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

TOWNSHIP TRUSTEES OF SCHOOLS TOWNSHIP 38 NORTH, RANGE 12 EAST,	)	
Plaintiff,	)	**No. 13 CH 23386**
vs.	)	**Judge Thomas R. Mulroy**
LYONS TOWNSHIP HIGH SCHOOL DISTRICT NO. 204	)	**Commercial Calendar I**
Defendants.	)	

PLAINTIFF'S TRIAL BRIEF

Plaintiff, Township Trustees of Schools Township 38 North, Range 12 East ("Trustees"), by its undersigned counsel, THE QUINLAN LAW FIRM, LLC, and MILLER, CANFIELD, PADDOCK & STONE, PLC, states as follows:

I. INTRODUCTION

A former Treasurer, Robert Healy, embezzled over $1 million in public funds, and granted unlawful, and unauthorized, financial benefits to Lyons Township High School District No. 204 ("District 204" or "LT") in violation of the School Code. Section 8-4 of the School Code mandates that LT "shall pay" its proportionate share of the Treasurer's expenses of office. **It is undisputed that LT did not pay its proportionate share of the Treasurer's expenses of office during Fiscal Years 2008 through 2013.**

LT argues that it and Mr. Healy reached an agreement in 2000 that excused LT from paying its proportionate share. Even assuming this "agreement" was validly entered into by the Boards of both parties (it was not) and complied with the Intergovernmental Cooperation Act (it

did not), it still violated Section 8-4 of the School Code and is, therefore, unenforceable. Moreover, at the absolute most, it would have been effective for only a single fiscal year.

It is also undisputed that the Treasurer paid for LT's audit expenses during Fiscal Years 2008 through 2012; the Treasurer thus treated LT's expenses as though they were the Treasurer's expenses. This violated the School Code because each school district is required to pay for its own audit. Further, the cost of **LT's** audit is not an expense of the **Treasurer's** office. This means that every other school district not only paid for their own audit, but paid their proportionate share of LT's audit. – the tax dollars of other districts were used to subsidize LT.

The Trustees seek a declaratory judgment authorizing the Treasurer to remedy these violations of Illinois law by debiting the amounts LT failed to pay from the $51,000,000 in funds the Treasurer is currently holding for LT. Failing this declaratory relief, each school district will have to be allocated its proportionate share of the deficit created by LT's non-payment.

II. FACTUAL BACKGROUND

A. The Township Trustees.

The Trustees are a body politic comprised of the three Township Trustees of Schools who are elected by voters within Lyons Township. 105 ILCS 5/5-2. The Illinois School Code mandates that "the school business of all school townships having school trustees shall be transacted by three trustees…." 105 ILCS 5/5-2. The Trustees also appoint the Lyons Township School Treasurer ("Treasurer"). 105 ILCS 5/8-1.

B. The Treasurer.

The Treasurer is responsible for providing financial services for District 204, and 10 other school districts: District 101 through 109; and Argo Community High School District 217. The Treasurer also provides services for 2 other bodies: the LaGrange Area Department of

Special Education ("LADSE"); and the West 40 Intermediate Service Center ("West 40"); each which provides specialty services to school districts.

The Treasurer has statutory duties, including to: (i) "[c]ollect from the township and county collectors the full amount of taxes levied by the school boards in his township;" (ii) "[b]e responsible for the receipts, disbursements and investments arising out of the operation of the school districts under his supervision; and (iii) "[p]ay all lawful orders issued by the school board of any district in his township." 105 ILCS 5/8-17(a)(2); (a)(3); (a)(9). The Treasurer is the "only lawful custodian" of the funds belonging to each school district. 105 ILCS 5/8-7.

How this works in practice is that the Treasurer takes receipt of the property taxes levied by each districts and then pools and invests the funds. The Treasurer refers to this pooled fund as the "Agency Fund." Each school district has its own percentage share of the Agency Fund. The Treasurer also pays each district's bills as directed by those districts.

