

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

FILED - 2

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CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIVISION

DOROTHY BROWN CLE.

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

Plaintiff,

vs.

LYONS TOWNSHIP HIGH SCHOOL )  
DISTRICT NO. 204, )

Defendants. )

No. 13 CH 23386

Judge Sophia H. Hall

Calendar 14

**TOWNSHIP TRUSTEES' RESPONSE TO DEFENDANT'S MOTION TO STRIKE**

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Township Trustees" or "TTO"), by its undersigned counsel, MILLER, CANFIELD, PADDOCK & STONE, PLC, for its Response to the "Motion to Strike Improper Responses in the TTO's Reply to Amended Affirmative Defenses" ("Motion") filed by Defendant, Lyons Township High School District No. 204 ("District 204" or "LT"), states as follows:

**Introduction**

On March 8, 2017, District 204 filed its First Amended Affirmative Defenses – a pleading that ran for 120 paragraphs and 23 pages. District 204 now takes issue with Township Trustees' reply to *two* of these paragraphs, Paragraphs 44 and 119. District 204's principal point seems to be that Township Trustees should somehow be able to reach into the mind of the former Treasurer, Robert Healy, and understand what he was thinking when he invoiced District 204 (¶44) and when he allocated additional interest to District 204 (¶119). Robert Healy, however, is currently serving a multi-year prison term in the Taylorville Correctional Center. The parties took his deposition there in November 2016. District 204 has the same access to Robert Healy as

does Township Trustees. Given the documents and his testimony, Township Trustees has replied appropriately to Paragraphs 44 and 199.

**A. Paragraph 44: *Pro Rata* Invoices to District 204**

District 204 generally alleges in Paragraph 44 that the Township Trustees paid for District 204's annual audit and treated it as an expense of the Treasurer's office, rather than requiring District 204 to pay for that audit. According to District 204, because its *pro rata* share of the Treasurer's expenses of office was about 25 percent at any given point in time, this means District 204 was in actuality invoiced for about 25 percent of the audit. (Of course, this same logic produces the conclusion that District was *not* invoiced for the remaining 75 percent.)

As Township Trustees has explained to District 204 on prior occasions and as Township Trustees states in its Reply to Paragraph 44, during the relevant time period "Healy did not include all expenses of the Treasurer's office on the *pro rata* invoices." In other words, in any given fiscal year, for reasons that no one understands, there were expenses of Township Trustees' office that Healy did not include when invoicing the member districts. No particular line items appear to have been left off the invoices, but rather the total amounts invoiced do not match the total expenses of the office. Accordingly, because it is not clear what individual expenses Healy included or excluded, Township Trustees cannot admit that District 204 was, in fact, invoiced for 25 percent of the costs of District 204's own audit.

The complaint of District 204, as stated at the bottom of page 3 of its Motion, is that Township Trustees should be able to figure this out after several years of litigation. This is specious. District 204 had the opportunity to and did serve written discovery, serve subpoenas and take depositions. If District 204 cannot arrive at a definitive answer to this question, then why would Township Trustees be able to do so? District 204 certainly could have put all of the

materials in front of Robert Healy during his deposition and asked him to recall what he did and did not include in his invoices, but District 204 did not do that. The reason is likely that Healy simply would not remember that level of detail and the written records do not contain the answer. Accordingly, because there is a factual basis to believe that not all of the audit invoices were included in the *pro rata* invoices issued to District 204, Township Trustees admitted as much as they could and denied the remaining allegations. Perhaps an alternative reply would have been to instead state lack of sufficient knowledge to either admit or deny the allegations of Paragraph 44, but under Illinois law this would be treated as a denial and would have had the same substantive effect. Either way, District 204's position that Township Trustees should be, in essence, forced to admit something it cannot determine with certainty is without merit.

**B. Paragraph 119: Improper Interest Allocations to District 204**

Township Trustees has alleged that during the period of time 1995 through 2012, Township Trustees earned interest income on funds it held and that Robert Healy improperly *allocated* interest income to District 204. District 204 has also had full discovery of this issue, including recently taking the expert deposition of James Martin, an accounting professional engaged by Township Trustees to testify as to the improper allocations. Indeed, District 204 has even engaged its own expert on this same subject. In Paragraph 119, District 204 alleged that Robert Healy's decision to "*pay to LT*" additional interest income to District 204 was not the product of "fraud, coercion, or mistake of fact . . . ." (Emphasis added.)

In replying, Township Trustees first states the possibility that this is an allegation of law, but provides a response in the event it is deemed an allegation of fact. This is proper. The response is to deny that it *paid* (as opposed to *allocated*) interest income to District 204. District

204 argues this is an evasive answer, because there is a “hyper-technical distinction between ‘allocation’ and ‘payment’ ....” (Motion at 4.) This is not true – the distinction is perhaps critical.

District 204 has raised the statute of limitations as an affirmative defense in this lawsuit. Illinois law, however, is that this defense is not applicable where a public body is suing over public funds and enforcing public rights. *See Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 459 (1983); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 472 (1989). In prior briefing on this issue, District 204 relied upon *School Directors of Dist. No. 5 v. School Directors of Dist. No. 1*, 105 Ill. 653 (1883) in support of its position that the statute of limitations applies nonetheless. This case, however, makes clear that the statute of limitations is *not* a valid defense under the facts presented here, particularly where a township treasurer continues to have custody of the funds that the public body is seeking to recover, as opposed to where the treasurer has actually paid those funds to another entity such that they leave his custody. *Id.* at 656.

Thus, it is District 204 who has interjected into this lawsuit the very real (and not “hyper-technical”) distinction between the fact that the Treasurer *allocates* funds to member districts through making journal entries but all the while retaining custody of those funds, as opposed to *paying* those funds to member districts.


With respect as to whether there was “fraud, coercion, or mistake of fact” with respect to Robert Healy’s decision to improperly allocate additional funds to District 204, Township Trustees replied appropriately. Township Trustees certainly has not accused District 204 (as opposed to accusing Healy) of fraud. To the extent Robert Healy over-allocated funds to District 204, however, and did so knowingly, such would constitute a fraud on the Township Trustees, its other member districts, and the public. To the extent that Robert Healy did not do so knowingly,

then he did so under a mistake of fact. The parties can certainly argue the conclusions to be drawn from Healy's deposition testimony. With respect to whether or not there was coercion involved, during his deposition Healy certainly alluded to feeling pressure from District 204 to provide it with additional funds. Whether this constitutes coercion is something to be decided. In any event, Township Trustees denial of Paragraph 119 was proper.

WHEREFORE, for the reasons stated herein, Township Trustees of Schools Township 38 North, Range 12 East, respectfully requests that this Court deny the Motion to Strike filed by District 204, along with providing such other relief as may be necessary or appropriate.

Respectfully submitted,

TOWNSHIP TRUSTEES OF SCHOOLS  
TOWNSHIP 38 NORTH, RANGE 12 EAST

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**PROOF OF SERVICE**

The undersigned, a non-attorney, certifies that a copy of the following document, **Township Trustees' Response to Defendant's Motion to Strike**, has been served upon:

Jay R. Hoffman  
Hoffman Legal  
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[jay@hoffmanlegal.com](mailto:jay@hoffmanlegal.com)

as follows:

	by personal service on May 31, 2017 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 May 31, 2017 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 May 31, 2017 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 May 31, 2017 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 May 31, 2017 before 5:00 p.m., the served [party/parties] having consented to such service.



[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct