

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
MCHENRY COUNTY ILLINOIS

ANDREW GASSER, ALGONQUIN)
TOWNSHIP ROAD COMMISSIONER,)
ALGONQUIN TOWNSHIP ROAD)
DISTRICT)

V.)

CASE NO. 17 CH 435

KAREN LUKASIK,)
INDIVIDUALLY AND IN HER)
CAPACITY AS ALGONQUIN)
TOWNSHIP CLERK, ANNA MAY)
MILLER AND ROBERT MILLER,)

Defendants,)

KAREN LUKASIK,)

CROSS- Gasser,)

V)

CHARLES A. LUTZOW JR.,)

Cross- Defendant,)

GASSER, ANDREW)

Counter-Defendant.)

THIRD AMENDED COMPLAINT
FOR BREACH OF FIDUCIARY DUTY, CONVERSION,
CONSTRUCTIVE FRAUD, AND AN ACCOUNTING

NOW COMES Andrew Gasser, Highway Commissioner of Algonquin Township and the Algonquin Township Road District (hereinafter "Road District") by and through their attorney, Robert T. Hanlon, with their complaint against Karen Lukasik, Robert Miller (hereinafter at times "BOB") and Anna May Miller (hereinafter at times "ANNA MAY"), and in support of this Third Amended Complaint states as follows:

PARTIES VENUE AND JURISDICTION

1. Plaintiff, ANDREW GASSER (“GASSER”), is the duly elected Algonquin Township Highway Commissioner. Gasser brings this action in his official capacity as Algonquin Township Highway Commissioner.

2. Plaintiff, ALGONQUIN TOWNSHIP ROAD DISTRICT (“Road District”), is a public body organized under the laws of the State of Illinois.

3. Defendant, KAREN LUKASIK ("LUKASIK"), resides in Algonquin Township, Illinois, and is the duly elected Clerk of Algonquin Township. As the elected Algonquin Township Clerk, LUKASIK is the defacto clerk of the Road District. LUKASIK is a necessary party to this litigation.

4. Defendant, ROBERT MILLER, is the former Algonquin Township Highway Commissioner and resides at 1415 East Main Street Cary, McHenry County, Illinois. Robert Miller’s term of Office as Highway Commissioner ended on May 14, 2017. Robert Miller was an agent of the Road District by virtue of his position as Highway Commissioner.

5. Defendant, ANNA MAY MILLER, was formerly employed by the Algonquin Township Road District and resides at 1415 East Main Street Cary in Cary, McHenry County, Illinois. By virtue of Anna May’s employment she was an agent of the Road District.

6. This Court has jurisdiction over the disputes and controversies alleged herein on the basis that the claims arose here in McHenry County.

7. Venue is proper in McHenry County because all of the parties to this action reside in McHenry County.

SHORT STATEMENT OF THE CASE / INTRODUCTION

8. This complaint contains twenty seven counts. Counts I - VI are breach of fiduciary duty claims which seek damages against Robert Miller and Anna May Miller for Breach of Fiduciary duty. Counts VII is a conversion claim and seeks monetary damages from Robert Miller, Count VIII sounds in constructive fraud and seek damages from Robert Miller, and finally Count IX of this complaint sounds in an accounting. The Counts sounding in Breach of Fiduciary Duty, Conversion and Constructive Fraud are plead in the alternative to each other. The accounting action seeks to account for Road District Property and the preservation of Records.

FACTS APPLICABLE TO ALL COUNTS

9. By statute GASSER has a duty to account for the assets of the Road District or Highway Department. See 605 ILCS 5/6-201.15.

10. In particular, 605 ILCS 5/6-201.15. commands that each elected highway commissioner annually shall make a report in writing, showing the following:

- (1) The amount of road money received by the district and a full and detailed statement as to how and where expended and the balance, if any, unexpended.
- (2) The amount of liabilities incurred and not paid (any undetermined liabilities shall be estimated) and the determined or estimated amount owing to each creditor, who shall be named.
- (3) An inventory of all tools having a present value in excess of \$200, machinery and equipment owned by the district, and the state of repair of these tools, machinery, and equipment.
- (4) Any additional matter concerning the roads of the district the highway commissioner thinks expedient and proper to report.

11. On or about May 15, 2017, Gasser began reviewing physical and electronic records of the Road District, prior to the filing of this suit.

12. Upon information and belief, in the period between the time that BOB lost re-election in the primary election in 2017 and May 15, 2017, BOB hired IT Connection, a computer services company, to forensically wipe Road District Computers, hard drives and servers. BOB instituted steps to pay IT Connection for this service with Road District funds.

13. As used in the preceding paragraph the term “wipe” means the loading and execution of anti-forensic software to erase unallocated space in computer systems where deleted documents could have been retrieved.

14. Upon information and belief, BOB and ANNA MAY participated in the deletion of computer records before the IT Connection installed anti-forensic software on computers of the Road District.

15. The electronic records of the Road District were deleted in part without any destruction order having been obtained from any lawful authority.

16. Despite BOB having served for over 23 years as the Algonquin Township Highway Commissioner, all of the Miller e-mail communications associated with the function of Highway Commissioner were deleted from the computers at the Road District.

17. During BOB’s term as Highway Commissioner he used both CommissionerBob@Hotmail.com” and “BobMiller@MC.net” in connection with the duties and functions of the Road District.

18. Upon information and belief, BOB directed Keith Seda of IT Connection to perform specific acts in association with the deletion of Road District records. At BOB’s direction, Keith Seda utilized an anti forensic computer software to obliterate the unallocated

space (location of deleted files) on the workstations, servers and respective back-ups to eliminate the records of misconduct at the Road District.

19. At the direction of BOB, Keith Seda removed two back-up hard drives and delivered those hard drives to BOB, before application of the anti-forensic computer software.

20. Plaintiffs made demand upon BOB to return over all of the records of the Road District. To date, BOB has turned over absolutely no substantive records of the Algonquin Township Road District or the Highway Department and is believed to retain assets of the Road District including the hard drives removed from the Road District servers referenced above.

21. None of the computers belonging to the Road District contain any e-mails of either BOB or ANNA MAY. (Investigation into the unallocated space continues.) Rather upon information and belief, Attorney Thomas Gooch, delivered to LUKASIK or her attorneys a flash drive containing what is believed to be selected e-mail correspondences related to the email account Bobmiller@MC.NET. Such e-mails were not kept in the ordinary course of business.

22. No correspondences between Business Agents of the International Union of Operating Engineers, Local 150 AFL-CIO ("Local 150") and MILLER exist in the records of the Road District.

23. No records related to bargaining with Local 150 exist within the records of Algonquin Township Highway Department or that of Algonquin Township.

24. Upon Gasser taking office, Local 150 began issuing grievances related to a purported labor agreement.

25. Upon information and belief, BOB used credit cards or convenience cards of the Road District to purchase items for his personal use.

26. BOB in furtherance of his schemes and artifices to convert funds of the Road District presented for payment from the Road District the full balance on the various cards issued to him the total balance shown on the respective cardholder statements were expensed to the Algonquin Township Highway Department. However, numerous purchases were for women's clothing (including skirts, purses/handbags/tote bags, blouses and non-uniform outfits) from various online retailers including but not limited to Prana, Lands' End, Levenger, and Orvis.

27. BOB was issued a American Express Platinum Business Credit Card to pay for necessary and proper expenses of the Road District.

28. The American Express Platinum Business Credit Card statements associated with the cards used by BOB are addressed to "Algonquin Twnshp Hwy Miller."

29. BOB was issued a Capital One Credit Card from the Road District.

30. As shown in Exhibit A, there are records of the use of the American Express Platinum Business Credit Card for the purchase of an item from Levenger Catalog/Webdelray BCH in the amount of \$384.52, dated November 7, 2014. On the following page of Exhibit A is a search result dated December 9, 2014, identifying a purse with a price of \$329.00 and the name "MILLER" written in by hand.

