

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

ANDREW GASSER, ET AL.,)
Plaintiff,)
v.)
KAREN LUKASIK,)
INDIVIDUALLY AND IN HER)
CAPACITY AS ALGONQUIN)
TOWNSHIP CLERK, ANNA MAY)
MILLER AND ROBERT MILLER,)
Defendants.)
-----)
KAREN LUKASIK, INDIVIDUALLY)
AND IN HER CAPACITY AS)
ALGONQUIN TOWNSHIP CLERK,)
ANNA MAY MILLER AND ROBERT)
MILLER,)
Defendants/Counter-Plaintiffs,)
v.)
ANDREW GASSER,)
Plaintiff/Counter-Defendant.)
-----)
KAREN LUKASIK, INDIVIDUALLY)
AND IN HER CAPACITY AS)
ALGONQUIN TOWNSHIP CLERK,)
Defendant/Third-Party Plaintiff,)
v.)
CHARLES LUTZOW,)
Third-Party Defendant.)

Case No. 17 CH 000435

PLAINTIFFS’ RESPONSE TO MILLER’S 2-619.1 MOTION TO DISMISS

NOW COME Plaintiffs, ANDREW GASSER AND THE ALGONQUIN TOWNSHIP ROAD DISTRICT (hereinafter “Gasser” and “Road District” respectively), by and through their attorney, LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES, P.C., with their response to Defendant Robert Miller’s (hereinafter “Miller”) Combined Motion to Dismiss (hereinafter “Miller’s Motion”) and state in opposition thereto as follows:

Introduction

Miller's Motion attacks the complaint¹ seeking judgment on the pleadings based on facts not contained in the pleadings but facts outside the pleadings under 2-615(e), and in the alternative under 2-615(a) for failure to state a cause of action and finally 2-619 under the theory that Plaintiffs have no standing. On the limited occasions where specificity is provided, Miller's claims are sadly erroneous, if not dubiously stated².

As to Counts I-VI, Miller falsely claims that Gasser is seeking relief for himself when the prayer for relief is clearly in favor of the Road District. Counts VII and VIII of the complaint seek redress for the receipt by Miller of \$47,384 from the Road District for purportedly unpaid sick time when in fact, Miller acknowledges that the payment from the Road District was erroneous. Only in the arrogance of Miller can he claim that he was not entitled to be paid money by the Road District and then contend that he should be able to keep it. Likewise, Miller attempts to confuse the court with a contention that Counts VII and VIII are combining causes of action. Rather, those causes of action are pled in the alternative. See complaint at paragraph 8. Said paragraph 8 specifically points to the two respective Counts VII & VIII as being pled in the alternative. *Id.* Finally, Miller also seeks dismissal on the basis of a purported lack of standing. Miller's lack of standing claim is as erroneous as his claim that the complaint seeks monetary damages in favor of Gasser.

Miller's arguments fail because he has asserted without veracity that the Prayer for Relief seeks monetary relief in favor of Gasser. Moreover, Miller alleges that additional facts must be pled to the exclusion of all other possible facts. Miller is simply wrong because he can always

¹ For simplicity, the 4th Amended Complaint is referenced herein as simply the "complaint".

² Throughout Miller's Motion, Miller takes great liberties with the truth.

raise an affirmative defense, but the Road District need not plead the negative of all possible facts.

False Statements in Miller's Motion

Each of the following statements in Miller's Motion are untrue, inaccurate or false:

- i. Miller's claim that Counts I-VI seek money to be returned to Gasser. See Miller's Motion, page 2, but see actual Prayer for Relief specifically seeking return to the Road District.
- ii. All of the counts... ignore the fact that the Highway Commissioner does not have the ability to pay anyone any amount of money. See Miller's Motion, page 2, but see complaint wherein Miller charged items to a credit card and see 605 ILCS 5/6-201.6 vesting all direction of spending with the Highway Commissioner.
- iii. Commencing on page 2 of Miller's Motion is a claim that Plaintiffs are ignoring the Township Code. In fact the Township Code governs the Algonquin Township (hereinafter "Township") and not the Road District.
- iv. Claim that it was impossible for Miller to dispose of assets of the Road District because of Board action. See Miller's Motion , pages 2-3), but see complaint in Counts I-VI. Miller used credit cards to purchase items and it was part of his scheme and artifice to defraud the Township.
- v. Claim that all of the payments from the Road District were approved by the Algonquin Township Board (hereinafter "Board" or "Township Board"). However, had Miller attached even a single copy of the minutes of the various township board minutes the court could observe that no such approval ever took place. Plaintiff is happy to produce a voluminous set of meeting minutes disproving this claim.

