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 Sophia H. Hall**
vs.	)	**Calendar 14**
	)	
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204	)	
	)	
Defendant.	)	

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF ITS
SECOND REVISED MOTION FOR SUMMARY JUDGMENT

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("TTO"), for its Reply Brief in Support of Its Second Revised Motion for Summary Judgment ("Motion") against the defendant, Lyons Township High School District No. 204 ("LT"), states as follows:

I. INTRODUCTION

This Court should grant the TTO's Motion. Alternatively, this Court should narrow the issues for trial by entering partial summary judgment on such issues as are appropriate. LT's continued cry that a jury will decide this case overlooks the numerous questions of law the Motion raises and that a jury will not decide many of the issues presented. It also overlooks that LT cannot rely upon a jury demand to create a genuine dispute of fact. The TTO has brought forth evidence establishing its right to relief and LT is now required to do the same. Summary judgment is the "put up or shut up moment in a lawsuit." *North Community Bank v. 17011 S. Park Ave.*, 2015 IL App (1st) 133672, ¶15. LT cannot rely upon mere argument or inadmissible testimony in an effort to satisfy its burden of production.

II. LT'S COUNTERCLAIMS ARE NOT RELEVANT

LT's implicit argument is that since, due to its counterclaims, there will be a "jury trial regardless of the outcome of the TTO's Motion" (Resp. at 2), the Motion is a waste of time. This is fallacy. First, granting even part of the Motion will reduce the issues to be tried. Second, finding that the purported contract regarding LT's *pro rata* share violates Illinois law will dispose collaterally of LT's first counterclaim, which is based upon that purported contract. Third, LT does not have the right to a jury trial on its second counterclaim alleging a breach of fiduciary duty. *Prodromos v. Everen Sec., Inc.*, 389 Ill. App. 3d 157, 174 (1st Dist. 2009).

III. THE TTO'S LIMITATIONS ARGUMENT IS PROPERLY PRESENTED

In 2017, both parties moved for summary judgment. This Court addressed LT's motion first, which was limited to the statute of limitations, and denied LT's motion. This Court has never ruled upon the TTO's own motion on this issue. The TTO has every right to ask this Court for entry of summary judgment on this issue through the current Motion.

In denying LT's Motion, this Court explained the "public right" exception to the statute of limitations might apply, but also explained it was not making a final decision on that issue. The TTO now presents a more complete set of facts than did LT, which demonstrate that this Court should take that "next step" and hold that the statute of limitations does not apply because the TTO is enforcing a "public right." Such a holding would narrow the issues to be tried.

This Court also explained that it did not appear that the TTO was holding all of the funds in its custody in trust. In support of this Motion, therefore, the TTO brings to this Court' attention the holding in *Hackett v. Trustees of Schools*, 398 Ill. 27, 32 (1947), wherein the Supreme Court explained that Trustees hold "all" of the property in their care in trust. LT works to distinguish *Hackett* on the facts, but the TTO does not argue the case is factually applicable – it is cited for the legal principle that the Trustees are, in fact, trustees.

The TTO's Motion addresses arguments developed over the past year. This does not convert it into a motion for reconsideration. Analysis of policy-based exceptions to the statute of limitations is a proper subject for this Court (not a jury) to address based on the facts before it.

IV. THE SCHOOL CODE CREATED THE TREASURER AS A ZERO-SUM OFFICE

LT recites a lot of facts attempting to argue that the Treasurer is not a zero-sum office. None of these facts change the School Code, which mandates two conclusions: first, the Treasurer is a zero-sum office because it has no source of revenue other than the school districts, **which LT does not dispute**; second, the Treasurer is required to bill in arrears, so it cannot ever "zero out" and will always have a "structural" deficit.

During the fiscal year, the Treasurer has expenses. The Treasurer must pay them as it incurs them; it cannot give an IOU. The Treasurer has no funds of its own, however, so the Treasurer uses funds belonging to the school districts. This creates a "structural" deficit because

the Treasurer has spent money without (yet) getting reimbursed by the districts. At the end of the fiscal year, the Treasurer totals its expenses, applies the statutory formula, and then invoices each district for its *pro rata* share. The districts (except for LT) then pay the invoices. During this time, however, the Treasurer has already incurred expenses for the next fiscal year.