31. Also shown in Exhibit A is a specific invoice matching the \$384.52 purchase referenced in the paragraph above with the item number AL 13100 GPBK. This item number and invoice match the credit card charge of \$384.52 after tax and shipping were added.

32. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of Algonquin Township and the Road District was conducted and the item shown in Exhibit A was not located. The Item shown on Exhibit A was not contained in the inventory delivered by Miller to Gasser.

33. Upon information and belief the Levenger bag described in Exhibit A is in the possession of BOB and ANNA MAY.

34. Attached hereto as Exhibit B is a copy of Credit Card Charges on the Road District American Express Platinum Credit Card for tickets to Disneyland. See Exhibit B
There is no lawful use of Road District Funds to entertain BOB and ANNA MAY.

35. Attached hereto as Exhibit C is a charge to the Capital One Account of the Road District for the purchase of two large sized clothing items, one being a long sleeve "v neck" Merino cardigan sweater. The second being a woman's Colorbook Merino Turtleneck. See Exhibit C. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District was conducted and the item shown in Exhibit C was not in any of the township buildings. The Item shown on Exhibit C was not contained in the inventory delivered by BOB to GASSER.

36. Attached hereto as Exhibit D there are records of the use of the Road District American Express Platinum Business Credit Card for the purchase of women's clothing including a blouse labeled "Print Drape Ballet", another blouse labeled "a Drop shoulder Tuck", and two more sweaters.

37. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District and the offices of Algonquin Township was conducted and the item shown in Exhibit D was not in the Road District offices or premises. The Item shown on Exhibit D was not contained in the inventory delivered by Miller to Gasser.

38. Attached hereto as Exhibit E there are records of the use of the Algonquin Township American Express Platinum Business Credit Card for the purchase of clothing from

Prana Living described as only "men's women clothing".

39. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District and the offices of Algonquin Township was conducted and the item shown in Exhibit E was not in the Road District offices or premises.

40. The item shown on Exhibit E was not contained in the inventory delivered by Miller to Gasser.

41. Attached hereto as Exhibit F are records of the use of the Road District American Express Platinum Business Credit Card on June 2, 2016 for the purchase of American Express Gift Cards at jewel totaling \$210.90.

42. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District and the offices of Algonquin Township was conducted and the item shown in Exhibit F was not in the Road District offices or premises.

43. The Item shown on Exhibit F was not contained in the inventory delivered by Miller to Gasser.

44. Attached hereto as Exhibit G there are records of the use of the Algonquin Township American Express Platinum Business Credit Card for a purchase at Hooters restaurant in Brookfield Wisconsin.

45. There was no Public Use associated with the purchases at Hooters Restaurant.

46. Upon Information and belief Defendants Miller and ANNA MAY caused to be charged to the Algonquin Township American Express Platinum Business Credit Card \$348.23 on or about 10/21/2014 for the purchase of: A) Womens' Classic Cashmere Jacquard Cardigan Sweater, 2) a Women's Supima Stripe Pocket Cardigan Sweater, 3) a Women's boiled Wool Walker Coat. Each from Lands End. Attached hereto and incorporated herein as Exhibit H is the

Lands End invoice and images from a catalogue associated with the referenced Purchase.

47. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District and the offices of Algonquin Township was conducted and the item shown in Exhibit H was not in the Road District offices or premises.

48. The items shown on Exhibit H was not contained in the inventory delivered by Miller to Gasser.

49. As shown on Exhibit I an e-mail confirmation was sent to Miller for a Apple iPad Air 2 Smart Case.

50. Road District inventory delivered by Miller to Gasser of does not contain either an iPad Air 2 or an iPad Air 2 Smart Case.

51. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of the Road District and Algonquin Township was conducted and the item shown in Exhibit I was not in the township offices, moreover, no I Pad Air 2 or or iPad Air 2 Smart case has been found in the premises of Algonquin Township after diligent search.

52. Attached hereto as Exhibit J there are records of the use of the Road District American Express Platinum Business Credit Card on July 3, 2014 for the purchase of another Levensger bag in the amount of \$211.44.

53. The item shown on Exhibit J was not contained on the inventory of Road District delivered by Miller to Gasser.

54. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of Algonquin Township was conducted and the item shown in Exhibit J was not in the township offices.

55. Attached hereto as Exhibit K there are records of the use of the Algonquin

Township American Express Platinum Business Credit Card to purchase women's clothing from Orvis.

56. After Gasser took office as the Highway Commissioner, a diligent search of the Premises of Algonquin Township was conducted and the item shown in Exhibit K was not in the township offices or premises of the township.

57. The items shown on Exhibit K were not contained in the inventory delivered by Miller to Gasser.

58. Attached hereto as Exhibit L are records of the use of the Algonquin Township American Express Platinum Business Credit Card to purchase airplane tickets for Rebecca Lee and another person which upon information and belief was the child of Rebecca Lee.

59. Upon information and belief, the additional passenger shown on Exhibit L is the granddaughter of BOB and ANNA MAY.

60. The flight referenced in Exhibit L cost \$375.00 for each passenger from Chicago to New Orleans plus baggage charges.

61. No employment record identifying Rebecca Lee or her minor child as employees of Algonquin Township has ever existed.

62. The payment for air fare in connection with transportation of BOB and ANNA MAY's Daughter and Grandchild is of no public purpose.

63. BOB used an e-mail account(bobmiller@mc.net) at all times relevant to the operation of the Highway Department to conduct the business of the Algonquin Township Highway Department.

64. As shown in Group Exhibit M, the purportedly private e-mail account was used in connection with Road District business. See Group Exhibit M.

65. ANNA MAY used an e-mail account to conduct the business of the Road District. Upon information and belief Anna May deleted all Road District e-mails from the Road District computers.

66. Prior to her election LUKASIK articulated that she intends to destroy various records of Algonquin Township. Lukasik's statement was posted on Facebook and since the initiation of this lawsuit the Posting was Deleted from Public view.

67. Upon information and belief, credit cards were used by BOB and ANNA MAY to purchase gift cards that were in turn used to purchase personal goods unrelated to the business of the Road District.

68. Upon information and belief, a scheme and artifice was utilized BOB and ANNA MAY to receive additional compensation beyond their respective salaries.

69. No person has the authority to authorize the use of public monies for personal use.

70. Upon information and belief, the pattern and practice of the use of credit cards as described herein extends many years into the past.

71. Plaintiffs seeks to preserve the records to ascertain if the amounts charged to the Road District served any lawful purpose.

72. Preserving the records of MILLER's and ANNA MAY's e-mails may aid in the investigation and return of assets of the Road District.

COUNT I – BREACH OF FIDUCIARY DUTY
AGAINST ROBERT MILLER AND ANNA MAY MILLER

73. Plaintiffs incorporate the allegations of paragraph 1-72 above in this Count for breach of fiduciary Duty.

74. When a principal-agent relationship is present, a fiduciary relationship arises as a matter of law. *State Security Insurance Co. v. Frank B. Hall and Co.*, 258 Ill.App.3d 588, 595, 196 Ill.Dec. 775, 630 N.E.2d 940 (1994).

75. Both BOB and ANNA MAY were agents of the Road District at all times relevant to this complaint.

76. The agency of ANNA MAY to the road district arose by virtue of her position as an employee.

77. The agency of BOB to the Road District arose by virtue of his position as the elected Highway Commissioner.

78. A claim for breach of fiduciary duty must allege two elements: a fiduciary relationship, and a breach of the duties imposed as a matter of law as a result of that relationship. [Miller v. Harris](#), 2nd Dist. (2013) 985 N.E.2d 671, 368 Ill.Dec. 864. Here, Plaintiffs have alleged the existence of a fiduciary relationship by virtue of BOB and Anna May's relationship to the Road District. The breach of each of their fiduciary duties arose in spending Road District funds for the personal expenses of BOB and ANNA MAY.