Other Relevant Statements by Miller

On January 16, 2018, Miller via his counsel filed the following statement:

First, Defendant alleged that the sick pay raised in Plaintiffs Response was paid from the general town fund. Defendant should have alleged that the sick pay owed Defendant was a liability of the general town and erroneously paid through the road and bridge fund at the time of payment, for sick days earned when MILLER was not an elected official, but was an employee.

This statement was incorporated by reference in the complaint and because it is part of the record is applicable to any motion to dismiss under 2-615. See complaint. See also *Howard v. Weitekamp*, App. 4 Dist.2015, 404 Ill.Dec. 740, 57 N.E.3d 499.

Argument

A) THE STATUTE AND ITS APPLICATION

735 ILCS 5/2-615:

2-615(a) and (e) read as follows:

Sec. 2-615. Motions with respect to pleadings. (a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

(e) Any party may seasonably move for judgment on the pleadings.

Unlike a motion for summary judgment or a motion for involuntary dismissal that raises an “affirmative matter avoiding the legal effect of or defeating the claim,” a motion to dismiss for failure to state a claim (§2-615) is a motion based on the pleadings rather than the underlying facts; thus, depositions, affidavits, and other supporting materials may not be considered by the court in ruling on a 2-615 motion. *Provenzale v. Forister*, App. 2 Dist.2001, 252 Ill.Dec. 808,

318 Ill.App.3d 869, 743 N.E.2d 676. A cause of action should not be dismissed, on a Section 2-615 motion with respect to pleadings, unless it is clear that no set of facts can be proved under the pleadings that would entitle the plaintiff to recover. *Tuite v. Corbitt*, 2006, 310 Ill.Dec. 303, 224 Ill.2d 490, 866 N.E.2d 114. All well-pleaded facts and reasonable inferences that can be drawn from those facts are accepted as true, and the court is to interpret the allegations in the complaint in the light most favorable to the plaintiff, on a Section 2-615 motion to dismiss with respect to pleadings. *Tuite v. Corbitt*, 2006, 310 Ill.Dec. 303, 224 Ill.2d 490, 866 N.E.2d 114.

A 2-615 motion to dismiss with respect to the pleadings attacks the legal sufficiency of the complaint, and, in ruling on the motion, courts only consider (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Howard v. Weitekamp*, App. 4 Dist.2015, 404 Ill.Dec. 740, 57 N.E.3d 499. In this case within the record and as alleged Miller executed an affidavit that the payment he received from the Road District was in error. Because Miller has acknowledged that the \$47,384 payment was made to him in error, this Court should not dismiss this cause because his admission demonstrates that he has received Road District assets and retains them knowing that he should not have received them.

B) PLAINTIFF IS NOT REQUIRED TO PLEAD EVIDENCE.

A pleader is not required to set forth his evidence. *Stinson v. Physicians*, 646 N.E.2d 930, 932 (Ill.App. 1995); *accord, Fiala v. Bickford*, 43 N.E.3d 1234, 1251 (Ill.App. 2015) (reversing dismissal). Dates and times are the sort of evidentiary facts which need not be pleaded. *Fiala*, 43 N.E.2d at 1252. A complaint also may withstand dismissal even where it “may not win any prizes for brevity.” *See Zeitz*, 592 N.E.2d at 389. Here, Miller contends that the complaint ought to be dismissed because Plaintiffs have not pled the exclusion of all possibilities for the use of public funds on Miller’s home.

C) ELEMENTS OF A BREACH OF FIDUCIARY DUTY

Counts I-VI are breach of fiduciary counts. Each of the Counts I-VI pleads the elements of a breach of fiduciary duty. A claim for breach of fiduciary duty must allege two elements: (1) a fiduciary relationship, and (2) 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.