The end result creates a "structural" deficit because Treasurer will *always* be in deficit. During the course of the fiscal year, the Treasurer's spending also creates what LT refers to as a "no-interest" loan from the districts to the Treasurer. (Resp. at 6.) LT's argument on this point illustrates its misunderstanding of the issue. Any interest the Treasurer might pay to the districts would be an expense to be included on the next invoice; the school districts would pay just be paying themselves interest. The Treasurer cannot pay interest out of its "own pocket" because the Treasurer does not have its own funds. For this same reason, if a money judgment was entered against the TTO, the TTO would have to bill the districts for their share of that, too.

LT's refusal to pay its *pro rata* share creates a different kind of deficit. By the time the Treasurer issues its invoice to LT, the expenses on that invoice have already been paid. If LT does not pay the invoice, a non-structural deficit is created. The Treasurer has spent money it does not have, and (unless someone pays) never will have. The only way to address this is for LT to pay, or for the other districts to pay LT's share. The TTO cannot pay the debt because (again) it does not have its own funds. The multitude of facts LT set forth in its Response do not change this. Whether the Treasurer loaned money to West 40, for example, does not change that the Treasurer is a zero-sum office by operation of law.

V. LT WAS REQUIRED TO PAY FOR ITS OWN AUDITS

LT does not dispute that it did not pay for its own audits, or that Robert Healy paid for LT's audits and treated them as an expense of the Treasurer's office, meaning that they were

included in each district's *pro rata* share. Whether the School Code required that LT pay for its own audit requires this Court to interpret a statute – a question of law appropriate for summary judgment. *Koperski v. Amica Mut. Ins. Co.*, 287 Ill. App. 3d 494, 496 (1st Dist. 1997).

The School Code's only reference to the payment of audits is Section 3-7, which states that each district shall have an annual audit and that, if any district does not, the regional superintendent shall employ an accountant to conduct the audit and bill the district in question. 105 ILCS 5/3-7. The only plausible interpretation of this language – and LT does not offer a different interpretation – is that each school district must pay for its own audit, either (a) because it hired the auditor, or (b) it refused and the regional superintendent hired the auditor and billed the district. Any other interpretation leads to an absurd result wherein the school district does not pay for its audit if it hires the auditor, but does pay for the audit if it does *not* hire the auditor. This Court is directed to presume the legislature did not intend absurd result. *People ex rel. Bodecker v. Community Unit School Dist. No. 36*, 409 Ill. 2d 526, 532 (1951).

LT cites *People v. Michelle* to argue the TTO's interpretation adds an exception, limitation or condition onto Section 3-7, but LT does not develop this argument or offer any other interpretation. LT cites *People v. Mary Ann P* for the general rule of law that if legislature uses different words, the legislature means different things; but LT does not identify any different wording elsewhere in the School Code on this issue.

LT argues that Dr. Susan Birkenmaier testified that, to her understanding, the School Code does not state that LT must pay for its own audit. Dr. Birkenmaier's opinion on statutory interpretation, however, is not admissible. *Northern Moraine Wastewater Reclamation Dist. v. ICC*, 392 Ill. App. 3d 542, 573-74 (2nd Dist. 2009). LT concedes it "signed formal engagement

letters with Baker Tilly" (Resp. at 17), but argues the TTO has no standing to enforce those engagement letters. This argument is specious, as the TTO is not suing under the letters.

LT argues that even though Healy paid for LT's audit, he also paid for everyone's audit. LT does not explain why this fact (if true) would prevent entry of summary judgment. It would just suggest the TTO might have a cause of action against all the other districts. Regardless, LT is wrong beyond any *genuine* dispute, as proven by the actual payment records. In her Affidavit, Dr. Birkenmaier exhaustively, over the course of 35 pages and 746 attached records, establishes *beyond genuine dispute* that the TTO paid for LT's audit expenses and that – with 3 exceptions – ***the TTO did not pay for any other district's audit expenses***. (See Motion at 5 and its Ex. 3.)