C. How the Expenses of the Treasurer's Office Are Paid.

The Treasurer is compensated and the Treasurer has expenses of office. Neither the Trustees nor the Treasurer, however, have a tax base, or any other source of revenue, to pay for these things. Accordingly, during the fiscal year (which begins on July 1 and runs through June 30),[1] the Treasurer advances unallocated monies from the Agency Fund to an operating account to pay its bills. This operating account is referred to as the "Government Fund."

In the short term, this creates a structural deficit within the Agency Fund, because the Treasurer has advanced monies owned by the school districts to pay his bills. At the conclusion of each fiscal year, however, the Treasurer sends each district a bill for that district's pro-rata share of the Treasurer's expenses. When these bills are paid, the districts' accounts are debited and the unallocated deficit is reduced by the amount of the payments. To the extent a district

[1] For example, Fiscal Year 2008 is the year beginning on July 1, 2007, and ending on June 30, 2008.

does not pay, the unallocated deficit remains in the Agency Fund. So long as the Treasurer bills the amount he spends, and so long as the districts pay, however, the fiscal year balances.

The School Code requires that each district "**shall pay** a proportionate share" of the Treasurer's compensation and expenses of office. 105 ILCS 5/8-4 (emphasis added). This share "shall be determined by dividing the total amount of all school funds handled by the township treasurer by such amount of funds as belong to each such…district." *Id*. This means the wealthiest districts are billed for a higher share of the Treasurer's expenses, and the poorest districts are billed for the least share. LT is, by far, the wealthiest district.

The critical fact is that if a district does not pay its pro-rata bill, then the unallocated deficit in the Agency Fund will not balance, **because the Treasurer has already spent the money shown on the pro-rata bill**. Because the Trustees and Treasurer do not have their own source of funds, they cannot "make up" the shortfall.

If LT is not forced to pay its share, the **only** other result is that the unallocated deficit must be allocated each of the districts, the same way any other debit would be apportioned. Every single theory that LT advances overlooks this inevitable conclusion: if LT does not pay, all of the other districts will eventually absorb that cost.

D. <u>Robert Healy's Misconduct</u>.

Robert Healy was the Treasurer from July 1988 through August 2012. Towards the end of his tenure, Healy redeemed a significant amount of unused vacation days. The Trustees engaged counsel to investigate whether this was appropriate. This led to the discovery that Healy had embezzled over $1 million. Ultimately, the Trustees turned their findings over to the Cook County State's Attorney, who successful prosecuted Healy.

The Trustees also investigated whether Baker Tilly, who audited the Treasurer's office, was negligent in failing to discover the embezzlement. This, in turn, lead to the discovery that Healy had conferred unlawful, and unauthorized, financial benefits upon LT. The Trustees found that: (i) Healy paid for LT's annual audit and forced that expense upon each of the other school districts; (ii) Healy permitted LT to avoid paying its pro-rata share of the Treasurer's expenses; and (iii) Healy over-allocated income from the pooled investments to LT. The third claim has been removed from this lawsuit by application of the limitations period. In October 2013 (part of Fiscal Year 2014, which is not at issue in this lawsuit), the Trustees filed this action against LT.

III. CLAIM 1 – LT'S FAILURE TO PAY ITS ANNUAL PRO-RATA BILLS

Section 8-4 of the School Code mandates that each district "**shall pay**" its pro-rata share of the Treasurer's expenses. 105 ILCS 5/8-4. After the close of each fiscal year, the Treasurer totals the amount he spent and sends a pro-rata bill to each district. **It is undisputed that LT did not pay its pro-rata share for Fiscal Years 2008 through 2012.** LT offers excuses for why it did not pay, but none of these excuses change the fact that Healy permitted LT to violate Section 8-4. LT offers no excuse for Fiscal Year 2013, for which it made a partial payment.

A. LT's Non-Payment Violates Section 8-4.

Section 8-4 requires LT to pay its annual invoice, and LT did not pay. The issue is as simple as that; LT's non-payment violated Section 8-4.

Recall that the Treasurer has already spent the funds on the pro-rata bill. If LT does not "pay" its share of those funds, they remain spent. This creates a shortfall in revenue and the Trustees and Treasurer do not have their own funds to "make up" the shortfall. If this Court grants the Trustees the declaratory relief they seek, the result will be that LT eventually pays –

conversely, if this Court does not, all of the other districts will have to absorb the deficit. Any agreement that resulted in LT not "paying" its proportionate share violates Section 8-4.

