

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.)

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
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06/15/2018
McHenry County, Illinois
22nd Judicial Circuit

FOURTH 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 nine counts. Counts I - VI are breach of fiduciary duty claims which seek damages against Robert Miller and Anna May Miller. 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 and seeks to account for records and assets of the Road District. The Counts sounding in Breach of Fiduciary Duty, Conversion and Constructive Fraud are plead in the alternative to each other. All monetary claims contained herein are those of the Road District. 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 his 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 to prevent their recovery. At BOB’s direction, Keith Seda utilized an anti forensic computer software to

obliterate the data previously contained in the unallocated space 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 all of the records of the Road District. To date, BOB has turned over absolutely no substantive records of the Road District 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. 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 as a road district record.

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 and no correspondence is known to exist between Bob and any Local 150 representative despite Bob having purportedly negotiated a collective bargaining agreement.

23. No records related to bargaining with Local 150 exist within the records of the Road District.

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 a scheme and artifice to convert funds of the Road District presented for payment from the Road District's depository accounts, the full balance on the various cards issued to him. In turn, the total balance shown on the respective cardholder statements were expensed to the Road District. 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, Levens, and Orvis. None of the women's clothing purchases complied with the written clothing allowance policy issued by Bob.

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 to pay for necessary and proper expenses of 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 Levens 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 premises occupied by the Road District and the Levenger bag depicted in Exhibit A was not located. The Item shown on Exhibit A was not contained in the inventory delivered by Bob to Gasser.

33. Upon information and belief the Levenger bag depicted 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 admission tickets to Disneyland. See Exhibit B There is no lawful use of Road District Funds to entertain BOB and ANNA MAY and such a use was for the personal benefit of Bob and Anna May. The Costs of the Disneyland admission tickets was ultimately paid for with Road District money.

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 occupied by the Road District was conducted. The clothing depicted in Exhibit C was not in the Premises occupied by the Road District. The Items depicted 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. The

clothing depicted in Exhibit D was not in the Premises occupied by the Road District. The Items depicted on Exhibit D was not contained in the inventory delivered by BOB 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. The clothing depicted in Exhibit E was not in the Premises occupied by the Road District.

40. The clothing depicted on Exhibit E was not contained in the inventory delivered by BOB 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. The gift cards shown in Exhibit F were 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 Road District 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 Road District accounts, the 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. The clothing depicted in Exhibit H was not in the Premises occupied by the Road District. The clothing depicted on Exhibit H was not contained in the inventory delivered by BOB to GASSER.

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 Levenger bag in the amount of \$211.44.

53. The item depicted 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 the Road District or the Algonquin Township Offices was conducted and the Levenger bag shown in Exhibit J was not present.

55. Attached hereto as Exhibit K there are records of the use of the Road District 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 depicted in Exhibit K was not in the Road District offices or premises of the township.

57. The items depicted 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. The expense of the airfare referenced in Exhibit L was ultimately paid for with Road District funds.

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 facebook Post was deleted from Public view.

67. Upon information and belief, Road District 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 and ultimate payment was charged to 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 or any use that is not a public use.

70. Upon information and belief, the pattern and practice of the use of Road District credit cards as described herein above 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 belonging to 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 I 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 in favor of the Road District.

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 as the Highway Commissioner responsible for the Road District. The breach of each of his fiduciary duty arose when BOB gave away, without charge, to David Diamond at least two truck-loads of Salt belonging to the Road District to be used at the Illinois Railway Museum.

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 and that salt was no longer available for use on the roads 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 two truck loads of salt given to David Diamond of the Illinois Rail Way Museum in favor of the Road District.

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 as Highway Commissioner. The breach of each of their fiduciary duties arose when BOB purchased gift cards and dissipated those gift cards.

95. On or about June 8, 2008 BOB purchased \$1,250 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 using Road District credit cards which were in turn paid for with Road District money.

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 or using said 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 in favor of the Road District.

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:

847-639-4529
847-878-1613
847-875-0548
847-343-3892
847-343-8732
224-239-7852
847-970-0571
847-516-2528

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 102 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 and transferred the intellectual property of the Road District without compensation to other persons including his own family members.

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 in favor of the Road District.

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 located at 1415 Main Street, Cary, Illinois.

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. The road District has no ownership in any improved property or structures. 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 expended Road District funds on decorating services when the Road District owns no property for which decorating services would have been lawful.

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 or others property in favor of the Road District.

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 OTHER 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. The Road District owns no improved property (real estate with buildings upon it).

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. There was no mention of any liability of the Road District owed to Robert Miller.

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 any amounts including 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 in this case on 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 \$47,381.84 payment (which Robert Miller acknowledges was in error).

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 depicted 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 in favor of the Road District;
- B) Pre judgment interest on the \$47,381.84 at the statutory rate of interest, in favor of the Road District;
- 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. Counts I-VI (Breaches of Fiduciary Duty) are also fully restated in this Court VIII.

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

Between 1994 and 2017 Each Year BOB prepared a sworn annual report setting forth all of the liabilities of the Road District. In each and every one of those annual reports BOB swore under oath that there were no liabilities of the Road District. No entry in each of the annual reports signed by Robert Miller referenced any liability owed to BOB much less for unused Sick time. 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 and personally signed the warrant to allow payment of Road District Funds to be made to him.

132. Within the 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.

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. On or about March 31,2017 BOB swore under oath that the Road District had no liabilities at all. Any liability if actually owed would have had to been listed on the annual report naming the person that is owed the money by name. See 605 ILCS 5/6-201.15

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 in favor of the Road District.