LT does not explain why these 3 exceptions, totaling 1.04% of the $1,741,058 the TTO spent on audits, are material. From fiscal year 1994 through fiscal year 2012, the TTO spent $1,229,989 for its own audit, and another $511,069 for LT's audit. (Motion, Ex. 3, ¶¶31-50, 43.) In this same time period, the other districts spent $4,789,855 for *their* own audits during. (*Id.* at ¶¶58-68.) LT does not dispute the payment records for the other districts.

LT argues that the TTO's records are incomplete, but of the 104 audit charges Dr. Birkenmaier's details in her Affidavit, LT only takes issue with ***seven***. LT argues these seven records are "examples" of other problems (Resp. at 14), but in responding to summary judgment LT must do more than this. If LT wants to dispute the other 97 records, it has the burden of coming forth with its own evidence as to each. *North Community Bank*, 2015 IL (App) 1st, ¶ 15 (summary judgment is the "put up or shut up moment in a lawsuit."). If this Court finds a genuine dispute only as to these seven records, the trial of this issue will be quite quick.

Even with respect to the seven records, however, LT fails to create a genuine dispute. LT argues that the first, fifth and sixth entries (see Resp. at 13-14) are invoices for "balancing," and LT incorrectly argues that Healy and Dr. Birkenmaier testified that balancing and the audit were

two different things. LT provides no citation for its statement, though; each actually testified balancing ***was*** part of the annual audit. (See Healy Dep., Resp. Ex. 12, at 72:3-14; Birkenmaier Dep., Resp. Ex. 9, at 110:14-22.) While the TTO thinks the other four are properly chargeable to LT, to enable summary judgment the TTO will drop its claim as to those four.

LT argues that the TTO's damages might be overstated, because LT's audit costs were billed to each district on a *pro rata* basis. Thus, if LT is forced to pay all of its audit costs ***and*** all of its *pro rata* share, it will be paying twice. The TTO has stated previously it agrees in theory, but the amount of duplication cannot be determined until after this Court rules on each claim. This issue should not prevent, at the least, entry of partial summary judgment. LT also argues that if the statute of limitations applies, some of the audit fees would fall outside of the limitations period. The TTO again agrees. The amount of funds at issue will either be the full amount of the claim, or a lesser amount as narrowed by the limitations period, if applicable.

VI. THE ALLEGED PRO RATA CONTRACT WOULD VIOLATE ILLINOIS LAW

This Court, not a jury, must decide whether the purported contract violates Illinois law. The factual disputes LT attempts to raise in its Response are not relevant to the issues of law presented by the Motion. There is no dispute that Section 8-4 requires each district to pay its *pro rata* share, and no dispute that LT did not "pay" its share – thereby increasing the non-structural deficit.

Even if this Court were to find that LT performed services equal to its share (*i.e.*, that it engaged in barter), and that this would otherwise be lawful, there is no question that the cost of those services should have been included as an expense of the Treasurer's office and then billed equally to all districts, including LT. There is no dispute that this did not happen. The result is

that, no matter which theory LT spins, the purported contract violated the School Code because LT did not pay its proper share.

The purported contract ***also*** violated the Intergovernmental Cooperation Act. LT argues that a formal intergovernmental agreement was not necessary, but notably LT does not contend that the purported contract complied with the Act. LT does not even respond to the TTO's argument that *all* of the other districts needed to be parties to any intergovernmental agreement because it caused them to pay more than their share. LT argues that its sweetheart deal was not "hidden" from the other districts; but does not explain why this provides it a defense.

LT cites the opinions of two of its employees, Todd Shapiro and Lisa Beckwith, than an intergovernmental agreement was not necessary. (Resp. at 30.) Their personal opinions on the operation of the Act are not admissible. *Northern Moraine*, 392 Ill. App. 3d at 574. LT argues that there are other occasions where the TTO should have, but did not, enter into an intergovernmental agreement. (Resp. at 28-29.) But LT does not explain why, assuming this is true, it provides LT with a defense here.