Any candid examination of the complaint in said Counts I-VI makes it clear that each of the first six counts of the complaint contain the required allegations. While Miller alleges that the counts contain legal conclusions, the facts pled are sufficient to establish not only the fiduciary relationship but also the breach thereof. More particularly, in Count I, Plaintiffs specifically cite to the elements of breach of fiduciary duty with citation to the appellate court. The citation to the appellate court is a statement of fact as to the elements with its proper citation. Even if the court were to ignore or even strike the reference to the elements which are presented to aid the court and ultimately the trier of fact in assessing the cause of action, the cause of action is properly pled. This is true as to each count alleging a breach of fiduciary duty.

Miller's argument is akin to a person who holds a power of attorney and spends money on himself without consideration to the purpose and intent of the power and alleges that they were authorized. Here the Road District funds were to be used specifically for Road District purposes within the Township, but instead they were used to purchase personal items and give away its assets.

D) ELEMENTS OF CONVERSION

Count VII is a count for conversion. Conversion is “ ‘any unauthorized act, which deprives a man of his property permanently or for an indefinite time.’ ” *In re Thebus*, 108 Ill.2d 255, 259, 91 Ill.Dec. 623, 483 N.E.2d 1258 (1985), quoting *Union Stock Yard & Transit Co. v.*

Mallory, Son & Zimmerman Co., 157 Ill. 554, 563, 41 N.E. 888 (1895). The essence of conversion is “ ‘the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held.’ ” *In re Thebus*, 108 Ill.2d at 259, 91 Ill.Dec. 623, 483 N.E.2d 1258, quoting *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill.App.3d 207, 213, 65 Ill.Dec. 801, 441 N.E.2d 1315 (1982). To sufficiently allege conversion, therefore, a plaintiff must allege (1) the defendant's unauthorized and wrongful assumption of control, dominion or ownership over the plaintiff's personal property, (2) the plaintiff's right in the property, (3) the plaintiff's right to immediate possession of the property, absolutely and unconditionally and (4) the plaintiff's demand for possession of the property. *General Motors Corp. v. Douglass*, 206 Ill.App.3d 881, 151 Ill.Dec. 822, 565 N.E.2d 93 (1990), *Roderick Dev. Inv. Co. v. Cmty. Bank of Edgewater*, 282 Ill. App. 3d 1052, 1057, 668 N.E.2d 1129, 1133 (1996).

In this case, Plaintiffs alleged that Miller caused the Road District to pay him money totaling \$47,381.84; Miller agrees that he was not supposed to be paid these funds from the Road District; and Miller retains those funds. See Miller's Motion to Correct Record filed on January 16, 2018 on this very point attached hereto as Exhibit A. These facts satisfy the first and second elements of the cause for conversion. The third element is satisfied in the allegation shown in paragraph 127 of the complaint. Additionally, the final element is satisfied by way of the allegation in paragraph 128 and Exhibit N to the complaint, which demonstrates the complaint sets forth a correct claim. Only in the twisted view of a world where an elected official is king for an eternity could a defendant both acknowledge that he received money that was not owed to him and also keep it because others told him to do so.

E) ELEMENTS OF CONSTRUCTIVE FRAUD

Constructive fraud does not require actual dishonesty or intent to deceive. “In a fiduciary relationship, where there is a breach of a legal or equitable duty, a presumption of fraud arises.”

Obermaier v. Obermaier, 128 Ill.App.3d 602, 607, 83 Ill.Dec. 627, 470 N.E.2d 1047 (1984).

Also see *Sale v. Allstate Insurance Co.*, 126 Ill.App.3d 905, 921–22, 81 Ill.Dec. 901, 467 N.E.2d 1023 (1984), *LaSalle Nat. Tr., N.A. v. Bd. of Directors of the 1100 Lake Shore Drive Condo.*, 287 Ill. App. 3d 449, 455, 677 N.E.2d 1378, 1383 (1997).

To state a cause of action based on constructive fraud, “the facts constituting the alleged fraud must be set forth in the complaint.” *Pfendler v. Anshe Emet Day School*, 81 Ill.App.3d 818, 822, 37 Ill.Dec. 1, 401 N.E.2d 1094 (1980). “The focus of the inquiry is on the nature of the liability and not on the nature of the relief sought.” *Armstrong v. Guigler*, 174 Ill.2d 281, 291, 220 Ill.Dec. 378, 673 N.E.2d 290 (1996). Constructive fraud can arise only if there is a confidential or fiduciary relationship between the parties. *Maguire*, 169 Ill.App.3d at 243–44, 119 Ill.Dec. 932, 523 N.E.2d 688. Accordingly, constructive fraud is not the same as conversion. Importantly, Count VIII is pled in the alternative to the conversion count. See paragraph 8 of the complaint.