79. BOB and ANNA MAY further breached their fiduciary duty to the Road District by receiving the benefits of Road District funds to attend Disneyland as shown in Exhibit B.

BOB and ANNA MAY further breached the fiduciary duty owed to the Road District.

80. BOB and ANNA MAY further breached their fiduciary duty to the Road District by using Road District funds to pay for personal expenses of the Road District as identified in Exhibits A-L.

81. Upon information and belief the womens clothing identified in Exhibits A-L are in the possession of Anna May Miller and have not been returned to the Road District despite demand for its return.

82. The purchases identified in Exhibits A-L were misappropriations of Road District funds.

83. As a direct and proximate cause of the breach of the fiduciary duty detailed above, the Road District suffered an injury in that Road District funds were expended upon items of personal property by Bob and Anna May Miller.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller and Anna May Miller in an amount to be determined at trial.

B) For such other and further relief as this Court deems just and equitable.

Count II Breach of Fiduciary Duty
(Delivery of Salt to David Diamond by Bob Miller)

84. Paragraphs 1- 8 are incorporated in this Count II as if fully restated herein.

85. When a principal-agent relationship is present, a fiduciary relationship arises as a matter of law. *State Security Insurance Co. v. Frank B. Hall and Co.*, 258 Ill.App.3d 588, 595, 196 Ill.Dec. 775, 630 N.E.2d 940 (1994).

86. BOB was an agent of the Road District at all times relevant to this complaint.

87. Annually, the Road District purchases salt for the purposes of maintaining the Roadways associated with the Road District.

88. A claim for breach of fiduciary duty must allege two elements: a fiduciary relationship, and a breach of the duties imposed as a matter of law as a result of that relationship. [Miller v. Harris](#), 2nd Dist. (2013) 985 N.E.2d 671, 368 Ill.Dec. 864. Here, Plaintiffs have alleged the

existence of a fiduciary relationship by virtue of BOB's relationship to the Road District. The breach of each of their fiduciary duties arose when BOB gave away to David Diamond at least two truckloads of Salt belonging to the Road District.

89. The gift of the Road District's salt to Dave Diamond is believed to have occurred between January 1, 2014 and May 1, 2017.

90. As a direct and proximate cause of the breach of the fiduciary duty detailed above, the Road District suffered an injury in that Road District assets comprised of two truck loads of salt were given away by BOB.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller in an amount to be determined at trial for the value of the two truck loads of salt given to David Diamond of the Illinois Rail Way Museum.

B) For such other and further relief as this Court deems just and equitable.

Count III
Breach of Fiduciary Duty – Expenditures on Gift Cards

91. Paragraphs 1- 8 are incorporated in this Count III as if fully restated herein.

92. When a principal-agent relationship is present, a fiduciary relationship arises as a matter of law. *State Security Insurance Co. v. Frank B. Hall and Co.*, 258 Ill.App.3d 588, 595, 196 Ill.Dec. 775, 630 N.E.2d 940 (1994).

93. BOB was an agent of the Road District at all times relevant to this complaint.

94. A claim for breach of fiduciary duty must allege two elements: a fiduciary relationship, and a breach of the duties imposed as a matter of law as a result of that relationship. [Miller v. Harris](#), 2nd Dist. (2013) 985 N.E.2d 671, 368 Ill.Dec. 864. Here, Plaintiffs have alleged the existence of a fiduciary relationship by virtue of BOB's relationship to the Road District. The breach of each of their fiduciary duties arose when BOB purchased gift cards.

95. On or about June 8, 2008 BOB purchased \$1250 of gift cards from the Barn Nursery using Road district credit cards which were in turn paid for with Road District money.