B. No "Agreement" Can Override Section 8-4.

LT argues that it was duplicating the Treasurer's services with its own employees, and so Healy agreed that the Treasurer's office would pay for those employees. The **result**, whatever might have been intended, was that Healy sent the annual pro-rata bills to LT, and LT did not pay. Nor did Healy make any payment to LT to pay for any employees, as LT argues was agreed upon. Healy just sat by and watched the deficit continue to grow for years.

LT cannot pick-and-choose what it is willing to pay for, or decide that the Treasurer is a bad value for LT; LT "**shall pay**" its pro-rata share. Any agreement that excused LT from doing so violated Section 8-4. A public body, however, cannot enter into a contract that "is *ultra vires*, contrary to statutes, or contrary to public policy." *Matthews v. CTA*, 2016 IL 117638, ¶98. The agreement LT reached with Healy functionally excused LT from paying its pro-rata share of the Treasurer's expenses and, therefore, was contrary to the School Code.

C. Any "Agreement" Required a Formal Intergovernmental Agreement.

LT's witnesses have described their agreement with Healy as that of the Treasurer "outsourcing" services to LT, or the two parties "sharing" services. This attempt at justifying the purported agreement leads to a violation of the Intergovernmental Cooperation Act. First, if LT were truly a vendor, selling its services to the Treasurer, then the Treasurer should have included the cost of those services **when calculating his expenses of office**. But this did not happen. Rather, Healy just permitted LT to offset its employees' salaries.

Section 3 of the Intergovernmental Cooperation Act Act provides that one public body may "exercise[], combine[], transfer[], and enjoy[]" its powers with another public body. 5 ILCS

220/3. Under LT's theory, that is what happened, *i.e.*, one public body performed work for another public body. But Section 5 of the Act imposes certain requirements upon such contracts.

Section 5 approves intergovernmental agreements, "provided that such contract shall be approved by the governing bodies of each party to the contract…." 5 ILCS 220/5. As discussed below, the governing bodies of each party did not approve the "contract." Moreover, since the "contract" created a deficit impacting the other school districts, they should have been a party to the agreement, too – but they were not.

Section 5 also provides that "[s]uch contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties." 5 ILCS 220/5. The purported "contract," however, does not state the purpose or objectives of the agreement, nor the rights, powers or other responsibilities of the parties.

The existence of a formal intergovernmental agreement is not mere pomp. In *Village of Montgomery v. Aurora Township*, 387 Ill. App. 3d 353, 354 (2nd Dist. 2008), Montgomery brought suit seeking a declaratory judgment respecting which public body had the obligation to maintain a bridge. Aurora Township argued that either Montgomery or the City of Aurora had informally agreed to assume the obligation. The Appellate Court explained that:

> [a]lthough the record contains intergovernmental agreements reflecting that during certain years, [the City of] Aurora agreed to plow and salt the bridge on behalf of the Township, neither Aurora nor Montgomery ever executed a formal agreement to take over maintenance responsibility for the bridge.

Id. at 358. Accordingly, lacking a proper intergovernmental agreement to transfer maintenance, the Township retained the obligation for maintenance of the bridge. *Id*.

Similarly, in *Connelly v. Clark County*, 16 Ill. App. 3d 947 (4th Dist. 1973), decided even before the Intergovernmental Cooperation Act became law, the Appellate Court addressed whether Clark County was permitted to operate a gravel pit and sell gravel to other public

bodies. The court concluded that although Clark County *could* have entered into an agreement with other public bodies, no such intergovernmental agreement existed. *Id*. at 951. Accordingly, while Clark County could operate the gravel pit for its own needs, it *could not sell excess gravel to other public bodies*, absent a formal intergovernmental agreement. *Id*. at 952.