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). To recover on a constructive fraud claim against defendants, Miller must be shown to have breached the fiduciary duty he owed the Road District, and defendants must be shown to have known of the breach and accepted the fruits of the fraud. See *Beaton*, 159 Ill.App.3d at 844, 111 Ill.Dec. 649, 512 N.E.2d 1286. Clearly, Plaintiffs have established the fiduciary relationship of the Miller defendants to the Road District. Further, the complaint clearly shows that the Millers accepted the fruits of the scheme. Moreover, it is not necessary for Plaintiffs to show that Miller was deceiving himself, rather the scheme imparted harm on the Road District and the District’s injuries are clearly set forth in the complaint.

F) EXAMINATION OF THE PRAYER FOR RELIEF IN EACH COUNT

In a fraudulent representation to the Court, Miller alleges that the complaint in Counts I-VI seeks relief and monetary damages on behalf of Gasser. This is simply one of many false contentions within Miller's Motion. On page two of Miller's Motion he makes a bold claim that Counts I-VI seek the return of money to "ANDREW GASSER". See Miller's Motion, page 2. In fact, Miller places Gasser's name in all capitals as if capitalizing his name in Miller's Motion will change the appearance of the actual prayers for relief. Truth be had, the prayer for relief seeks remedy for the Road District, not Gasser. However, the prayer for relief in each of Counts I-VI reads that Plaintiffs seek judgment "in favor of the Road District". See complaint at pages 13, 15, 16, 18, 19, 20, 22, and 28.

Nowhere in the prayer for relief does the complaint articulate that Gasser is seeking monetary funds from Miller. Rather, the prayer for relief clearly states that it seeks judgment "in favor of the Road District". It is the Road District that seeks return of its property. It is outlandish that Miller feels free to assert that Gasser is seeking to enrich himself in the way that Miller has for so many years.

But if the court actually examines the prayer for relief in Counts I-VI it would find that Miller has framed a proverbial "straw man" to fail as opposed to addressing the facts of the case. The "straw man" argument is evident because the purchases were completed with Road District credit cards and the acquisition of gift cards that were purportedly given away were all done outside the scope of any oversight by the Township Board (although the Board has no authority to regulate the spending of the Road District as it is a separate form of government.).

G) NO PERSON OR UNIT OF GOVERNMENT HAS THE POWER TO APPROVE OR RATIFY AN UNCONSTITUTIONAL ACT

As cited in the complaint, the provisions of the Illinois Constitution prohibit the use of public money for non-public purposes. As alleged in the complaint, the use of public money for non-public purposes violates the express terms of the Illinois Constitution. Thus, even if the court were to accept that the Township Board purportedly “approved” the expenditures, such a position is a nullity because the complained of expenditures were not for a public purpose as alleged. Nevertheless, the minutes of the various Algonquin Township Board meetings repudiate the claims of Miller. Miller asserts a claim that each month the Township Board of Trustees purportedly approved Miller’s credit card spending. There is no such record of the township board approving any expenditure of the road district, much less the expenditures complained of by the Road District in this case.

“It is a well established rule that the powers of the multifarious units of local government in our State, including counties, are not to be enlarged by liberally construing the statutory grant, but, quite to the contrary, are to be strictly construed against the governmental entity. *Inland Land Appreciation Fund, L.P. v. Cty. of Kane*, 344 Ill. App. 3d 720, 724, 800 N.E.2d 1232, 1236 (2003). Nowhere in the statutory scheme for either road districts or township boards did the legislature provide to the township board the power to ratify an action directly contrary to the constitutional prohibition against use of public money for non-public purposes. 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).

