

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

Andrew Gasser,)
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 435

MOTION FOR JUDGMENT ON THE PLEADINGS

NOW COMES Defendants, Karen Lukasik individually and Karen Lukasik in her capacity as Algonquin Township Clerk, by and through counsel, ZUKOWSKI, ROGERS, FLOOD, & McARDLE, and hereby moves, pursuant to 735 ILCS 5/2-615, for Judgment to be entered on the pleadings against Andrew Gasser, Algonquin Township Road Commissioner and the Algonquin Township Road District. In support of this Motion, Defendants state as follows:

I. STANDARD

Judgment on the pleadings is appropriate when there is no genuine issue of material facts and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-615(e); *M.A.K. v. Rush Presbyterian-St. Luke's Medical Center*, 198 Ill.2d 249, 255 (2001). When ruling on a motion for judgment on the pleadings, a court takes as true all well-pled facts contained in the pleadings and may also consider judicial admissions and matters subject to judicial notice. *Id.*

II. ARGUMENT

A. THERE ARE NO CAUSES OF ACTION OR PRAYERS FOR RELIEF AGAINST KAREN LUKASIK, INDIVIDUALLY

1. On June 15, 2018, Plaintiff's filed a 4th Amended Complaint naming Karen Lukasik, individually, as a Defendant. See Exhibit A: Fourth Amended Complaint, dated June 15, 2018, attached hereto and made a part hereof by reference (without Exhibits).

2. The 4th Amended Complaint contains nine (9) total counts. *Id.*

3. The 4th Amended Complaint contains a "Short Statement of the Case" and explains that Counts I-VI "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 seeks 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." *Id.*

4. By the title of the cause of action, the allegations contained therein, and the prayers for relief, the first seven counts of the 4th Amended Complaint are directed against Robert Miller and, at times, Anna May Miller. *Id.*

5. A prayer for relief against Karen Lukasik, in her individual capacity, is never made in Counts I-VII of Plaintiff's 4th Amended Complaint. *Id.*

6. On March 21, 2019, this Court entered an Order stating Count VIII of Plaintiff's 4th Amended Complaint was voluntarily dismissed. See Exhibit B: Court Order dated March 21, 2019, attached hereto and made a part hereof by reference.

7. Count VIII was also neither directed to, nor contained a prayer for relief against Karen Lukasik, in her individual capacity. See Exhibit A.

8. On March 21, 2019, this Court entered an Order declaring Count IX of Plaintiff's 4th Amended Complaint moot. See Exhibit B. See also Exhibit C, Court Transcript, p. 16-17,

attached hereto and made a part hereof by reference (wherein the Court on its own declared Count IX moot and dismissed said Count).

9. Consistent with these rulings, the March 21, 2019 Order only demanded “Defendants shall answer the Complaint in Counts I-VII.” **Exhibit B.**

10. The Court must take judicial notice of this Order. *See Rush Presbyterian-St. Luke’s Medical Center*, 198 Ill.2d 249.

11. Additionally, Count IX of the 4th Amended Complaint contained no prayer for relief against Karen Lukasik, individually. *See **Exhibit A.***

12. The only remaining allegations pertaining to Karen Lukasik, individually, is that she “resides in Algonquin Township” and allegedly “Prior to her election Lukasik articulated that she intends to destroy various records” in a Facebook post. *See **Exhibit A,*** paras. 3, 66.

13. Where someone lives and an alleged Facebook post prior to an election pled in the factual allegations of the 4th Amended Complaint do not set forth a cause of action against Karen Lukasik, individually, under Illinois law.

14. Judgment on the pleadings is warranted as there is no genuine issues of material facts that Plaintiff’s 4th Amended Complaint fails to state a cause of action and contains no prayer for relief against Karen Lukasik, individually.

15. Therefore, Karen Lukasik, individually, must be immediately dismissed from this litigation and her name should be removed from the caption as a party to this case.

