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

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| LYONS TOWNSHIP TRUSTEES OF SCHOOLS, TOWNSHIP 38 NORTH, RANGE 12 EAST, | ) | |
| Plaintiff, | ) | No. 2018 CH 08263 |
| v. | ) | Judge Diane J. Larsen |
| LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204, | ) | Calendar 7 |
| Defendant. | ) | |

**LT'S REPLY IN SUPPORT OF**
**LT'S MOTION TO STRIKE THE PRAYER FOR RELIEF**
**IN THE TTO'S COMPLAINT PURSUANT TO SECTION 2-617**

In a separate pleading that the TTO filed earlier in this case, the TTO described its claim in this case as "a simple Complaint respecting Defendant's non-payment of four annual invoices." (TTO Motion to Dismiss Counterclaim, p.2.) What is not so simple, though, is the TTO's claim for relief in the Complaint. Instead of simply seeking payment of the $636,740.08 that LT allegedly owes, the TTO seeks a declaratory judgment (a) that LT wrongfully did not pay this amount; (b) that LT owes this amount; and (c) that the TTO can deduct this amount from LT's investment funds held in TTO agency accounts. This is not a proper use of the declaratory judgment statute.

## I. THE TTO'S REQUEST FOR DECLARATORY RELIEF IS IMPROPER.

### A. Every Claim for Monetary Damages is not a Declaratory Action.

The point of LT's motion is that Illinois law does not permit the TTO to transform a simple claim for money damages into a declaratory action. LT has nothing against claims for declaratory relief – in fact, there are several set forth in LT's Counterclaim. But the TTO fundamentally misunderstands the purpose of declaratory actions, and why its claim is improperly stated as a

declaratory action. Also, the TTO's misapprehends certain of LT's arguments, and thereby addresses legal points in its Response that actually are not in dispute.

Before we address the applicable case law, there is a common sense point that LT made in its Motion, and that the TTO's Response does not address at all. Under the TTO's legal position, every single claim alleging a right to monetary damages can be converted into a claim for declaratory relief. For example, if a party suffers a breach of contract, and loses money, the TTO's position would allow that party to file a declaratory judgment action seeking declarations of rights that (a) the other party breached the contract; and (b) the other party owes monetary damages. Because the Declaratory Judgment Act was not designed to be used in this manner, Illinois law prevents this use of declaratory relief.

Now this Court may ask – what difference does this issue make in our case? The answer is that there are several real consequences to the TTO's framing of its prayer for relief. First, the TTO recently used its request for declaratory relief as an argument in opposition to LT's motion to transfer with case to the Law Division to facilitate a jury trial. While it is true that the Divisions of the Circuit Court are administrative in nature, it also is true that Chancery Courts are not set up to handle jury trials (and LT demanded a jury trial). Judicial economy will be served by an early determination of the parties' jury rights, as well as the appropriate Division to manage this complex and large dollar case. Second, there is no proper basis for the TTO's demand for a declaration that it can collect on a monetary judgment from LT's investment funds – and the TTO does not even try to justify this claim for "self-help" in its Response.

LT's Motion cited several cases in which Court held that a declaratory action could not proceed where monetary damages were an adequate remedy at law. Because the TTO contends that these case are inapposite (which we address below), LT also calls this Court's attention to

*Goldberg v. Valve Corp.*, 89 Ill.App.2d 383 (1st Dist. 1967). In *Goldberg*, the plaintiff filed a declaratory judgment action based on an employment contract. The Court viewed his claim for relief as "simply … a declaration of his status as a discharged employee, together with consequential money damages." *Id.* at 390. The Court refused to allow the plaintiff to proceed with his declaratory action because his claim "was and is compensable in a traditional action/s at law, which recourse, by the language of the order below, plaintiff is not foreclosed from asserting." *Id.* at 391.

The Appellate Court reached a similar result in *Myers v. Mundelein College*, 331 Ill.App.3d 710, 715 (1st Dist. 2002). In *Myers*, employees Gray and Hasty filed a complaint that "sought a declaration that Gray and Hasty were entitled to damages for lost earnings from January 1, 1997, to the present." *Id.* at 712. The Court held that "Gray and Hasty's claims for damages are actions at law properly brought in the law division." *Id.* at 715. The Court also reversed the trial court's dismissal of the complaint under 735 ILCS 5/2-615, and remanded "with directions that the complaint be transferred to the law division." *Id.* Thus, as the Motion explained, money damage claims cast as claims for declaratory relief are improper.