Therefore any action by the Township Board to audit any expense that is for a non-public purpose is a nullity. Miller, having used a credit card to acquire the various items of personal property, could not have relied upon future Board action to ratify his unlawful act. Moreover,

any action taken after Miller charged the expenses to ratify his unconstitutional spending is void ab inito. The effect of finding any action unconstitutional is to render that act void ab inito. See *People v. Gersch*, 135 Ill.2d 384, 398, 142 Ill.Dec. 767, 553 N.E.2d 281 (1990) and *People v. Mosley*, 2015 IL 115872, ¶ 16, 33 N.E.3d 137, 148. Even a contract which is legally prohibited or beyond the power of the entity is absolutely void and cannot be ratified by later action,” *Ad-Ex, Inc. v. City of Chicago*, 207 Ill. App. 3d 163, 165, 169, 565 N.E.2d 669, 671, 673 (1st Dist. 1990) (holding that variance given by Chicago to company pursuant to settlement agreement was void and unenforceable because it was agreed upon without first giving notice and holding a public hearing as required by city ordinance). See also *Elk Grove Twp. Rural Fire Protection Dist. v. Village of Mount Prospect*, 228 Ill. App. 3d 228, 234, 592 N.E.2d 549, 553 (1st Dist. 1992) (citing *McGovern v. City of Chicago*, 281 Ill. 264, 118 N.E. 3 (Ill. 1917)) and *Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, No. 10 C 7064, 2016 WL 147654, at *14 (N.D. Ill. Jan. 13, 2016).

H) POWER TO SPEND ROAD DISTRICT FUNDS

Unlike the contentions of Miller that the Treasurer controls the spending of the Road District, that position is inaccurate if not a flat out lie. Any Highway Commissioner is charged with the duty and responsibility to direct the expenditure of all moneys collected in the District for road purposes and draws warrants on the district treasurer. While the statutory duty places the function of the custody of Road District funds in the hands of the Treasurer, the Treasurer is obligated to disburse funds at the direction of the Highway Commissioner. See 605 ILCS 5/6-201.6. The commissioner of highways is the officer authorized under the statute to sign and issue the warrants for payment and when there are ample funds in the hands of the treasurer to pay such warrants they need not be signed by the treasurer. *National Bank of Monmouth v. Shunick*, 1923, 228 Ill.App. 471.

Importantly, Miller alleges that all such spending was approved by the Board. Such an allegation is not within the pleadings. Moreover, there is no support for any such approval for the complained of expenditures. In fact, the Minutes of the meetings do not reflect any such approval³. In the absence of any approval being in the Minutes, this Court could not take judicial notice of any such position. Therefore, all arguments of Miller claiming approval by the separate Township Board are either false or a nullity. Either way, Miller is not entitled to a dismissal or judgment on the pleadings on a theory of approval by the Township Board.

I) MILLER'S INAPPOSITE STANDING ARGUMENT

The United States Supreme Court established that the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, see *id.*, at 756, 104 S.Ct., at 3327; *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740–741, n. 16, 92 S.Ct. 1361, 1368–1369, n. 16, 31 L.Ed.2d 636 (1972);¹ and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical,’ loss” *Whitmore, supra*, 495 U.S., at 155, 110 S.Ct., at 1723 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” *Simon v. Eastern Ky. Welfare *561 Rights Organization*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be “likely” as opposed to merely “speculative” that the injury will be “redressed by a favorable

³ Defendant Miller avers an argument based on some purported action but failed to attached any minuets to support his position. Had Miller attached even one such set of meeting minuets the could would clearly know that the argument is a falsity.

decision.” *Id.*, at 38, 43, 96 S.Ct., at 1924, 1926. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992).

Miller’s lack of standing argument fails in every way. First, the Plaintiff in all counts seeking economic remedies is the Road District. It is the Road District that has suffered a pecuniary injury, not one of its officers. Road districts have been statutorily granted the capacity to sue and be sued in the name of the road district. See 605 Ill. Comp. Stat. Ann. 5/6-107. In this case, the Road District is the plaintiff seeking the return of its assets, not some third person seeking misappropriated assets to be returned to a third party. What Miller attempts to do here is contend that a specific officer of the Road District is the party to have standing to recover money for the Road District. However, Miller is misplaced in that the power to sue is vested in the Road District entity, not the Treasurer and not the Clerk. If successful, the check that Miller will have to write will be payable to the Road District and the Treasurer will have the obligation to deposit it into the accounts of the Road District. For example every bank has a head cashier that is responsible for the maintenance and accounting and custody of money in the bank, but when the bank files suit we do not require that the head cashier be the plaintiff. This is the type of argument raised by Miller.