Wherefore, Karen Lukasik, in her individual capacity, prays this Court will:

- a. Enter an Order dismissing Karen Lukasik, individually, with prejudice as Plaintiff’s 4th Amended Complaint contains no cause of action or prayer for relief against her;

- b. Enter an Order removing Karen Lukasik, individually, from the caption and as a Defendant in this litigation as no cause of action or prayer for relief has been made against her individually.
- c. For any additional relief this Court deems just and warranted.

B. NO CAUSE OF ACTION REMAINS AGAINST KAREN LUKASIK, IN HER CAPACITY AS ALGONQUIN TOWNSHIP CLERK

16. On June 15, 2018, Plaintiff filed a 4th Amended Complaint naming Karen Lukasik, in her capacity as Algonquin Township Clerk, as a Defendant. *See Exhibit A (without Exhibits).*

17. The 4th Amended Complaint contains nine (9) total counts. *Id.*

18. The 4th Amended Complaint contains a “Short Statement of the Case” and explains that Counts I-VI “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 seeks 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.” *Id.*

19. Moreover, by the title of the cause of action, the allegations contained therein, and the prayers for relief, the first seven counts of the 4th Amended Complaint are directed against Robert Miller and, at times, Anna May Miller. *Id.*

20. A prayer for relief against Karen Lukasik, in her capacity as Algonquin Township Clerk, is never made in Counts I-VII of Plaintiff’s 4th Amended Complaint. *Id.*

21. On March 21, 2019, this Court entered an Order stating Count VIII of Plaintiff’s 4th Amended Complaint was voluntarily dismissed. *See Exhibit B.*

22. Count VIII was also neither directed to, nor contained a prayer for relief against Karen Lukasik, in her capacity as Algonquin Township Clerk. *See Exhibit A.*

23. On March 21, 2019, this Court entered an Order declaring Count IX of Plaintiff's 4th Amended Complaint moot. *See* **Exhibit B**. *See also* **Exhibit C**, Court Transcript, p. 16-17, attached hereto and made a part hereof by reference (wherein the Court on its own declared Count IX moot and dismissed said Count).

24. Consistent with these rulings, the March 21, 2019 Order only demanded "Defendants shall answer the Complaint in Counts I-VII." **Exhibit B**.

25. The Court must take judicial notice of this Order. *See Rush Presbyterian-St. Luke's Medical Center*, 198 Ill.2d 249.

26. There is no remaining cause of action pertaining to Karen Lukasik, in her capacity as Algonquin Township Clerk remaining in Plaintiff's 4th Amended Complaint.

27. Judgment on the pleadings is warranted as there is no genuine issues of material facts that Plaintiff's 4th Amended Complaint fails to state a cause of action and contains no prayer for relief against Karen Lukasik, individually.

28. Therefore, Karen Lukasik, as Algonquin Township Clerk, must be immediately dismissed from this litigation and her name should be removed from the caption as a party to this case.

Wherefore, Karen Lukasik, as Algonquin Township Clerk, prays this Court will:

- a. Enter an Order dismissing Karen Lukasik, Algonquin Township Clerk, with prejudice as Plaintiff's 4th Amended Complaint contains no cause of action or prayer for relief remains;
- b. Enter an Order removing Karen Lukasik, Algonquin Township Clerk, from the caption and as a Defendant in this litigation as no cause of action or prayer for relief remains.
- c. For any additional relief this Court deems just and warranted.

**III. STATUTE BARS PLAINTIFFS' ACTION NAMING
KAREN LUKASIK, IN HER CAPACITY AS CLERK**

29. On August 27, 2019, Andrew Gasser filed a Reply in support of his Motion for Judgment on the Pleadings. Exhibit D, Reply, attached hereto and made a part hereof by reference.

30. In that Reply, Gasser argued “No Standing” citing 60 ILCS 1/95-10 and claiming “Lukasik fails to identify the section of any statute that allows Karen Lukasik to bring suit in her own name for the benefit of the Township or in the name of the Office of the Township Clerk (thus no standing to advance this case).” *Id.*

31. 60 ILCS 1/95-10 provides, “In all suits and proceedings, the township shall sue and be sued by its name...”