96 On or about June 2, 2016, BOB purchased gift cards at a cost of \$210 charging said gift cards to the Road District financial accounts.

97. Bob did not memorialize in any Road District record who received the respective Gift cards or how they were used.

98. As a direct and proximate cause of the breach of the fiduciary duty in purchasing and delivering gift cards, the Road District suffered an injury in that Road District assets comprised of the funds spent on the Gift Cards was diverted from the Road District for unauthorized purchases.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller in an amount to be determined at trial for the value of all gift cards acquired by Robert Miller and unaccounted for.

B) For such other and further relief as this Court deems just and equitable.

Count IV

Breach of Fiduciary Duty – Giving Away Cellular Telephones

99. Paragraphs 1- 8 are incorporated in this Count IV as if fully restated herein.

100. BOB was an agent of the Road District at all times relevant to this complaint.

101. At relevant times to this complaint, the Road District acquired Cellular telephones associated with telephone numbers on the Road District Accounts. Those Cellular phones having been acquired at Road District expense and associated with the following telephone numbers:

(847) 878-1613
(847) 875-0548
(847) 343-3892
(847) 343-8732
(847) 343-3892
(224) 239-7852
(847) 970-0571

102. At a point in time between BOB's loss of the Primary election in 2017 and his departing office, BOB conveyed the cellular telephones owned by the Road District to various other persons in a breach of his fiduciary duty.

103. BOB went further in the breach when he re-assigned the telephone numbers shown above in paragraph 101 to individuals including Derek Lee, and Andrew Rosencrans (Family members of Robert Miller).

104. The breach of BOB's fiduciary duty to the Road District arose when BOB gave away the cellular phones of the Road District.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller in an amount to be determined at trial for the value of the cellular telephones given away by Robert Miller.

B) For such other and further relief as this Court deems just and equitable.

COUNT V
BREACH OF FIDUCIARY DUTY –
IMPROVEMENTS TO MILLER RESIDENCE AT ROAD DISTRICT EXPENSE

105. Paragraphs 1- 8 are incorporated in this Count V as if fully restated herein.

106. BOB was an agent of the Road District at all times relevant to this complaint.

107. On or about January 28, 2016, Robert Miller caused to be acquired with road district funds Blink cameras and had said cameras installed in his personal residence.

108. The Cameras themselves had a cost of \$299 to the Road District.

109. Despite demand to return said Blink Cameras, Defendants Bob and Anna May have retained the Cameras.

110. Upon information and belief Defendants BOB and ANNA MAY caused to be expended from Road District funds the sum of \$4,090 from Martenson Decorating on property not belonging to the Road District in the period of time between June 2013 and December 2016.

111. The breach of BOB and ANNA MAY's fiduciary duty to the Road District arose when BOB and ANNA MAY used Road District funds for improvements to their personal residence with the installation of the cameras and decorating services.

112. BOB and ANNA MAY have not returned the Blink Cameras to the Road District despite demand.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller and Anna May Miller in an amount to be determined at trial for the amount of Road District funds expended to improve the Defendants residence.

B) For such other and further relief as this Court deems just and equitable.

**COUNT VI - BREACH OF FIDUCIARY DUTY –
USE OF ROAD DISTRICT FUNDS TO IMPROVE NON-ROAD DISTRICT PROPERTY**

113. Paragraphs 1- 8 are incorporated in this Count VI as if fully restated herein.

114. BOB was an agent of the Road District at all times relevant to this complaint.

115. On or about June 12, 2013, and 9/10/2014 BOB caused to be expended with Road District funds repairs to property not owned by the Road District to Behm Paving totaling \$13,644.40.

116. Between 10/12/2014 and 5/17/2017 BOB caused Road District funds in the amount of 13,644.40 to be used to pay Birch for installation of communications equipment on property not owned by the Road District.

117. The breach of BOB fiduciary duty to the Road District arose when BOB used Road District funds for improvements to property not owned by the Road District.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

A) enter judgment against Robert Miller in an amount to be determined at trial for the value of the funds for improvements to property not owned by the Road District.