D. <u>If There Was an "Agreement," It Was Effective Only For FY 2000</u>.

LT was the wealthiest district, and so LT's pro-rata bill was the largest – LT did not like the fact that its wealth meant it had to pay more, and so its business manager (Lisa Beckwith) sought to alleviate LT's unhappiness.[2] The end-result was a February 29, 2000 memorandum Beckwith sent to Healy. In the memorandum, Beckwith states the relevant "proposal:"

Following is a list of responsibilities that District 204 proposes become the direct cost and responsibility of the Township Treasurer's office:

- Payroll and accounts payable bank reconciliation.
- Balance monthly totals between Treasurer and LTHS.
- Provide printing costs for checks and envelopes for accounts payable, payroll, imprest and student activities.
- Annual salary and benefit costs for 3 employees as listed below:

	Salary 99-00	OASDI Medicare	IMRF	Insurance Medical	Insurance Life	Total
Programmer Analyst	$41,205	$3,152	$3,045		$48	$47,450
Accounts Payable Bkkeeper	$23,192	$1.774	$1,714	$7,028	$48	$33,756
Payroll Bookkeeper	$21,861	$1,672	$1,616		$48	$25,197
Total	**$86,258**	**$6,598**	**$6,375**	**$7,028**	**$144**	**$106,403**

An invoice will be sent to the Township Treasurer in May with receipt of funds expected prior to the close of the fiscal year.

(Plaintiff's Trial Exhibit 10.)

[2] LT was akin to parents who send their children to private schools being unhappy paying that portion of their taxes supporting public schools. The monies are owed whether they used the services or not.

LT argues that the Trustees voted to "accept" this proposal during a March 21, 2000 Board meeting, thereby forming a contract with LT. Even if this were true, on its face, the proposal was for "99-00." Nothing in the memorandum suggests it was to be applicable on a perpetual basis. **And neither this proposal, nor any other similar proposal, was ever again voted upon by the Trustees over the next 12 years.**

Moreover, Illinois law states that a public board cannot enter into contracts for employment or services lasting longer than the period for which the board making the decision has left to serve. *Cannizzo v. Berwyn Twp. 708 Cmty. Mental Health Bd.*, 318 Ill. App. 3d 478, 482-87 (1st Dist. 2000). Such contracts are "*ultra vires* and void *ab initio*." *Id*. at 487.

Here, the governing body of the Plaintiff consists of 3 elected Trustees. 105 ILCS 5/5-2. One trustee is elected every 2 years to serve a 6-year term, with elections occurring in odd-numbered years. 105 ILCS 5/5-4; 5-13; 5-14. LT's theory is that the contract was agreed to by the Trustees in March 2000 and by LT in June 2000. A new Board of Trustees would then be created in 2001 with the next election. A "perpetual" agreement would have been unlawful.

E. <u>The Trustees Did Not Vote to Approve an Agreement With LT</u>.

The Trustees' minutes for the March 21, 2000 meeting reflects the following:

> Healy submitted to the Trustees the proposal from District 204 stating this office absorb certain payroll, accounts payable and computer processing expenditures by District 204. As these costs would be incurred by the Treasurer's office if Lyons Township High School were to totally utilize the facilities of the Treasurer's office. These costs would certainly be incurred. A point to be clarified is to make sure that workman's compensation is covered. A further recommendation by Trustee Hartigan is that the trustees be given an evaluation of the employee's performance for those aforementioned personnel employed at the high school.

(Plaintiff's Trial Exhibit 14, p. 2.)

The Minutes then reflect the following action:

A motion was made by Russell Hartigan seconded by Joseph Nekola to accept the proposal given to the Lyons Township Trustees of Schools by Cook County High School District #204.
ROLL CALL: Ayes - Joseph Nekola, Russell Hartigan
Nays - None

(Plaintiff's Trial Exhibit 14, p. 3.) (The third Trustee was absent.)

LT argues that by voting to "accept" the proposal, the Trustees formally agreed to enter into a contract with LT. This is wrong. The Board was acknowledging their receipt of the proposal. Russell Hartigan will testify that his vote was not to officially enter into a contract with LT. A review of other of the Trustees' minutes reveals that the Trustees "accepted" document when receiving them into the record; and always "approved" contracts.