32. Plaintiff has ignored the very statute he argues.

33. Plaintiff’s 4th Amended Complaint names Karen Lukasik in her capacity as Algonquin Township Clerk and pleads, “as the elected Algonquin Township Clerk” she is a “necessary party to this litigation.” See Exhibit A, para. 3.

34. Plaintiff has thus claimed within this case that he can sue Karen Lukasik, in her capacity as Algonquin Township Clerk, but that very same party lacks standing to plead a Counter-Claim in this case.

35. By naming Karen Lukasik, in her capacity as Algonquin Township Clerk, rather than naming the township in its name, Plaintiff has failed to comply with 60 ILCS 1/95-10.

36. Plaintiff has failed to identify the section of any statute that allows Plaintiff to bring a suit against “Karen Lukasik as Algonquin Township Clerk.”

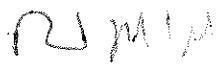
37. Judgment on the pleadings is warranted as there is no genuine issues of material facts that Plaintiff’s 4th Amended Complaint fails to comply with 60 ILCS 1/95-10 and Karen Lukasik, as Algonquin Township Clerk is not a proper party.

38. Therefore, Karen Lukasik, as Algonquin Township Clerk, must be immediately dismissed from this litigation and her name should be removed from the caption as a party to this case.

Wherefore, Karen Lukasik, as Algonquin Township Clerk, prays this Court will:

- a. Enter an Order dismissing Karen Lukasik, Algonquin Township Clerk, with prejudice as Plaintiff's 4th Amended Complaint fails to name a proper party pursuant to 60 ILCS 1/95-10;
- b. Enter an Order removing Karen Lukasik, Algonquin Township Clerk, from the caption and as a Defendant in this litigation as Plaintiff's 4th Amended Complaint fails to name a proper party pursuant to 60 ILCS 1/95-10.
- c. For any additional relief this Court deems just and warranted.

KAREN LUKASIK
ALGONQUIN TOWNSHIP CLERK
By Zukowski, Rogers, Flood & McArdle

By 
One of her attorneys

David W. McArdle, Attorney No. 06182127
dmcardle@zrfmlaw.com
Zukowski, Rogers, Flood & McArdle
Attorneys for Karen Lukasik, Algonquin Township Clerk
50 Virginia Street, Crystal Lake, Illinois 60014
(815) 459-2050

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

Katherine M. Keefe
Clerk of the Circuit Court
Electronically Filed
Transaction ID: 17111168483
17CH000435
06/15/2018
McHenry County, Illinois
22nd Judicial Circuit

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.)

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:

EXHIBIT A

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, Levenson, 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 Township 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 Levenson 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 duties 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 be 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 discover 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
Robert T. Hanlon, One of Plaintiffs'
Attorneys

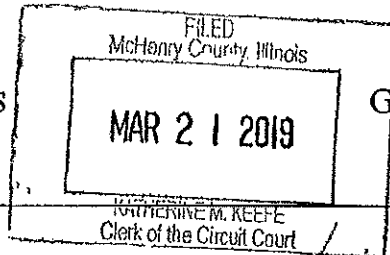
Robert T. Hanlon, ARDC #6286331
LAW OFFICES OF ROBERT T. HANLON
& ASSOCIATES, P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200

IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT

STATE OF ILLINOIS)

COUNTY OF MCHENRY)

) SS)



GEN. NO. 17 CH 435

Jury Non-Jury.

Grasser, Andrew
Algonquin Township

VS.

Lukislik, Karen et al

Date: 3/21/19

Plaintiff's Attorney Hank

Defendant's Attorney Grzech, Kelly, Brady, Zdrovski

ORDER

This cause coming on to be heard on motion of Robert Miller to dismiss pursuant to 2-619.1. The court fully advised in the presence it is ordered:

- 1) Defendant shall answer the complaint in ~~the~~ court I-VII on or before May 6, 2019 HH
- 2) This cause is continued to May 20, 2019, for status on answer at 9:00am
- 3) Defendant Robert Miller's motion to dismiss is denied except that court 9 is dismissed as moot.
- 4) on the oral motion of Plaintiff court 8 (VIII) is voluntarily dismissed.

