

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

ALGONQUIN TOWNSHIP ROAD	)	
DISTRICT,	)	
Plaintiff,	)	
	)	
v.	)	Case No. 19 LA 6
	)	
CHARLES A. LUTZOW, JR.,	)	
	)	
Defendant,	)	

**1<sup>ST</sup> AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY  
AND CONSTRUCTIVE FRAUD**

NOW COMES Plaintiff, ALGONQUIN TOWNSHIP ROAD DISTRICT (hereinafter “ROAD DISTRICT”), by and through its attorney, Robert T. Hanlon, with its First Amended Complaint for Breach of Fiduciary Duty and Constructive Fraud against Defendant, CHARLES A. LUTZOW, JR. (hereinafter at times "LUTZOW"), and in support of its complaint, states as follows:

**PARTIES, VENUE AND JURISDICTION**

1. Plaintiff, ALGONQUIN TOWNSHIP ROAD DISTRICT (“ROAD DISTRICT”), is a public body organized under the laws of the State of Illinois.
2. Defendant, LUTZOW, resides in Algonquin Township, Illinois, and is the duly elected Supervisor of Algonquin Township. As the elected Algonquin Township Supervisor, LUTZOW is the Treasurer of the ROAD DISTRICT.
3. This Court has jurisdiction over the disputes and controversies alleged herein on the basis that the claims arose here in McHenry County, Illinois.
4. Venue is proper in McHenry County because all of the parties to this action reside in McHenry County, Illinois.

## **SHORT STATEMENT OF THE CASE/INTRODUCTION**

5. This complaint contains two counts. Those counts are summarized as follows: Count I is for Breach of Fiduciary Duty; and Count II is a claim sounding in Constructive Fraud. Both counts are pled in the alternative to each other. Each count seeks return of ROAD DISTRICT monies that Defendant Charles Lutzow placed into accounts in the name of a separate public body, Algonquin Township, over which he has control and because of the Defendants action in placing Road District Money into the account of the Township the Road District suffered a pecuniary loss.

## **FACTS APPLICABLE TO ALL COUNTS**

6. In May 2017, LUTZOW was sworn in as Algonquin Township Supervisor, which in turn, by statute, made LUTZOW the Treasurer of the ROAD DISTRICT.

7. Upon information and belief, at a time unknown but believed to be in 2017, LUTZOW transferred the monies of the ROAD DISTRICT from Fifth Third Bank, under his official title as Treasurer of the ROAD DISTRICT, to American Community Bank and Trust, but did not put those monies into an account in the name of the ROAD DISTRICT, but rather identified the depositor as Algonquin Township.

8. Upon information and belief as part of LUTZOW'S actions in moving ROAD DISTRICT monies to American Community Bank and Trust, LUTZOW opened at least one account with ROAD DISTRICT monies, but did not title the account in the name of the ROAD DISTRICT but rather listed the named depositor as Algonquin Township.

9. Upon information and belief as it relates to each account opened by LUTZOW at American Community Bank and Trust, LUTZOW executed a sworn statement identifying the

depositor as “Algonquin Township” when it should have been identified as “Algonquin Township Road District”.

10. The ROAD DISTRICT’S funds deposited into the accounts at American Community Bank are the lawful property of the ROAD DISTRICT, not another unit of government.

11. Since service of the complaint in this case, Defendant Lutzow has not returned the monies belonging to Algonquin Township Road District but has left monies in the name of a separate unit of government, Algonquin Township.

12. LUTZOW has the power to return the monies of the ROAD DISTRICT to the ROAD DISTRICT but has failed to do so.

13. Upon information and belief, more than one million dollars of ROAD DISTRICT funds are in accounts of Algonquin Township.

14. LUTZOW is a principal at CAL Financial Group Inc./DBA CAL Business Transitions and CAL Financial Inc., where LUTZOW is responsible for the custody and control of numerous financial accounts and is particularly aware of the need to title accounts in the name of the entity that actually owns the accounts.

15. In December of 2018, a Citation to Discover Assets was served upon American Community Bank and Trust by a creditor of the ROAD DISTRICT. After service of the Citation, American Community Bank and Trust responded that the ROAD DISTRICT had no accounts at that institution.