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

COUNT IX
ACCOUNTING AND INJUNCTIVE RELIEF

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

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

139. Both Gasser and the Road District have 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 another 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 at Bob Miller’s direction – 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 purportedly opened, with the following bids:

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

140. 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.

141. The Road District seeks to account and recover from Defendant Bob unlawful payments made by the Road District while Miller was the Highway Commissioner. Only an accounting will allow sufficient discovery to ascertain if additional breaches of fiduciary duties exist. There is no known identity of the person that ultimately used the gift cards acquired by Robert Miller. It is unknown how many total gift cards were purchased.

142. 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).

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

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

145. Use of purportedly 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.

146. It is the duty of all persons working in government to preserve records of the public body. Robert Miller breached this duty in deleting records and there is a need to discovery what records were destroyed by Robert Miller.

147. 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.

Authorization and Instigation: The aforementioned breach of the public trust has occurred with and at the authorization, sanction, advice, encouragement, and/or instigation of MILLER. At present, it is unknown to what extent the conduct referenced herein has taken place. Moreover, the authenticity of the documents delivered is currently being examined.

148. **Damages, Irreparable Injury and Need for Equitable Relief:** If Defendants, LUKASIK, ANNA MAY AND MILLER, and their agents and employees are not restrained from destroying any records related to the Algonquin Township Road District, there is no

adequate remedy at law and the Road District and Gasser, will suffer irreparable harm. Gasser and Road District will suffer additional irreparable harm in that Gasser will be deprived of the very protections afforded under state law for the delivery of records and assets associated with his office. The road district and the people risk the further loss of public records.

149. **Injunction is in the Public Interest:** An injunction is in the public interest because Defendants, LUKASIK, ANNA MAY AND MILLER, have a public duty to preserve the records that they either have had control over or continue to have control over. If they are not so enjoined, the destruction of public records would undermine the rule of law and create a threat to the enforcement of the right of the People to open and honest government.

150. **No Adequate Remedy at Law:** Plaintiffs have no adequate remedy at law. Although there are laws to prevent the destruction of public records, Plaintiffs cannot without the intervention of the Court protect and preserve the government records and the dispute cannot be remedied solely by remedies at law. Further, in the event further government records are either destroyed or concealed, Gasser and the Road District will not be able to ensure the integrity of the records of the Road District. Granting the relief requested herein serves to aid the protections afforded to Plaintiffs. Moreover there is litigation pending with the Operating engineers in which the Road district needs access to the records of the road district to which LUKASIK retains as if they cannot be used or viewed by any but herself. The road District has also been sued by the Edgar County Watch Dogs for failing to comply with FOIA requests and access to the Road District records will be necessary to defend that lawsuit.

151. **Balancing of the Rights, Interests and Injuries:** The balancing of the interests of the parties is entirely in favor of Plaintiffs. This is because the activities which the Plaintiffs seek to restrain are unlawful acts to begin with, and the denial of injunctive relief would serve to require Gasser and the People to suffer additional injury. In fact, Defendants, LUKASIK ANNA MAY AND MILLER, will suffer no injury if restrained from destroying government records because none of the defendants possess the right to destroy government records.

152. **Prior Application:** Prior to the filing of this action, there has been no prior application for injunctive relief to this Court or any other court for or in connection with the violations set forth herein.

153. Illinois law governing townships provides that upon the change of office, the prior office holder shall deliver to the newly elected officer all of the records of office. In particular, 60 ILCS 1155-55 provides:

It is the duty of every person going out of office, whenever required under Section 55-45 or 55-50, to deliver up, on oath, all the records, books, and papers in his or her possession or in his or her control belonging to that office. The oath may be administered by the officer to whom the delivery is to be made. It shall also be the duty of every supervisor and commissioner of highways going out of office, at the same time, to pay over to his or her successor the balance of moneys remaining in his or her hands as ascertained by the trustees of township accounts.

154. The Local Records Act also provides for the preservation of records.

All public records made or received by, or under the authority of, or coming into the custody, control or possession of any officer or agency shall not be mutilated, destroyed, transferred, removed or otherwise damaged or disposed of, in whole or in part, except as provided by law. Any person who knowingly, without lawful authority and with the intent to defraud any party, public officer, or entity, alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony. 50 ILCS §205/4; see also id. §205/7. (Except as otherwise provided by law, no public record shall

be disposed of by any officer or agency unless the written approval of the appropriate Local Records Commission is first obtained.")

155. The Local Records Act defines "public record" as, inter alia, "any ... digitized electronic material ... regardless of physical form or characteristics, made, produced, executed or received by any agency or officer pursuant to law or in connection with the transaction of public business and preserved or appropriate for preservation by such agency or officer, or any successor thereof, as evidence of the organization, function, policies, decisions, procedures, or other activities thereof, or because of the informational data contained therein." Id. §205/3.

156. The Illinois State Archivist's for Local Government Agencies? Further explains that an email or instant message may be a public record under the Local Records Act depending on the information contained? therein; If the information in the definition above of a public record as described in the Local Records Act, then the information is subject to the provisions of the Act regardless of the media the data is maintained the messages have a bearing on actions or decisions taken or not taken, then they would be classified as a public record under the Local Records Act. See Jesse White, Ill. Secretary of State, Ill. State Archives: FAQs for Local Government Agencies.

157. E-mails and text messages sent or received on the "personal" telephone or email accounts that pertain to public business and reflect the policies and decisions, and other information concerning Robert or Anna May Miller's official activities, would be appropriate for preservation, and are public records within the meaning of the Local Records Act. No measures have been taken to preserve these e-mail records, and, upon information and belief, many of MILLER's and ANNA MAY's e-mails have not been preserved

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
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