Prepared by: R. Hank

Attorney for: Plaintiff

Attorney Registration No.: 6286331

Judge: [Signature]

EXHIBIT B

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS:

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 McHENRY COUNTY, ILLINOIS

5
6 ANDREW GASSER,)
7 Plaintiff,)
8 vs.) No. 17 CH 435
9 KAREN LUKASIK,)
10 Individually and in her)
11 capacity as Algonquin)
12 Township clerk; ANNA MAY)
13 MILLER and ROBERT)
14 MILLER,)
15 Defendants.)

14 ELECTRONICALLY RECORDED REPORT OF PROCEEDINGS

15 had in the above-entitled cause before the Honorable
16 THOMAS A. MEYER, Judge of said Court, on March 21, 2019,
17 in the morning session.

19 APPEARANCES:

20 LAW OFFICES OF ROBERT T. HANLON & ASSOCIATES
21 BY: MR. ROBERT T. HANLON
22 Appeared on behalf of the Plaintiff,
23 Andrew Gasser.

23 ZUKOWSKI, ROGERS, FLOOD & McARDLE
24 BY: MS. JENNIFER GIBSON
Appeared on behalf of the Defendant,
Karen Lukasik.

INDEX (Cont.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. STEVEN J. BRODY
Appeared on behalf of Anna May Miller.

THE GOOCH FIRM
BY: MR. THOMAS GOOCH
Appeared on behalf of Robert Miller.

MR. JAMES KELLY
Appeared on behalf of Charles Lutzow.

1 THE COURT: Okay. Gasser vs. Lukasik.

2 MR. GOOCH: How long are we going to wait this
3 time?

4 THE COURT: I -- I don't know.

5 MR. GOOCH: You know, you could just rule on the
6 briefs.

7 THE COURT: Yeah, I could, and I may because I
8 don't listen to what you guys say anyway so -- For the
9 record I'm kidding.

10 MR. GOOCH: Thomas Gooch, G-o-o-c-h, appearing on
11 behalf of Robert Miller.

12 MR. BRODY: Steven Brody on behalf of Anna May
13 Miller.

14 MS. GIBSON: Jennifer Gibson on behalf of Karen
15 Lukasik.

16 MR. KELLY: James Kelly on behalf of Lutzow.

17 THE COURT: Are you just observing?

18 A VOICE: I'm just observing.

19 THE COURT: Okay. Is there a reason everybody is
20 standing behind Mr. Gooch? I'm confused.

21 MR. KELLY: It's Mr. Gooch's motion.

22 MS. GIBSON: Yeah, it's Mr. Gooch's motion.

23 THE COURT: Okay.

24 MR. BRODY: I'm joining in his motion on behalf of

1 Miss Miller.

2 MR. GOOCH: That means you can sit next to me or
3 stand next to me -- special.

4 THE COURT: Is -- And Mr. Hanlon is missing.

5 Has anyone heard from Mr. Hanlon?

6 MR. GOOCH: No.

7 MR. BRODY: No, but I can text him if you like.

8 THE COURT: Yeah, why don't you text him. Let's
9 just find out.

10 THE BAILIFF: Would you like him paged in the
11 building, Judge?

12 THE COURT: Yeah. Let -- Let's page him too,
13 please.

14 See, I -- I have -- I did have a couple of
15 questions for him, so I don't know that I'm -- Okay.

16 Well, what do you want to do?

17 You know what? I may -- I take it we don't
18 have any response so let's give him a couple of minutes.
19 And if he doesn't show up, I'll -- I'll do that which I
20 can.

21 MR. GOOCH: I'm sorry, sir?

22 THE COURT: I'll do what I can because I -- I have
23 issues so -- And I was going to ask him questions.

24 And I'm not sure what I'll do if he doesn't

1 show but let's give him five minutes, see what happens.

2 And, Mr. Brody, if you hear from him,
3 please -- please, let me know.

4 MR. BRODY: I'll let you know as soon as I do.

5 THE COURT: Thank you.

6 (WHEREUPON, the case was passed and
7 later recalled.)