J) TOWNSHIP GOVERNMENT VS ROAD DISTRICT GOVERNMENT

Commencing on page 2 of Miller’s Motion is a claim that Plaintiffs are ignoring the Township Code. Townships and Road Districts are two separate and distinct units of government. The Township Code has nothing to do with the Road District’s claims in this case. The Township Code does not control what takes place in a Road District. This is basic road district law and Miller misstates both facts and the law in this context.

Conclusion

Plaintiffs have pled the various causes of action in compliance with the standards for pleading a cause of action. Miller's arguments for judgment on the pleadings ignore the law of the State of Illinois and were not properly developed.

Wherefore, for the reasons set forth hereinabove, this Court ought to deny Miller's Motion and grant such other and further relief that this Court deems just and equitable.

Respectfully submitted,

/s/Robert T. Hanlon
Robert T. Hanlon

PROOF OF SERVICE

I, Robert T. Hanlon, an attorney, state that I served a copy of **PLAINTIFFS' RESPONSE TO MILLER'S 2-619.1 MOTION TO DISMISS** upon the attorneys referenced in the attached service list at their respective addresses, by depositing the same in the U.S. mail with postage prepaid at the Woodstock, Illinois, U. S. Post Office and via email to their respective email addresses on this **28th** day of **September, 2018**.

/s/Robert T. Hanlon

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Group Exhibit A

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

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111127998
17CH000435
01/16/2018
McHenry County, Illinois
22nd Judicial Circuit

ANDREW GASSER, ALGONQUIN)
TOWNSHIP ROAD COMMISSIONER)

Plaintiff,)

V.)

CASE NO. 17 CH 435

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

Defendants,)

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Cross-Plaintiff,)

V.)

CHARLES A. LUTZOW JR.,)

Cross-Defendant,)

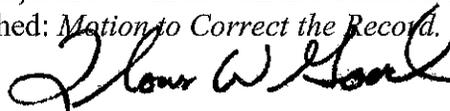
ANDREW GASSER,)

Counter-Defendant)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

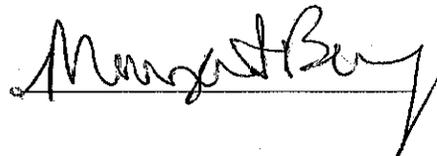
PLEASE TAKE NOTICE that on **January 15, 2018** we filed with the Clerk of the Circuit Court of McHenry County, Illinois, the attached: *Motion to Correct the Record.*



Thomas W. Gooch, III

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedures, the undersigned certifies that she served a copy of the foregoing to whom it is addressed via email from Wauconda, Illinois on January 15, 2018 by 5:00 p.m.

A handwritten signature in black ink, appearing to read "Margaret Berg", written over a horizontal line.

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THE UNITED STATES OF AMERICA
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL COURT
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ANDREW GASSER, ALGONQUIN)
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Plaintiff,)

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

CASE NO. 17 CH 435

KAREN LUKASIK,)
))
Cross-Plaintiff,)
V.)
))
CHARLES A. LUTZOW JR.,)
))
Cross-Defendant,)
))
ANDREW GASSER,)
))
Counter-Defendant)

MOTION TO CORRECT RECORD

NOW COMES your Defendant, ROBERT MILLER, by and through his attorneys,
Thomas W. Gooch, III of THE GOOCH FIRM, and as and for his Motion as aforesaid states the
following:

1. Defendant recently filed a Reply Brief to his Motion to Dismiss due to Lack of Standing
which contains two errors.

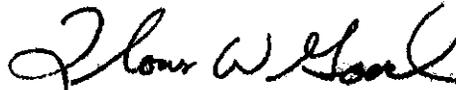
2. First, Defendant alleged that the sick pay raised in Plaintiff's Response was paid from the general town fund. Defendant should have alleged that the sick pay owed Defendant was a liability of the general town and erroneously paid through the road and bridge fund at the time of payment, for sick days earned when MILLER was not an elected official, but was an employee.

3. Defendant also alleged in his Reply Brief that he had filed in April of 2017 the Annual Report and Inventory, more than 30 days before the annual town meeting. MILLER, in fact, filed the Annual Report and Inventory within the 30-day period before the annual town meeting, as required by statute.

WHEREFORE your Defendant, ROBERT MILLER prays this Honorable Court correct the record accordingly.

Respectfully submitted by,

THE GOOCH FIRM, on behalf of ROBERT
MILLER, Defendant,



Thomas W. Gooch, III

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