LT argues that Healy **told them** that the Trustees approved the agreement; but Healy did not have actual authority to bind the Trustees. The School Code mandates that all township business be conducted by the Trustees. 105 ILCS 5/5-2, and while Section 8-7 of the School Code authorizes the Treasurer to enter into certain types of contracts, none of them are applicable here. 105 ILCS 5/8-7. In short, under the School Code, only the Trustees could approve an agreement with LT. *See also Matthews v. CTA*, 2016 IL 117638, ¶99 (a public body may only be contractually bound by official action taken by its governing Board).

Nor did Healy have apparent authority. The doctrine of apparent authority is not applicable against public officials. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶36. This is because: (a) it would leave a public body "helpless to correct errors" and "escape the financial effects of frauds and thefts by unscrupulous public servants;" and (b) persons acting with a public official are charged with knowing the bounds of his or her authority, even if the official is himself unsure. *Id*. Moreover, LT employees will testify that they knew that Healy was not authorized to enter into the purported contract.

F. Not Even LT's Board Voted to Approve the "Agreement".

The LT Board of Education met on June 19, 2000. Its Agenda, Minutes and relevant attachments are Plaintiff's Trial Exhibit 16. The Minutes reveal the Board voted to "approve the Consent Agenda…." (Plaintiff's Trial Ex. 16, p. 13.) The Consent Agenda identifies "Exhibit T" as the "Township Treasurer's Invoice." (*Id*.) Consent Agenda Exhibit T includes a memorandum from Beckwith to the Board, stating that the "Board of Education action is to approve a payment…." (Plaintiffs' Trial Ex. 16, p. 21.) That is precisely what the Board did.

LT's position is that the Board's vote approving payment of the invoice and the vote approving the "contract" are one and the same vote. In other words, by voting to approve a payment, the Board was also voting to approve a contract. But that is not what the actual vote was. LT's Board never voted to approve a contract with the Trustees.

G. The Pro-Rata Bill for Fiscal Year 2013.

LT's failure to pay its pro-rata bill for Fiscal Year 2013 is problematic for a different reason. LT concedes that the purported "agreement" would not have been in effect for Fiscal Year 2013. Despite this, LT still failed to pay its bill in full. The only explanation LT has ever given is that it was upset the Trustees hired a public relations firm.

Most respectfully, neither this Court nor LT has authority to second-guess the business decisions of the Trustees or the Treasurer. While this Court has the authority to issue relief to control "the discretionary actions of public officials," this is only where "fraud, corruption, oppression or gross injustice is shown…." *Board of Educ. v. Board of Educ.*, 112 Ill. App. 3d 212, 219 (1st Dist. 1983). It is not appropriate for this Court to substitute its own business judgment for the discretionary spending of a public body.

Moreover, the public relations firm was hired to help with the media attention generated as a result of Healy's wrongdoing. This engagement is within the business judgment of the Trustees. In *Ryan v. Warren Township High School Dist.*, 155 Ill. App. 3d 203 (2d Dist. 1987), the court held that a school district had implicit authority to employ a public relations firm during a period when the school board was under scrutiny. This was authorized as a result of the district's obligation to hold public meetings because the firm might "enhance the school district's communications with the public…." *Id*. at 205. The Trustees are similarly required to disseminate information to the community and to hold public meetings. 5 ILCS 120/1.

IV. CLAIM 2 – HEALY WRONGLY PAID FOR LT'S ANNUAL AUDITS

The School Code mandates that "[e]ach school district shall, as of June 30 of each year, cause an audit of its accounts to be made…." 105 ILCS 5/3-7. Thereafter, they "shall…submit an original and one copy of such audit to the regional superintendent of schools…." *Id*. If they do not, the superintendent "shall…cause such audit to be made by employing an accountant…to conduct such audit and shall bill the district for such services…." *Id*.

Courts should interpret statutory provisions as a whole and not focus on phrases in isolation. *People v. Glisson*, 202 Ill. 2d 499, 505 (2002). This Court may also assume that the legislature did not intend an absurd result. *Id*. Section 3-7 of the School Code requires that each district "shall cause" an annual audit to be made. While not expressly identifying who should pay, the logical reading is that each district pays for its own audit, because that district is the party "causing" the audit to be undertaken.