8 THE COURT: Are we ready on Gasser?

9 MR. HANLON: Can I just take my coat off, Judge?

10 THE COURT: Okay. Okay. While we're waiting,
11 let's identify ourselves again.

12 MR. GOOCH: Thomas Gooch, G-o-o-c-h, appearing on
13 behalf of Robert Miller.

14 MR. BRODY: Steven Brody appearing on behalf of
15 Anna May Miller.

16 MS. GIBSON: Jennifer Gibson for Karen Lukasik.

17 MR. KELLY: James Kelly on behalf of Charles
18 Lutzow.

19 MR. HANLON: Robert Hanlon on behalf of
20 plaintiffs, Judge.

21 THE COURT: Okay. This is Mr. Gooch's motion, am
22 I correct?

23 MR. GOOCH: That's correct, your Honor. It comes
24 on for hearing on Defendant's -- my motion to dismiss

1 brought pursuant to 5/2-619.1.

2 THE COURT: Okay.

3 MR. GOOCH: I will stand on the brief and answer
4 any questions you have, Judge.

5 THE COURT: My first question is directed to the
6 Plaintiff. And perhaps -- Because I looked at this
7 initially a while ago.

8 One of the questions I have -- and maybe
9 you've alleged it -- is whose money is it? Because
10 there -- there's an argument as to whether or not --

11 MR. HANLON: The road district's, Judge.

12 THE COURT: Well, do you allege that that --
13 because you allege --

14 MR. HANLON: I said it's alleged it's property of
15 the road district.

16 THE COURT: Well, the property is. But we're also
17 talking about money, like the sick leave and the
18 expenses associated with cell phones.

19 MR. HANLON: Yes, and that I do allege that
20 because I even reference and incorporate the motion Mr.
21 Gooch had filed indicating it was inadvertently paid out
22 of the road district as opposed to paid from the
23 Township account.

24 THE COURT: So with respect to the money, what --

1 where do you allege it's road district money?

2 MR. HANLON: One second, Judge.

3 THE COURT: And that's different from an
4 inventory --

5 MR. HANLON: Yes.

6 THE COURT: -- just so we're clear.

7 I understand there's a distinction, but when
8 you ask for money, you've -- I need to know you're the
9 one entitled to the money.

10 MR. HANLON: Right.

11 THE COURT: (Unintelligible).

12 MR. GOOCH: I think the treasurer has the money.

13 THE COURT: I'm sorry?

14 MR. GOOCH: I think the road district treasurer
15 has possession of the money.

16 THE COURT: Well, I don't know that I can make
17 that determination in the 2-615. I'm just --

18 MR. GOOCH: Well, I haven't pled it.

19 THE COURT: I just need them to say it's -- the
20 road district is entitled to return of the funds.

21 MR. GOOCH: There's a statute that's very clear on
22 that.

23 THE COURT: Okay. But I don't think I can get to
24 that just yet because I need to know -- I need to have

1 him allege that.

2 And I think you did argue the statute.

3 MR. GOOCH: I did.

4 THE COURT: Thank you.

5 MR. GOOCH: I think they have to allege that that
6 statute doesn't apply for whatever reason they might
7 think up.

8 MR. HANLON: Paragraph (Unintelligible) 23, Judge,
9 says on or about --

10 THE COURT: I'm sorry?

11 MR. GOOCH: I'm sorry. What page? Paragraph?

12 THE COURT: 23 you said?

13 MR. HANLON: 123.

14 THE COURT: 123. I apologize.

15 MR. GOOCH: Is that an exhibit, might I ask?

16 THE COURT: No, it's count -- it says in Count 7.

17 MR. GOOCH: I'm sorry, sir?

18 THE COURT: Count 7.

19 MR. GOOCH: And page number?

20 THE COURT: Page -- It looks like 18.

21 MR. GOOCH: 18?

22 THE COURT: Yeah, Page 18.

23 On or about January 16, 2018, Robert Miller
24 via his counsel articulated that he was not entitled to

1 payment of sick leave from the road district and that it
2 was an error --

3 MR. GOOCH: Judge, I'm sorry. Could I have the
4 paragraph number?

5 THE COURT: 123.

6 In which he actually had a claim against
7 Algonquin Township town fund.

8 But I don't think that answers my question.
9 That doesn't say the money goes to --

10 MR. HANLON: 122 says Robert Miller caused road
11 district funds to be paid directly to him under the
12 claim that he was entitled to unpaid sick time.

13 MR. GOOCH: And those were the property of the
14 treasurer, not the highway commissioner.

15 THE COURT: And that's --

16 MR. GOOCH: That's been my whole point all along.

17 THE COURT: But he is a -- He is alleging that the
18 money came from the road district.

19 You're saying that's not true.

20 MR. GOOCH: No. I'm saying, Judge, that the
21 treasurer is a custodian of the road district funds, not
22 the highway commissioner.

23 THE COURT: But he says road district funds.

24 And if I'm going to read this liberally, as I

1 must, I think that means my question was answered that
2 he's established that it's road district funds that were
3 paid out and implicitly that they're entitled to the
4 return of them.

5 So I guess that satisfies that one.

6 With respect to -- I think in every count you
7 ask for money.

8 MR. HANLON: No, Judge. I believe it's all but
9 the last count asking for money to be paid to the road
10 district.

11 THE COURT: Enter judgment against -- I'm looking
12 at Count 8 example.

13 In an amount to be determined at trial for
14 the value of cell phones and -- and the -- might be able
15 to get around it but asking for the return of the cell
16 phones is one thing, but asking for the amounts
17 suggests --

18 MR. HANLON: Judge, I'll make this really simple
19 for your Honor.

20 THE COURT: Yeah.

21 MR. HANLON: With respect to the cell phone
22 account, I'll voluntarily nonsuit that count.

23 THE COURT: Okay.

24 MR. GOOCH: No, it's not okay, Judge. I have a --

1 It may be okay with the Court, but it's not okay with
2 me. I have a dispositive motion pending.

3 THE COURT: Okay. Well, that's -- that's -- We
4 can wait until after resolution because I -- I'm -- In
5 fact, I'll tell you right now I'm not going to grant
6 your 2-619 motion because I don't think it satisfies --
7 you've met your burden.

8 And with respect to a judgment on the
9 pleadings, I'm not satisfied that you've met your burden
10 in convincing me that I have to grant you a judgment on
11 the pleadings.

12 I had questions here, but I felt that you
13 were asking me to rely on facts outside the record more
14 than I could and I could cut to the chase on that.

15 What do you want to do? What's your comment
16 on that? I know it's (Unintelligible).

17 MR. GOOCH: Judge, I mean, there will be another
18 day for another 619 motion.

19 But I think you have to strike this complaint
20 regardless. The complaint lacks the necessary
21 allegations to support the causes of action if he has
22 standing. Evidently you're not going to reach that
23 decision today.

24 THE COURT: No.

1 MR. GOOCH: But he still has to make certain
2 allegations.

3 THE COURT: He alleges he has standing. And --
4 And I think that's enough for this stage.

5 MR. GOOCH: At this time.

6 THE COURT: Yeah. And so I -- I don't think I
7 can -- there's anything I can do about it.

8 Even if he doesn't have standing he alleges
9 it. That's enough.

10 MR. GOOCH: He still needs to allege, Judge, and
11 prove that Mr. Miller circumvented the statutes and
12 spent money -- actually paid bills -- inappropriately
13 when, in fact, there's a statute that requires an audit.
14 He has to allege that that audit was never -- never took
15 place, and he can't make that allegation
16 (Unintelligible).

17 THE COURT: Here's -- here's where my -- And this
18 is where I differ from your argument.

19 It -- it is adequately -- perfectly
20 adequately alleged that Mr. Miller had an obligation to
21 provide an inventory and presumably all the items
22 contained in that interview -- inventory when he left
23 office.