**B. The TTO Cannot Justify its Request for a Declaration of Rights.**

Admittedly, this legal issue rarely arises in reported cases. LT suspects that there are not more cases like the authority cited in LT's Motion, as well as the *Goldberg* and *Myers* decisions, because – at least in counsel's experience – parties rarely seek to present simple claims for monetary damages based on a contract or a statute as declaratory actions. In this case, the TTO's Response does not justify its request for a declaration of rights.

First, the TTO's asserted justification for bringing its claim as a declaratory action does not hold water. In the Response (at 3), the TTO contends that it is "seeking a declaratory judgment of

its statutory rights and responsibilities under the School Code" and a "finding from this Court that LT is obligated to pay those amounts included on the Treasurer's annual invoice and that LT does not get to pick and choose what it feels like paying." However, this actually is not the relief that the TTO seeks in the Complaint. In the Complaint (p. 6), the TTO seeks a declaration that LT violated Section 8-4; that it owes $636,740.08; and that the Treasurer can take the amount owed from LT's investment funds that the TTO holds. There is no mention of "statutory rights and responsibilities," nor any reference to "picking and choosing" of expenses (which, incidentally, is not what LT did).

Second, to the extent that the TTO is justifying its demand for declaratory relief as a way to force LT to pay all future invoices in full, that request would be contrary to controlling law. "[A] declaratory judgment action should not be used to secure advisory opinions or legal advice with respect to future litigation." *Myers*, 331 N.E.2d at 710.

Third, LT notes that the TTO makes no effort in the Response to justify its request for a declaration that it can satisfy a monetary award against LT by taking money from LT's agency accounts. These accounts contain investment funds that the TTO holds for LT pursuant to statute. By this request, the TTO tries to jump ahead to a post-judgment remedy (*see* 735 ILCS 5/2-1402, governing Supplementary Proceedings), while ignoring the fiscal agency relationship that governs the TTO's management of LT's investment funds.

Accordingly, the TTO has not expressed a valid reason for articulating its simple claim for payment of money as a demand for declaratory relief.

**C. The TTO Incorrectly Contends that LT Argued Declarations Are Equitable.**

The TTO also misapprehends the argument in LT's Motion as to declaratory relief. LT's Motion did not argue that a request for declaratory judgment is a form of equitable relief. The

cases that LT cited in its Motion stand for the proposition that Courts treat claims for equitable relief and declaratory relief similarly, in that each is improper where there is an adequate remedy at law. It certainly is correct that declaratory relief is not an exclusive remedy, and may be combined with other remedies – and LT never argued otherwise. In fact, LT's Counterclaim seeks both declarations of rights and money damages. LT's point, as discussed above, is that the TTO is not genuinely seeking declaratory relief.

The decision in *Office of Lake Cty. State's Attorney v. Ill. Human Rights Comm'n*, 200 Ill.App.3d 151, 155 (2nd Dist. 1990), explains the distinction between employing other remedies, on the one hand, and having adequate remedies making a declaration unnecessary, on the other hand: "As to declaratory judgment, such a proceeding may be employed alone or in combination with other remedies to determine questions as to the construction or interpretation of statutes and is an appropriate method for determining controversies relating to such construction. The declaratory judgment procedure does not create substantive rights or duties but merely affords a new, additional, and cumulative procedural method for their judicial determination. The existence of another adequate remedy is a bar to a declaratory judgment action." *Id.* (deciding that administrative remedy was not adequate to resolve jurisdictional question raised in claim for declaratory relief, emphasis added).

In other words, while declaratory relief is not exclusive, and can be combined with other remedies, and can be chosen an alternative remedy, it cannot be pursued when there is an adequate legal remedy such as money damages that makes the claim for declaratory relief superfluous. That is why the cases that the TTO cites for the proposition that it can "pursue declaratory relief, even if other remedies are available" (Response at 2), are not relevant to the dispute in this case.

For example, In *Beahringer v. Page*, 204 Ill.2d 363 (2003), cited in the Response (at 2), the Court considered an inmate's claim for declaratory relief against a prison warden to regain confiscated property. There was no claim for monetary damages. 204 Ill.2d at 365. The warden claimed that the complaint failed to state a cause of action for declaratory relief because the inmate failed to exhaust the administrative grievance procedure. *Id.* at 369-70. After making the general statement that "the existence of other remedies does not preclude judgment for declaratory relief, even though such other remedies may be equally effective," the Court held that the inmate's claim for declaratory relief was improper because he failed to exhaust his administrative remedies. *Id.* at 374, 378.

