

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

TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
	)	
Plaintiff,	)	No. 13 CH 23386
	)	
v.	)	Hon. Sophia H. Hall
	)	
LYONS TOWNSHIP HIGH SCHOOL	)	
DISTRICT 204,	)	
	)	
Defendant.	)	

**NOTICE OF MOTION**

Please take notice that on May 23, 2017, at 10:00 a.m., we shall appear before the Honorable Sophia H. Hall in Courtroom 2301 of the Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois, and present the attached motion.

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 May 16, 2017, he caused the foregoing notice of motion to be served by email on the following attorneys:

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s/Jay R. Hoffman

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TOWNSHIP TRUSTEES OF SCHOOLS	)	
TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
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Plaintiff and Counter-Defendant,	)	No. 13 CH 23386
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	)	
LYONS TOWNSHIP HIGH SCHOOL	)	Calendar 14
DISTRICT 204,	)	
	)	
Defendant and Counter-Plaintiff.	)	

**DEFENDANT LT’S SECTION 2-615 MOTION TO STRIKE IMPROPER RESPONSES  
IN THE TTO’S REPLY TO AMENDED AFFIRMATIVE DEFENSES**

**A. Introduction**

Defendant Lyons Township High School District 204 (“LT”), pursuant to 735 ILCS 5/2-615, respectfully asks this Court to (a) strike as evasive and improper Paragraphs 44 and 119 of the Plaintiff Township Trustees of Schools’ (“the TTO’s”) Reply to LT’s Amended Affirmative Defenses (attached hereto as Exhibit 1), and (b) require the TTO to provide proper, verified responses to these allegations within 14 days.

Discovery is closed, and the TTO has an obligation to provide truthful and direct responses to these key allegations of the Affirmative Defenses. With proper responses, LT can establish that (a) the TTO’s damages claim relating to audit payments is overstated by more than \$100,000 due to double counting, and (b) LT does not contend that it somehow over-allocated to LT about \$1.5 million in interest income due to circumstances involving fraud, coercion, or mistake of fact.

**B. Section 2-615 of the Code of Civil Procedure**

Pursuant to Section 2-615 of the Code of Civil Procedure, the Court may strike defective portions of pleadings, and may order a party to amend its pleading to make it more definite and

certain in a specified manner. 735 ILCS 5/2-615. The TTO's evasions in the present case are very similar to those *People ex rel. Chamberlin v. Trustees of Sch. of Twp. No. 1 S., Range 5 W.*, 319 Ill. App. 370 (3<sup>rd</sup> Dist. 1943), in which the township trustees of schools asserted evasive answers, claiming lack of knowledge of facts that were clearly within their control:

Defendants, in their numerous amended answers which were stricken by the Court, persistently avoided direct admissions or denials of numerous allegations of the complaint by alleging lack of knowledge of many matters which were patently within their knowledge or of record in the offices of the respective defendants, and in each instance could have been independently answered by various defendants; who saw fit, however, to file answers jointly on behalf of all defendants of each township, pleading conclusions of lack of knowledge concerning such matters or concerning matters which could not be collaterally raised or attacked in a mandamus proceeding. Such evasive pleadings were properly stricken by the Court as not meeting the requirements of the Civil Practice Act.

*Id.* at 376 (emphasis added).

#### **C. Paragraph 44 of the Affirmative Defenses**

In Paragraph 44 of LT's Affirmative Defenses, LT made the following assertion:

44. From 1992 through 2012, the payments that the TTO made for the annual audits of LT were part of the expenditures of the TTO. The TTO's expenditures, in turn, formed the basis of the TTO's pro rata expense invoices. During this period, LT's pro rata share was about 25 percent. Therefore, through the pro rata billing process, the TTO invoiced LT for about 25 percent of the costs of LT's own annual audit.

(Exhibit 1, ¶ 44 (emphasis added).)