LT's argument that *Village of Montgomery* supports its position is odd. In that case, the court expressly held that only "a formal agreement" could transfer responsibility for maintaining a bridge. 387 Ill. App. 3d 353, 358 (2nd Dist. 2008). The TTO agrees that a formal agreement is necessary – and the Act also requires any such agreement "set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." 5 ILCS 220/5. LT just ignores the TTO's argument on this point and it is **undisputed** that the purported contract does not comply with this statutory mandate.

LT argues that *Callender Construction* stands for the proposition that parties to a joint venture do not need further intergovernmental agreements, but the case just does not say that.

Moreover, where is LT's evidence that the TTO-LT relationship meets the definition of a joint venture under Illinois law? There is none – just LT's argument that it is so.

Next, LT does not dispute that the purported contract, on its face, it was limited to the "99-00" school year. It is, thus, an unambiguous contract that this Court can interpret for itself. LT does not dispute that any "extension" would require official approval from the Trustees (and from LT's Board). LT does not respond to the TTO's argument that any vote on an extension would have to be contained in the minutes. (Motion at 15-16). LT does not dispute that there is absolutely **nothing**, in any of the 366 pages of meeting records the TTO attached to its Motion, reflecting a vote by either entity's board on any subsequent proposal for the ensuing years.

LT ignores *Cannizzo*, which the TTO cites in its Motion, and which held that the board of a public body cannot make contracts lasting longer than the period for which the board has left to serve. (Motion at 12-13.) These points all dictate the finding that, if the purported contract was otherwise lawful, it was for only the 1999-2000 fiscal year. LT cites deposition testimony that the Trustees approved "expenditures" – but none of the witnesses testified that the Trustees voted to approve other contracts with LT and the records prove beyond genuine dispute they did not.

Of course, this raises the question of whether either public body voted to approve even the "99-00" proposal. LT does not dispute that official action was necessary by both the Trustees and LT's Board. LT does not dispute that the only vote the Trustees took was to "accept" the proposal, which for a deliberative body is "to receive" it, or that the custom and practice of the Trustees was to use the word "accept" to signify receipt of materials, not to approve contracts. (Motion at 14-15.) LT does not dispute that its own records reflect only a vote to approve payment of an invoice and there is no official record of voting on the proposal.

LT argues that the invoice for fiscal year 2013 presents a special case – and LT is correct. (Resp. at 33.) LT concedes that the purported contract does not provide LT a basis to refuse to pay its *pro rata* share for that year. LT argues it *still* should not have to pay this invoice, because it includes "litigation expenses" incurred for the current claims against LT. LT argues that the School Code does not permit the TTO to recover its legal fees from LT – but the TTO is not seeking "prevailing party" attorneys' fees; the legal fees were incurred as an expense of the Treasurer's office. LT cites no statutory basis for permitting this Court to re-write the School Code, under the guise of equity or otherwise, to alter or excuse LT from the statutory formula.

Respectfully, neither LT nor this Court is permitted a vote on whether incurring legal fees on this lawsuit was a good business decision. As explained in a case LT relies upon, *Lynn v. Trustees of Schools*, the court explained "the trustees are given control of the school business of their townships [and] and are empowered to sue for moneys due the township or the school districts." 271 Ill. App. 539, 547 (4th Dist. 1933). Finding that the decision to commence a lawsuit was within the discretion of the Trustees, the court held the trustees "had the right, if they thought it for the best interest of the public which they represent, to employ private attorneys to bring and prosecute the suits in question…." *Id*. LT has never sought to enjoin this lawsuit or argued the Trustees are without authority to prosecute it. The expenses in question have been incurred and LT's non-payment of this invoice just adds to the deficit. LT does not get to pick and choose what expenses it wants to pay for.

VII. HEALY'S MISALLOCATION OF INVESTMENT INCOME TO LT

The TTO has established, through documentary evidence and sworn expert testimony, that when Healy allocated investment income he did not do so proportionately. Sometimes LT got more than it should have, sometimes less, but the net effect was that LT was allocated at least

$1,386,267.03 more than it should have received. (Motion at 18-20.) LT makes a number of factual arguments that try to muddy the water, without much of a discussion of why they are material, but LT has not demonstrated that entry of summary judgment is not appropriate.

LT argues that the Treasurer historically does not allocate *all* of the investment income, and that the School Code does not permit the Treasurer to do this. (Resp. at 35.) This has nothing to do with whether Healy gave too much income to LT at those times when the Treasurer *did* allocate income. LT argues that the School Code does not provide that if one district receives too much income, then the other districts receive too little income (see Resp. at 36); but this is the logical conclusion – income allocated to LT cannot also be allocated to another district.

LT attacks Kelly Bradshaw, a staff accountant who helped uncover Healy's malfeasance (Resp. at 38-39), but the TTO does not rely upon Ms. Bradshaw's opinions; rather, the TTO relies upon the analysis and opinions of its expert, Jim Martin. (See Motion at 19.) Mr. Martin used Ms. Bradshaw's work as a starting point, but he reached his own conclusions. (Motion at 19.) His expert opinion, as set forth in his Affidavit attached as Exhibit 16 to the Motion, is that LT was over allocated $1,427,442.04. (Motion at 19, Ex. 16 at ¶19.) To render certain disputes non-material, the TTO accepts certain criticisms of his analysis, producing the end result that LT was over allocated $1,386,267.03. (Motion at 20.)

LT purports to rely upon the opinion of its expert, Martin Terpstra, and attaches his report (LT's Exhibit 48). LT then recites Terpstra's opinions as expressed in the report. (Resp. at 41-42.) This report, however, is clearly hearsay and inadmissible. LT argues that "Terpstra confirmed these opinions in his deposition testimony," but LT does not provide citation to Terpstra's deposition for the eight opinions LT recites. (See Resp. at 41-42.) This inadmissible

report cannot be used to create a dispute of fact. LT also relies upon the opinion of one of its employees, David Sellers (Resp. at 40), but he was not disclosed as an opinion witness.

LT argues that Healy denied he misallocated income. LT cannot cling to this summary denial where the uncontroverted financial records prove otherwise beyond *genuine* dispute. LT argues that Healy's handwritten sheets are not reliable, but Healy admitted they are the business records of his office. (Motion at 18., Ex. 15 at 94:5-96:12; Ex. 20 at 66:12-16.) As both parties agree, Healy testified they showed an estimate of what he intended to allocate, *i.e.*, a conservative, rounded number. (Motion at 18; Resp. at 36.) The general ledger shows the actual record of what was allocated to the penny. Healy did not testify, as LT suggests, that the general ledger contained only an estimate. (See Motion, Ex. 15 at 57:7-60:19.)

LT's larger argument is that it is impossible to know the total amount of investment income earned during the years in question due to missing records – but this is not material to the TTO's claim, as the TTO describes. (Motion at 20.) The TTO's claim is that when Healy allocated investment income, he gave LT more than its proportionate share of the allocation being made. In other words, if Healy was allocating $100,000 of income, and the TTO owned one-quarter of the amount invested, then LT should have gotten one-quarter of the allocation. For inexplicable reasons, Healy allocated LT more, perhaps $30,000 instead of $25,000. The net of these misallocations is what produces the figure of $1,386,267.03.

But maybe, according to LT, when further allocations were made, everything balanced out; maybe on the next allocation LT got $5,000 less than it should have. But Martin looked at the "further allocations" – Martin looked at *all* of the allocations and concluded that LT was over allocated $1,386,267.03. (Motion at 19.) Or maybe, according to LT, if $120,000 was actually earned, then an allocation to LT of $30,000 would not be an over allocation, since $30,000 is one

quarter of $120,000. The problem with LT's "maybe" is that Healy still only allocated $100,000 **and of that allocation, LT got more than one quarter**. This means that if the remaining $20,000 of income is distributed at some future point, then under LT's logic, **LT should not get any of it**. This leaves two options: (a) the Treasurer re-allocates $1,386,267.03 now and LT can get its full share of future distributions; or (b) when future allocations occur, LT receives $1,386,267.03 less. (See Motion at 20-21.) The former is the relief the TTO seeks.