24 MR. GOOCH: Values at over \$300.

1 THE COURT: And -- and -- I -- I don't have a
2 determination yet as to everything.

3 MR. GOOCH: But it's in the statute, Judge. It
4 has to be pled.

5 THE COURT: And I -- I don't -- how do you -- You
6 say plead and prove. I think it has been pled. I think
7 there's enough in there to meet the necessary
8 requirement to put you on notice of what he's talking
9 about. And so I -- I think that he's met that burden.

10 What is it I'm missing in a nutshell?

11 MR. GOOCH: That the highway commissioner does not
12 have the ability to spend money.

13 THE COURT: Meaning he has no --

14 MR. GOOCH: Only the town board can approve a bill
15 and pay it.

16 THE COURT: And I -- I think that that's a
17 different issue --

18 MR. GOOCH: But it has to be pled --

19 THE COURT: -- because of the pleadings.

20 MR. GOOCH: -- that they circumvented that -- that
21 Miller circumvented the town board's authority.

22 THE COURT: I don't think so.

23 MR. GOOCH: Or the town board then has to be a
24 party to this litigation.

1 THE COURT: And I -- I don't think so with respect
2 to that either.

3 So actually what I -- What I'm going to do is
4 I'll cut to the chase as to where I end up.

5 I was going to make you amend 8 anyway
6 because I don't think the prayer for relief lined up
7 with the allegations.

8 I -- I'm denying the dispositive motion.

9 Do you wish to make your motion? Mr. Hanlon?

10 MR. HANLON: Well, with respect to that rule --
11 going to rule -- You were willing to allow me to amend
12 just that one count.

13 That's the cell phone count, Judge?

14 THE COURT: Yeah.

15 MR. HANLON: Judge, I'd like to voluntarily
16 dismiss that one count so we can proceed to this --

17 THE COURT: Okay.

18 MR. HANLON: -- this case.

19 THE COURT: Any objection to the oral motion?

20 MR. GOOCH: Yes.

21 THE COURT: Okay.

22 MR. GOOCH: Well, I object to it being nonsuited,
23 but I don't care if he's making it orally or in writing.

24 THE COURT: Okay. That's upon payment of your

1 costs.

2 Is there anything else?

3 MR. GOOCH: No.

4 THE COURT: Okay. Then I will allow him to make
5 that --

6 MR. GOOCH: What count is that?

7 A VOICE: Count 8.

8 MR. HANLON: So, Judge, do I take all accounts and
9 divide it by, you know, his filing fee for the purpose
10 of ascertaining (Unintelligible).

11 THE COURT: I'll enter and continue.

12 MR. GOOCH: I don't care about that. I mean, the
13 money comes out of one pot and goes into another.

14 THE COURT: I'm going to -- So I'm going to allow
15 counts 1 through 7 to stand in large part because I felt
16 that there was going -- there was too much of a factual
17 analysis for me to address it under the type of motion
18 that was filed.

19 Count 9, what's -- what remains of Count 9
20 and I --

21 MR. HANLON: Judge, I --

22 THE COURT: I agree it's -- it probably moot. I
23 don't know what else is on (Unintelligible).

24 MR. HANLON: Frankly, I almost -- almost forgot

1 what Count 9 was.

2 THE COURT: You wanted an accounting for all
3 assets, records and assets. And they entered an order
4 or at some point there was an order entered -- requiring
5 them to preserve any and all records.

6 MR. HANLON: And I think you're right with that,
7 Judge. And the reason -- only reason it's replied is to,
8 you know, because that was the sum and substance of what
9 was at issue between both Mr. Gasser and -- And so the
10 only question that I have with respect to the accounting
11 of records is the -- the issue associated with -- in
12 preserving those records.

13 What I'd like to point out, Judge, is that
14 Mr. Miller is not a defendant as it relates to the
15 accounting portion of this complaint. It's only
16 directed towards Miss Lukasik. And so the motion that's
17 before the Court with respect to that, he wouldn't have
18 standing to raise any arguments as to any deficiency
19 with respect to that.