This assertion essentially states that the TTO is double-counting a portion of its claimed damages. The TTO demands in the present case that (a) LT pay in full the TTO's pro rata expense invoices, about 2.6 million, without the agreed setoffs; and (b) that LT repay to the TTO the full amount of the payments the TTO knowingly made to Baker Tilly for LT's annual audit costs. However, as Paragraph 44 points out as a partial defense, the TTO's audit cost payments to Baker Tilly were part of the TTO's expenses, and so a pro rata share of those payments was included in the TTO's annual pro rata expense invoice to LT. In other words, when the TTO paid Baker Tilly

for LT's audits, it recorded those payments as TTO expenses, and later invoiced LT for a 25 percent pro rata share of those same expenses.

In its Reply to Affirmative Defenses, the TTO responded to the allegations in Paragraph 44 with a series of generalities and evasions:

**Reply:** Township Trustees admits that its payment of District 204's annual audits were treated as an expenditure of the TTO and should have been included on the annual *pro rata* invoices sent to member districts. Township Trustees admits that during the time period alleged, District 204's *pro rata* share was about twenty-five percent. Township Trustees affirmatively states that Healy did not include all expenses of the Treasurer's office on the *pro rata* invoices. Township Trustees further states that during the time period in question, District 204 did not pay its annual *pro rata* invoices, but rather paid some or none of such invoices. Township Trustees denies any remaining allegations within paragraph 44.

(Exhibit 1, ¶ 44 (emphasis added).)

Thus, the TTO response does not fairly meet the substance of the allegations in Paragraph 44. The TTO's admission only that the audit costs should have been included in the pro rata bills, along with a vague and generalized claim that Healy did not include all expenses in those bills, constitutes an evasion. All of the information needed to answer this key factual allegation is within the TTO's (and only the TTO's) knowledge as stated in its own records.

After four years of litigation, in which the TTO had every opportunity to scour its own records, analyze its own pro rata invoices (at least the ones not missing from its files), and seek additional records from third parties. The TTO now has the obligation to directly admit or deny that it charged LT for a 25 percent pro rata share of the disputed payments to Baker Tilly. A 25 percent share of the audit costs claim of \$511,068.60 is \$127,767.15. Accordingly, this pleading issue makes a difference in the TTO's damages claim of over \$100,000.

**D. Paragraph 119 of the Affirmative Defenses**

In Paragraph 119 of LT's Affirmative Defenses, LT made the following assertion:

119. There was no fraud, coercion, or mistake of fact involved in the TTO's decisions to pay to LT periodic interest on invested funds.

(Exhibit 1, ¶ 119.)

The TTO alleges in the present case that it over-allocated almost \$1.5 million in investment income to LT. In the Affirmative Defenses, LT sought to establish that the TTO's decisions made in 1995-2012 with respect to interest payments were not based on any circumstances constituting fraud, coercion, or mistake of fact.

In the Reply, the TTO asserted a meritless objection, as well as an evasion based on a non-responsive and hyper-technical distinction between "allocation" and "payment":

**Reply:** Paragraph 119 contains an allegation of law to which it is not appropriate to respond. To the extent paragraph 119 can be deemed as containing factual allegations, Township Trustees denies that it "paid" interest to District 204, but does not deny it made journal entries allocation [sic] interest to District 204. Township Trustees denies any remaining allegations within Paragraph 119.

(Exhibit 1, ¶ 119.)

The net result of this response is a catch-all denial that leaves this critical issue open after discovery is done and with only months to go before our jury trial.

**E. Conclusion**

LT is entitled to direct, good faith responses to the allegations in Paragraphs 44 and 119 of the Affirmative Defenses. LT's counsel tried to resolve this issue informally with the TTO's counsel but, ironically, was unable to get a response. LT respectfully asks this Court, pursuant to Section 2-615, to (a) strike Paragraphs 44 and 119 of the TTO's Reply to LT's Amended Affirmative Defenses as evasive and improper, and (b) require the TTO to provide proper, verified responses to these allegations within 14 days.

Respectfully submitted,

LYONS TOWNSHIP HIGH SCHOOL  
DISTRICT 204

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