As a final point, LT argues Jim Martin conceded that in some fiscal quarters, *other* districts also received improper allocations. (Resp. at 41.) This is entirely true. The TTO will either determine it is economically worthwhile to pursue the other misallocations, or it will not. Alternatively, LT could chose to file suit against the other school districts. But these allocations, which are minor compared to the amounts LT improperly received, do not provide LT a defense.

VIII. LT'S REMAINING AFFIRMATIVE DEFENSES

LT argues "a jury should be allowed to weigh the relevant evidence" of its remaining affirmative defenses (the statute of limitations was addressed above). (Resp. at 45.) But LT's equitable defenses will not be tried to a jury and, regardless, this Court may enter summary judgment when the underlying material facts are not in genuine dispute.

A. First Affirmative Defense: Laches.

Whether to apply laches is left to this Court's discretion, not a jury. *In re Marriage of Kramer*, 253 Ill. App. 3d 923, 933 (4th Dist. 1993). LT concedes the applicable standard: there is "considerable reluctance" to apply laches to claims brought by public entities, absent "extraordinary circumstances." (Motion at 22; Resp. at 45.) The TTO submits that the circumstances here, which is Robert Healy giving LT a sweetheart deal, in violation of Illinois law, and to the direct financial detriment of every other district, is precisely the type of claim for

which there is "considerable reluctance" to apply laches. The other dozen educational districts the TTO serves should not suffer because Healy botched his job and broke the law.

LT argues that *Trustees of Schools v. American Surety,* 307 Ill. App. 398 (2nd Dist. 1940) provides "precedent" for applying laches against the Trustees; but that case does not present a similar fact pattern. LT makes broad arguments about various prejudices it maintains it will suffer should its financial windfall be reversed, but ignores the prejudice the other districts suffered as a result of its windfall. Due to the public rights being asserted laches should no more restrict this action than the statute of limitations. If public policy considerations dictate the absence of a limitations period, equity should not compel the enforcement of one.

B. Third and Fourth Affirmative Defense: Promissory and Equitable Estoppel.

LT does not dispute that promissory estoppel is an offensive doctrine and not an affirmative defense. (See Motion at 23-24; *Matthews v. CTA*, 2016 IL 117638, ¶¶93-94, n.11.) Accordingly, this Court should enter summary judgment on the Third Affirmative Defense.

With respect to equitable estoppel, LT merely argues the financial windfall it received was not prohibited by the School Code. This is the inverse of the TTO's own claim, which is that the windfall *was* prohibited; LT does not admit the legal sufficiency of the TTO's claim and introduce affirmative facts to overcome that claim, and so this is not a proper affirmative defense. *Farmers Auto Ins. Ass'n v. Neumann,* 2015 IL App (3d) 140026, ¶ 16. Moreover, as with laches, the doctrine of equitable estoppel may only be applied against a public body under extraordinary circumstances, and the circumstances of this case do not warrant its application.

C. Fifth Affirmative Defense: Waiver.

LT asserts the defense of waiver only with respect to LT's nonpayment of its *pro rata* share of the Treasurer's expenses. (Resp. at 48.) In particular, LT contends the Trustees voted to

approve the purported contract with LT. As explained above, the Trustees did not vote to enter into the "99-00" proposal, they voted to receive it. Moreover, even if they did vote to enter into a contract, such contract was, on its face, good for just one school year. There is **no** record anywhere in the hundreds of meeting minutes that the Trustees ever again voted on LT's yearly "proposals." Nothing else the Trustees may have done constitutes a "clear, unequivocal and decisive act" as would be required to establish a waiver, and LT does not dispute that Healy cannot waive the TTO's rights. *See Ciers v. OL Schmidt Barge Lines, Inc.*, 285 Ill. App. 3d 1046, 1050 (1st Dist. 1996).

D. Sixth Affirmative Defense: Unclean Hands.

A jury does not decide whether to apply unclean hands; that is a decision left to this Court's discretion. *Baal. v. McDonald's Corp.*, 97 Ill. App. 3d 495, 501 (1st Dist. 1981). Moreover, the doctrine is disfavored and is meant to protect this Court – not LT – from using its equitable powers to "aid a wrongdoer…." *Carlyle v. Jaskiewicz,* 124 Ill. App. 3d 487, 498 (1st Dist. 1984). The TTO cannot fairly be characterized as a "wrongdoer" by bringing this lawsuit in an effort to address Healy's wrongdoing. This Court should enter summary judgment on this defense and remove it from the lawsuit.

E. Seventh and Eighth Affirmative Defenses: Quasi Contract.

LT argues that the cases the TTO cites in its Motion do not expressly rule out unjust enrichment and *quantum meruit* as affirmative defenses. The cases describe these legal theories as affirmative claims, however, and LT does not cite any case supporting its belief that they are proper affirmative defenses in this action, nor make any argument on this issue at all. This Court should enter summary judgment on these two defenses and remove them from this case.

F. Ninth Affirmative Defense: Voluntary Payment Doctrine.

LT does not dispute that no Illinois court has ever applied this doctrine against a public body, or that a multitude of cases from other jurisdictions have refused to apply the doctrine against public bodies. LT dismisses these cases on the basis that they are "75-120 years old." (Resp. at 49.) (Note: this is another way of saying "long-established.") In any event, LT does not cite to a single case where this doctrine has been applied against a public body within the last "75-120 years," nor does LT suggest there is evidence of a more modern trend towards applying this doctrine to a public body. It is for this Court to decide whether it is applicable, not a jury.

LT argues that, assuming the doctrine applies, it fits the facts of this case. But LT offers no evidence to support its own affirmative defense. LT cites only to testimony that LT demanded investment information and a higher rate of return – not testimony that it demanded to be paid any particular allocation. (Resp. at 49-50.) LT again argues that the TTO does not have standing to enforce the LT-Baker Tilly engagement letters – but the TTO is not seeking to enforce those letters; the point is that the TTO did not make audit payments ***to LT*** and so this doctrine is not a defense for LT. Finally, LT concedes that the TTO never made a single payment to LT with respect to the *pro rata* share dispute, but argues this is a "hyper-technical" point. (Resp. at 50.) The law, however, is replete with technicalities; that is what makes it the law rather than a set of suggested guidelines. This Court should enter judgment on this affirmative defense.

IX. CONCLUSION

WHEREFORE, for the reasons stated herein and in its Motion, the plaintiff, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court grant its Second Revised Motion for Summary Judgment and/or provide such further relief as is appropriate and enter partial summary judgment on such issues as this Court may decide.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS
TOWNSHIP 38 NORTH, RANGE 12 EAST

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

The undersigned, an attorney, certifies that a copy of the following document, **Plaintiff's Reply Brief in Support of Its Second Revised Motion for Summary Judgment**, has been served upon:

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as follows:

	by personal service on September 7, 2018 before 5:00 p.m.
	by U.S. mail, by placing the same in an envelope addressed to them at the above address with proper postage prepaid and depositing the same in the U.S. Postal Service collection box at 225 W. Washington Street, Chicago, Illinois, on September 7, 2018 before 5:00 p.m.
	by facsimile transmission from 225 W. Washington Street, Suite 2600, Chicago, Illinois to the [above stated fax number/their respective fax numbers] from my facsimile number (312) 460-4201, consisting of ____ pages on September 7, 2018 before 5:00 p.m., the served [party/parties] having consented to such service.
	by Federal Express or other similar commercial carrier by depositing the same in the carrier's pick-up box or drop off with the carrier's designated contractor on September 7, 2018 before the pickup/drop-off deadline for next-day delivery, enclosed in a package, plainly addressed to the above identified individual[s] at [his/her/their] above-stated address[es], with the delivery charge fully prepaid.
X	by electronic mail, on September 7, 2018 before 5:00 p.m., the served [party/parties] having consented to such service.

/s/ Barry P. Kaltenbach
Barry P. Kaltenbach

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