B) For such other and further relief as this Court deems just and equitable.

COUNT VII **CONVERSION**

118. Paragraphs 1- 8 are incorporated in this Count VII as if fully restated herein.

119. Robert Miller was elected Highway Commissioner in 1993 or thereabouts.

120. Between 1993 and 2017 Robert Miller prepared an annual report setting forth all of the liabilities of the Road District. In each and every one of those annual reports Robert Miller swore under oath that there were no liabilities of the road district related to un paid sick time.

121. The financial audits commencing in 1994 and continuing to 2016 did not reflect any liability of the Road District associated with any claim of Robert Miller to unpaid sick time.

122. In April 2017, Robert Miller caused Road District funds to be paid directly to him under a claim that he was entitled to unpaid sick time.

123. On or about January 16, 2018, Robert Miller, via his counsel articulated that he was not entitled to payment of the \$47,381.84 payment by the Road District and that it was an

error in which he actually had a claim against Algonquin Township general town fund. See paragraph 2 of Miller's Motion to Correct Record filed 1/16/18.

124. By way of the admission of Robert Miller in his 1/16/2018 filing, The Road District is entitled to the return of the \$47,381.84 payment Miller contends was paid to him in error.

125. Plaintiffs made demand upon Robert Miller to return the payment (which Robert Miller acknowledges was in error) referenced above in paragraph 122.

126. The Road District has a right in the property being the \$47,381.84 erroneously paid to Robert Miller.

127. The Road District has a right to the immediate absolute and unconditional possession of the \$47,381.84.

128. Plaintiffs made demand upon Defendants Robert Miller and Anna May Miller to return to the road district all of the property shown in Exhibit N. The Road District has a right in the property shown in Exhibit N.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

- A) Enter judgment against Robert Miller in an amount to be determined at trial in excess of \$47,381.84;
- B) Pre judgment interest on the \$47,381.84 at the statutory rate of interest;
- C) An order commanding Robert and Anna May Miller to return to the Road District all of the assets in their possession thereof to the Road District, or the value of the assets misappropriated by Defendants as this court determines;
and
- D) For such other and further relief as this Court deems just and equitable.

COUNT VIII
CONSTRUCTIVE FRAUD

128. Paragraphs 1- 8 are incorporated in this Count VII as if fully restated herein.

129. Robert Miller was elected Highway Commissioner in 1993 or thereabouts.

Between 1994 and 2017 Robert Miller prepared a sworn annual report setting forth all of the liabilities of the Road District. In each and every one of those annual reports Robert Miller swore under oath that there were no liabilities of the Road District related to unpaid sick time associated with any claim BOB may have had. A fiduciary relationship existed between Robert Miller and the Road District.

130. The financial audit reports commencing in 1994 and continuing to 2016 did not reflect any liability of the Road District associated with any claim of Robert Miller to unpaid sick time.

131. In April 2017, Robert Miller caused Road District funds to be paid directly to him under a claim that he was entitled to unpaid sick time.

132. Within this pleadings of this Case, Robert Miller acknowledged that he was not due any funds from the Road District for his unpaid sick leave and that there was an error in the payment by the Road District to Robert Miller in the amount of \$47,381.84

133. Plaintiffs made demand upon Robert Miller to return the payment (which Robert Miller acknowledges was in error) referenced above in paragraph 122.

134. The Road District has a right in the property being the \$47,381.84 erroneously paid to Robert Miller.

135. Robert Miller accepted the fruit of the constructive fraud by continuing to retain the money he acknowledges was paid to him in error.

136. Bob was aware of the breach of his fiduciary duty at the time he accepted the \$47,381.84 payment because he had just completed a highway commissioner report which did not list the liability owed to him only days before claiming the funds.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

- A) Enter judgment against Robert Miller in an amount to be determined at trial for the value of the cellular telephones given away by Robert Miller.
- B) For such other and further relief as this Court deems just and equitable.

