing schedule set forth in the Court's order of December 17, 2018, in order to allow LT to respond to the pending motions to dismiss with a motion for partial summary judgment. LT should be able to file its motion for partial summary judgment, and a response to the remaining parts of the motions to dismiss, soon after it receives a full document production and interrogatories answers from Plaintiff and Counter-Defendant Lyons Township Trustees Of Schools Township 38 North, Range 12 East ("the TTO"). The TTO has promised its responses by January 31, 2019. This procedure will streamline the motions process, conserve judicial resources, and allow the parties to save on legal fees by having this Court consider once – instead of twice – certain key legal issues involved in this case.

In support of this motion, LT states as follows:

1. The TTO filed a complaint in this case seeking approximately \$600,000 from LT. This alleged debt arises from LT's partial payment of four invoices demanding payments for alleged expenses of the office of the TTO's Treasurer. LT contends that certain portions of these invoices are improper, and therefore refused to pay them. LT's objections are partly, but not

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entirely, based in LT's objections to paying annual invoices that include 25 percent of the TTO's legal fees and expenses that the TTO has incurred in still-ongoing litigation against LT.

2. In response to the Complaint, LT filed an answer, affirmative defenses, and counterclaim. LT's affirmative defense asserts that the TTO's attempt to force LT to pay a portion of its legal fees and expenses incurred in suing LT violates the American Rule (as adopted in Illinois). This Rule requires that each party to a lawsuit bear its own fees and expenses, unless otherwise provided in a contract's fee-shifting provision or an express statutory provision. LT's counterclaims included a series of monetary and declaratory claims against the TTO arising from the TTO's unlawful billing of expenses and its mismanagement of LT's investment funds. Part of the relief that LT seeks in its Counterclaims is a declaration concerning the TTO's inability to bill LT for a portion of its litigation expenses previously incurred, and to be incurred, in suing LT.

3. The TTO filed a Section 2-615 motion to dismiss LT's affirmative defense, alleging that it is legally deficient because the American Rule is inapplicable. The TTO also filed a combined Section 2-615 and Section 2-619 motion to dismiss LT's Counterclaims. One of the central arguments in that motion concerned the TTO's legal right to bill LT for a 25 percent share of its litigation costs.

4. On December 17, 2018, the Court entered a briefing schedule on the TTO's motions to dismiss. The Order sets LT's responses for 1/23/2019, the TTO's reply for 2/13/2019, and a clerk's status for 2/19/2019.

5. The TTO also filed a motion for a protective order seeking a stay on LT's document requests and interrogatories relating to the issues asserted in the counterclaims. On January 4, 2019, the Court denied this motion in its entirety and ordered the TTO to provide responses. The TTO promised to provide those responses by January 31, 2019.

6. In analyzing the TTO's motions to dismiss, LT and its counsel believe that certain of the key issues involved in those motions can and should be resolved on summary judgment. Accordingly, in response to the TTO's motions, LT seeks leave to respond by way of a motion for partial summary judgment, along with a memorandum of law on the remaining legal issues.

7. To prepare this motion for partial summary judgment, LT believes that it will be sufficient for LT to receive the TTO's document production and interrogatory answers. Of course, LT will need full and fair responses. LT hopes that this is what it will receive eight days from now, on January 31.

8. LT believes that filing a motion for partial summary judgment on the TTO's legal ability to charge LT with its legal fees and costs will significantly narrow the issues involved in this case. Furthermore, having this Court consider these key legal issues in a summary judgment proceeding will save this Court from having to consider these issues twice – that is, once on a motion to dismiss, and a second time in summary judgment proceedings. Given that LT believes it will need only full and complete responses to written discovery before filing, this requested procedure would conserve the resources of the parties, and not result in any real prejudice to the moving party. It is worth noting that LT has a legitimate interest in reducing the TTO's litigation costs, given that the TTO believes it can charge LT for a 25 percent share of those costs.

9. In addition, on January 23, 2019, LT filed a motion pursuant to Section 2-617 to strike the prayer for declaratory relief in the Complaint. As explained in that motion, the TTO's prayer for relief is inappropriate because the TTO has an adequate remedy at law. LT views the Section 2-617 motion as a first step to transferring this case to the Law Division for a jury trial (which LT demanded). LT believes that the most efficient use of judicial resources involves having

the to-be-assigned Circuit Judge in the Law Division consider the legal issues to be set forth in LT's motion for partial summary judgment and the TTO's pending motions to dismiss.

WHEREFORE, LT respectfully asks this Court to strike the briefing schedule in the 12/17/2018 Order, and enter and continue the motions to dismiss for a further status hearing in order to facilitate LT's intention to file a motion for partial summary judgment in response to those motions.

LYONS TOWNSHIP HIGH SCHOOL
DISTRICT 204

By s/Jay R. Hoffman
Its Attorney

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CERTIFICATE OF SERVICE

Jay R. Hoffman, an attorney, certifies that on January 23, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

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s/Jay R. Hoffman