16. As a direct and proximate cause of the fact that the Defendant placed the funds of the Road District into accounts of the Township, a separate unit of government, the Road District was denied the use of its funds to satisfy the judgment granted against it. Additional judgments

have been granted against the Road District and a possibility exists that additional judgments could enter against the Road District.

**COUNT I**  
**BREACH OF FIDUCIARY DUTY**

17. Plaintiff incorporates the allegations of paragraphs 1-16 above in this Count I as if fully restated herein.

18. 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).

19. LUTZOW was an agent of the ROAD DISTRICT at all times relevant to this complaint.

20. The agency of LUTZOW to the ROAD DISTRICT arose by virtue of his position as the Treasurer of the ROAD DISTRICT.

21. 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*, 2<sup>nd</sup> Dist. (2013) 985 N.E.2d 671, 368 Ill.Dec. 864. Here, Plaintiff has alleged the existence of a fiduciary relationship by virtue of LUTZOW serving as the Treasurer to the ROAD DISTRICT. The breach of each of his fiduciary duties arose by placing funds belonging to the ROAD DISTRICT into accounts not titled in the name of the ROAD DISTRICT.

22. As a direct and proximate cause of the breach of the fiduciary duty detailed above, the ROAD DISTRICT suffered an injury in that its funds are no longer in the name of the ROAD DISTRICT and thus was not able to satisfy a judgment taken against it.

23. Pursuant to a settlement agreement, the Judgment amount grew by \$5,000 per month because the funds were not properly titled in the name of the road district. Additional judgments have been taken against the Road District and Defendant has failed to pay on the judgments thereby necessitating that the judgments be subject to citation and collection which may not be satisfied.

WHEREFORE, Plaintiff, ALGONQUIN TOWNSHIP ROAD DISTRICT, prays that this Honorable Court grant the following relief:

- A) Enter judgment for compensatory damages against Defendant, CHARLES LUTZOW, JR., in an amount not less than \$1,000,000 or such other or higher amount as determined at the trial of this case;
- B) Order Defendant, CHARLES LUTZOW, JR., to cause all funds of the ALGONQUIN TOWNSHIP ROAD DISTRICT to be returned to an account of the ALGONQUIN TOWNSHIP ROAD DISTRICT in the name of the ALGONQUIN TOWNSHIP ROAD DISTRICT; and
- C) For such other and further relief as this Court deems just and equitable.

**COUNT II**  
**CONSTRUCTIVE FRAUD**

24. Plaintiff incorporates the allegations of paragraphs 1-23 above in this Count II as if fully restated herein.

25. 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). Where there is a breach of a legal or equitable duty arising out of a fiduciary relationship, a presumption of constructive fraud arises. *Vermeil*, 176 Ill.App.3d at 564, 126 Ill.Dec. 603, 532 N.E.2d 288.

26. LUTZOW had a legal duty to maintain the accounts of the ROAD DISTRICT in the name of the ROAD DISTRICT, but failed to do so and placed money belonging to the Road District in the name of Algonquin Township.

27. LUTZOW'S legal duty to maintain the accounts of the ROAD DISTRICT in the name of the ROAD DISTRICT, arose from a fiduciary relationship with Plaintiff as its treasurer.

28. By depositing Road District monies into an account in the name of Algonquin Township, a separate unit of government, the Road district was deprived of the use of its money to satisfy judgments taken against it.

29. Because Charles Lutzow placed the Road District's money into an account in the name of the Township, as opposed to the Road District, the Plaintiff suffered a pecuniary injury of more than \$5,000 per month that the Road District's money was unavailable to the Road District causing additional injury to the Road District.

WHEREFORE, Plaintiff, ALGONQUIN TOWNSHIP ROAD DISTRICT, prays that this Honorable Court grant the following relief:

- A) Enter judgment for compensatory damages against Defendant, CHARLES LUTZOW, JR., in an amount not less than \$1,000,000 or such other or higher amount as determined at the trial of this case;
- B) Order Defendant, CHARLES LUTZOW, JR., to cause all funds belonging to ALGONQUIN TOWNSHIP ROAD DISTRICT to be returned to an account of the ALGONQUIN TOWNSHIP ROAD DISTRICT in the name of the ALGONQUIN TOWNSHIP ROAD DISTRICT; and
- C) 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 Plaintiff's Attorneys

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