COUNT IX
ACCOUNTING

137. Plaintiffs restate and re-allege the allegations of Counts I-V sounding in a breach of fiduciary duty in this count .

136. In furtherance of his statutory duties, GASSER seeks to account for the assets of the Road District.

137. The Road District has a need for discovery not only as it relates to the breach of fiduciary duty referenced in Counts I-V, but also as it relates to the misappropriation of funds and bid rigging that plaintiffs believe occurred with respect to a Street Sweeper acquisition. In particular:

- a. On 3/15/2017 Kevin Watts of RNow solicited Bob Miller for a Street sweeper providing a brochure.
- b. On 3/20/2017 Richard Bakken of Standard Equipment delivered specs to Bob Miller on an Elgin Crosswind Machine.
- c. On 4/04/2017 Richard Bakken revises the Specs and delivers the revised specifications to Bob Miller at Bob's direction.
- d. On 4/07/2017 Bob Miller orders for publication in the Northwest Herald/Shaw Media an advertisement to appear on 4/10/2017.

- e. On 4/10/2017 Northwest Herald Publishes Notice of Invitation for Bids using the language from the Richard Bakken list.
- f. On 4/10/2017 Richard Bakken delivers to Bob Miller a revised spec sheet that is thereafter used as the official bid package spec sheet.
- g. On 4/17/2017 Richard Bakken seeks an “Official Bid Package” and the Official Bid Package is delivered to him using his exact same document as what Richard Bakken prepared – all the way down to the font used.
- h. On 4/26/2017 Richard Bakken sent an e-mail to Bob Miller with his “official bid” signed and indicating that he will bring an original bid sheet to the meeting for opening the bids later that evening.
- i. On 4/26/2017 the bids were opened, with the following bids:

Wm Nobbe Co. Regenerative Sweeper	\$253,700.00
Standard Equipment, Elgin Sweeper Bakken’s Company)	\$307,719.25 (Richard
RNOW, Schwartz	\$267,622.00

138. As opposed to accepting the low bidder, Bob Miller accepted the high bidder under the pretense that the Standard Equipment machine satisfied all of the specifications when in fact it did not.

139. The Road District seeks to account and recover from Defendant Bob unlawful payments made by the Road District while Miller was the Highway Commissioner.

140. Article VIII, section 1(a), of the Illinois Constitution, provides that "Public funds, property or credit shall be used only for public purposes." See *People v Howard*, 888 N.E.2d 85, 228 Ill.2d 428 (2008).

141. Payment of government money for admission to Disneyland serves absolutely no legitimate lawful public purpose in connection with the function of Road District.

142. Payment of government money for purchases of cashmere sweaters serves absolutely no legitimate lawful public purpose in connection with the function of Road District.

143. Use of private e-mail to conduct the business of Algonquin Township serves absolutely no legitimate purpose and only serves to prevent the public from having access to records that are clearly within the realm of public inquiry.

144. It is the duty of all persons in government to preserve records of the public body.

145. Gasser is further responsible for accounting for all of the assets of the office of the Highway Commissioner and the Road District. Obtaining records related to the use of Road District money will allow Gasser to account for all assets of the Road District.

WHEREFORE, Plaintiffs pray that this Honorable Court grant the following relief:

- A) Grant an accounting to allow the Plaintiff to account for all of the records and assets of the Road District.
- B) Order Defendants Robert Miller and Anna May Miller to turn over the emails contained on each of their email accounts used while employed by the Algonquin Township to Plaintiff and to the clerk of Algonquin Township.
- C) Issue an injunction preventing the destruction of records of the Road District.
- D) Order the Algonquin Township Clerk to allow Andrew Gasser access to the Records of the Road District in furtherance of this accounting action.
- E) For such other and further relief as this Court deems just and equitable.

Respectfully submitted,

By: /s/Robert T. Hanlon
Robert T. Hanlon, One of Plaintiffs'
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