The TTO's Response (at 2) also quotes generally from the decision in *Kupsik v. Chicago*, 25 Ill.2d 595 (1962). That case stands for the proposition that a party seeking a declaratory judgment to invalidate a zoning ordinance may seek additional relief in the form of an injunction. 25 Ill.2d at 596-98 (rejecting City's argument to the contrary).

Also, the Response (at 2) contains a parenthetical quote about the availability of other relief not barring a request for a declaration of rights from *Alderman Drugs, Inc. v. Metro. Life Ins. Co.*, 79 Ill.App.3d 799 (1st Dist. 1979). Again, context is important. The *Alderman Drugs* Court held that plaintiffs were not barred from seeking a declaration of rights under the contract simply because they could have terminated the contract instead – *i.e.*, as alternative relief: "It appears that the trial court dismissed the complaint because the plaintiffs had another remedy, namely they could terminate the contract. But it seems well established in this state that the existence of another remedy does not preclude declaratory relief. It would make little sense to say that the plaintiffs cannot seek declaratory relief because they can always terminate the contract, when the

very issue here is whether the defendant can avoid the contract provisions limiting modification of forcing the plaintiffs to terminate the agreement or by terminating it itself." *Id.* at 804-05.

Thus, in the *Beahringer*, *Kupsik* and *Alderman Drugs* cases, the plaintiffs all started with a legitimate claim for declaratory relief, which is not the situation presented in this case. By the Motion, LT is not trying to force the TTO to choose between valid forms of relief, but rather to present what is in essence a claim for money damages as an actual claim for money damages.

## II. LT'S MOTION IS PROCEDURALLY PROPER.

The TTO's Response (at 5-6) contends that the Motion is procedurally improper and, as a result, should be disregarded. LT believes that its Motion is procedurally proper, and that in any event, the Supreme Court's guidance that motions should be resolved based on their content, and not their labels, should control.

It certainly is true that over the years, Courts have addressed the propriety of prayers for relief under both Sections 2-615 and 2-617 of the Code of Procedure. However, LT's Motion relied on the *Five Mile Capital* case, decided in 2012, as what LT considers the modern expression of how motions to strike prayers for relief can be brought. (Motion at 4-5.) As the TTO notes in its Response, the defendant in *Five Mile Capital* contested a prayer for relief by filing a Section 2-615 motion to dismiss. However, the Court noted that the plaintiff should have proceeded under Section 2-617, and not Section 2-615: "The circuit court recognized that defendants' motion to dismiss under section 2-615 was in substance a motion to strike plaintiff's prayers for injunctive relief under section 2-617 (735 ILCS 5/2-617 (West 2010))." *Five Mile Capital*, ¶ 14. The Appellate Court's use of the word "recognized," in LT's view, indicates the Court's approval of the lower court's determination on this procedural issue.

The Court in *Five Mile Capital* also recognized a legal principle that applies with equal force in this case: "the supreme court's long-standing admonition that motions should be resolved based on their substance rather than their form," and accordingly, "the character of the pleading should be determined from its content, not its label." *Id.* ¶ 15.

LT believes that the *Five Mile Capital* Court was correct because Section 2-615 and 2-617 serve different purposes. As noted in LT's Motion (at 5), Section 2-615 motions determine whether a complaint states a cause of action upon which relief may be granted. While LT vigorously disputes the merits of the Complaint, and the key factual allegations in the claim, LT agrees that it does state a legal claim upon which relief can be granted.

Section 2-617, by its own terms, permits LT to contest the prayer for relief on a motion addressing the pleadings (which is this Motion), or even later on in summary judgment proceedings or trial. Section 2-615 does not limit motions addressing the pleadings to Section 2-615 and 2-619 motions. The TTO suggests, essentially, that LT should be required to ask this Court for leave to withdraw its answer, and then file a Section 2-615 motion to dismiss the Complaint based on a Section 2-617 attack on the prayer for relief. Even if this is the appropriate procedure, as the TTO argues, this approach would serve no purpose other than to cause delay and create additional expense. Also, this approach would not honor the legal requirement that "the character of the pleading should be determined from its content, not its label."

Respectfully, LT is either correct or incorrect under Illinois law about the TTO's ability to seek full monetary payments on four invoices through a declaratory action. LT is asking this Court to resolve this issue now, without any further procedural wrangling, so that the parties know where they stand – and where this case should be heard – as they proceed with their litigation.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL DISTRICT 204

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**CERTIFICATE OF SERVICE**

Jay R. Hoffman, an attorney, certifies that on February 27, 2019, he caused the foregoing pleading to be served by email on the following attorneys:

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