If a school district does not cause an audit to be undertaken, the regional superintendent "shall cause" the audit to be done, and then "shall bill" the district for the cost. This reinforces the conclusion that the cost of the audit is for the school district to bear. Any other conclusion

would create the absurd result wherein the district is **not** responsible for the cost of its audit if the district causes it, but **is** responsible for the cost if the regional superintendent causes it.

Yet it is undisputed that during Fiscal Years 2008-2012, Healy paid for LT's audit and treated it as an expense of the Treasurer's office. This means that: (a) LT did not pay for its own audit because LT's audit costs were included on the pro-rata bill that LT did not pay; and (b) every other district paid for its own audit **and** its pro-rata share of LT's audit – the other districts were forced to subsidize LT.

LT has two counter-arguments, but neither of them changes the fact that LT's non-payment violated Section 3-7. First, LT argues that Healy paid for every school district's annual audits. This is a pointless argument, because it still would not excuse LT's own violation. Regardless, the business records establish that with a few exceptions, Healy paid the annual audits of **only** LT, and not the other districts; and that each of the other districts paid for their own annual audit **plus** their pro-rata share of LT' audit.

Second, LT argues that because it was the biggest (and wealthiest) district, it performed many of its own business services and its audit was more complex, and so it was proper for Healy to force the other districts to subsidize LT. This is nonsensical. If LT's audit was more complex all the more reason for **LT** to bear that cost, rather than forcing it on the school districts.

VI. LT's AFFIRMATIVE DEFENSES

A. First Affirmative Defense: *Laches*.

"There is considerable reluctance to impose the doctrine of *laches* to actions of public entities unless unusual or extraordinary circumstances are shown." *Van Milligan v. Board of Fire & Police Comm'rs*, 158 Ill. 2d 85, 90 (1994). This is because "*laches* may impair the functioning of the [public body] in the discharge of its government functions, and valuable public interests

may be jeopardized or lost by negligence, mistakes, or inattention of public officials. *Id*.; *accord Wabash County v. IMRF*, 408 Ill. App. 3d 924, 936 (2d Dist. 2011) ("the doctrine should not be imposed on a government entity absent extraordinary circumstances, because the public would be adversely affected."). This is precisely what happened in this case, Healy's misconduct adversely affected the other school districts within Lyons Township; they should not have to bear the financial burden of Healy's malfeasance.

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

Although these doctrines are somewhat different, "similar considerations apply when these doctrines are asserted against public bodies." *Matthews v. CTA*, 2016 IL 117638, ¶94. Illinois courts have consistently held that these doctrines "will not be applied to governmental entities absent extraordinary and compelling circumstances." *Id*.

1. Promissory Estoppel.

Promissory estoppel is an offensive doctrine and it is distinguished from equitable estoppel in that promissory estoppel "allows a party to pursue a claim for damages" whereas "the latter is used as a defense…." *Id*. at ¶¶ 93-94, n.11. Accordingly, promissory estoppel is not appropriately asserted as an affirmative defense.

2. Equitable Estoppel.

Equitable estoppel may not be applied against a public body unless the body takes official action. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148 (2012), ¶39. A public body cannot be estopped "by an act of its agent beyond the authority expressly conferred upon that official." *Id*. at ¶39. Otherwise, the body "would remain helpless to correct errors." *Id*. at ¶36. To establish equitable estoppel, LT would have to establish (a) an affirmative act by the Trustees,

and (b) that LT detrimentally changed its position in reasonable reliance upon such act. *Id*. at ¶40. Moreover, "when public revenues are at stake, estoppel is particularly disfavored." *Id*.

Here, beyond the single March 2000 Trustees board meeting, LT cannot point to affirmative conduct by the Trustees. Moreover, LT will argue it would have hired different auditors had it been forced to pay for its own audit, but LT's Director of Business Services during the years at issue will testify he was satisfied with LT's auditors. With respect to LT's "contract" claims, LT did not hire anyone new as a result of the purported agreement. Finally, the purpose of equitable estoppel is to "to prevent fraud or injustice." *Gorgees v. Daley*, 256 Ill. App. 3d 143, 146 (1st Dist. 1993). Enforcing the School Code is not unjust.

D. Ninth Affirmative Defense: Voluntary Payment Doctrine.

No Illinois court has applied the voluntary payment doctrine against a public body. Other jurisdictions have held that the doctrine does not apply where the recovery of public funds are at issue. *See*, *e.g*., *Kansas City v. Halvorson*, 177 S.W.2d 495, 498 (Mo. 1943); *Township of Normania v. Yellow Medicine County*, 286 N.W. 881, 883 (Minn. 1939); *State ex rel. Hunt v. Fronizer*, 1906 WL 1164 (Ohio C.C. May 19, 1906); *Wiles v. McIntosh County*, 88 N.W. 710, 712-13 (N.D. 1901); *Village of Ft. Edwards v. Fish*, 50 N.E. 973 (N.Y. 1898).

The doctrine is little more than a form of estoppel, and the Illinois Supreme Court has explained that estoppel "will not be applied to governmental entities absent extraordinary and compelling circumstances." *Matthews*, 2016 IL 117638 at ¶94. Further, estoppel may not be applied against a public body through the unauthorized acts of a public official. *Patrick Eng'g*, 2012 IL 113148 at ¶39. Even if his Court were to apply the doctrine, however, such application would fail under the facts presented. First, the Trustees did not pay anything to LT under a claim of right to the payment. The Treasurer paid for LT's annual audit, but this money was paid to the

auditor, and the auditor is not the one asserting the defense. Further, while Beckwith proposed that the Treasurer would actually "pay" LT the sums set forth in her memorandum; such payment was never actually made. Rather Healy just permitted LT to apply an offset.

VII. DISTRICT 204'S COUNTERCLAIM

A. Count I – Setoff.

LT's claim for setoff is just another attempt to enforce the "agreement" it asserts it reached with Healy. For all the reasons discussed above that "agreement" was unenforceable and void under Illinois law. Moreover, a setoff asserts a cause of action that is "extrinsic to that which is the basis of plaintiff's cause of action." *Lake County Grading Co. of Libertyville v. Advance Mech. Contractors, Inc.*, 275 Ill. App. 3d 452, 461-62 (2nd Dist. 1995). Count I really just seeks to reduce the damages the Trustees seek, it is not a proper Counterclaim.

B. Count II – Breach of Fiduciary Duty.

To state a claim for breach of fiduciary duty, LT must prove that the Trustees breached a fiduciary duty owed to LT and damage proximately caused by that breach. *Lutkauskas v. Ricker*, 2013 IL App (1st), ¶ 35; *In re Estate of Bontkowski*, 337 Ill. App. 3d 72, 78 (1st Dist. 2003). The Trustees recovered $1,040,000 under Healy's fidelity bonds. The Treasurer disclosed to the school districts what was being done with this money – it was used to offset expenses of the Treasurer's office that otherwise would have been included on the pro-rata bills to each district. This was a lawful application of the funds.

But even if it were not, LT was not damaged by how the Treasurer applied the funds. By using the funds to pay for the Treasurer's expenses, the Treasurer lowered the amount each district had to pay for its pro-rata share. If instead the Treasurer had allocated the funds to the

districts, then each district would have received a higher pro-rata bill. The net result is precisely the same. LT received the full benefit of its share of the $1,040,000 recovered.

VII. CONCLUSION

For these reasons, the Trustees request this Court enter a declaratory judgment authorizing the Treasurer to make a bookkeeping entry debiting those funds allocated to LT and held by the Treasurer, in the amount of $1,325,337.26 (LT's unpaid pro-rata bills) and $249,008.21 (LT's audit expenses), and authorizing the Treasurer to credit the unallocated deficit by this same amount. The Trustees will submit a post-trial memorandum setting forth a credit to which LT will be entitled should the Trustees prevail on both of their claims.

Respectfully submitted,

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

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

I hereby certify that on September 4, 2019, I electronically filed **PLAINTIFF'S TRIAL BRIEF** with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/Barry P. Kaltenbach