20 THE COURT: But I --

21 MR. HANLON: So the Court (Unintelligible).

22 THE COURT: But I -- I can (Unintelligible).

23 MR. HANLON: Judge, the -- From a big picture
24 standpoint, that's what started this because we couldn't

1 ascertain and find the -- you know, all the respect
2 documents.

3 Now, the Court's entered orders in this case.
4 We're preserving all documents. We're not going get rid
5 of any documents.

6 But if we don't have the count, I don't know
7 what happens to the -- that prior order with respect to
8 preserving all that stuff.

9 THE COURT: I -- well, see, I don't think -- My
10 dismissing Count 9 on the basis that I believe it is now
11 moot because of the standing order.

12 MR. BRODY: I'm good with that, Judge.

13 THE COURT: And my standing order or the standing
14 order preserving everything you've asked for and
15 protects you. It accomplishes your goal.

16 And on top of that, it's my understanding
17 they don't have access or possession of anything new.
18 So it isn't -- There's no requirement for a new order.

19 MR. HANLON: I understand, Judge. I'm -- I'm good
20 with that.

21 THE COURT: Okay. So I will dismiss Count 9 as
22 being moot.

23 MR. GOOCH: But you're not dismissing it with
24 prejudice?

1 THE COURT: See, I'm not -- I don't know that I
2 can -- I don't know that I want to dismiss with
3 prejudice only because I fear that opens other doors.

4 My -- my concern is -- Have the documents all
5 been turned over?

6 MR. GOOCH: We have possession of
7 (Unintelligible).

8 MR. HANLON: No, Judge. You stayed discovery a
9 year ago when Mr. Gooch was claiming that there was no
10 standing on the part road district.

11 THE COURT: All right.

12 MR. HANLON: And he was going to file a motion.

13 MR. GOOCH: It's always Mr. Gooch's fault, always.

14 THE COURT: Yes.

15 I -- I'm not going to dismiss with prejudice
16 until such time as all the records have been turned
17 over. But for now, I've entered an order that
18 accomplishes its goal. That order will stand so there's
19 no need to tag this on to the new complaint.

20 MR. HANLON: Judge, you had previously stayed
21 discovery in this matter until we got to this point. I
22 think we're past this point now. I ask that --

23 THE COURT: But he needs to answer, but, yes.

24 A VOICE: Yes.

1 THE COURT: Yes.

2 MR. GOOCH: I need to answer what, Judge?

3 THE COURT: You need to answer the complaint.

4 MR. GOOCH: Yeah, it's 1 through 7.

5 THE COURT: Yeah. Yeah.

6 MR. BRODY: I believe I need to answer also.

7 THE COURT: So how long do you need to do that?

8 MR. GOOCH: Well, everybody needs to file answers.

9 THE COURT: Okay. 28 days enough?

10 MR. GOOCH: Oh, no. No. It's a 200-page

11 complaint, no. 60 --

12 MR. HANLON: Judge, they -- they've had this

13 for --

14 THE COURT: Let -- let -- Let him finish.

15 MR. GOOCH: I'm really not interested in what Mr.

16 Hanlon's opinions are of my abilities.

17 THE COURT: So you just tell me how much time you

18 need.

19 MR. GOOCH: 60 days.

20 THE COURT: Okay.

21 MR. GOOCH: In view of the times that have been

22 extended in this case, I don't think that's

23 unreasonable.

24 THE COURT: 60 days does seem excessive.

1 Anyone else want to chime in?

2 So I'll cut -- I'll split the difference.

3 I'll call it 45.

4 Can you do it in 45?

5 MR. GOOCH: Other than -- If I can't, I'll be in
6 on a motion.

7 THE COURT: Okay. But yeah.

8 MR. HANLON: Judge, I'd like to point out that
9 when it comes to continuance in this case, Mr. Gooch has
10 had multiple --

11 THE COURT: I -- everybody gets a continuance so
12 I --

13 MR. HANLON: Yes, I understand that.

14 But when you say 45 days, I think that puts
15 us on a Sunday if I did my fingers and toes right in my
16 head.

17 THE COURT: I put this on -- Well, it does
18 technically.

19 MR. GOOCH: Then it will be Monday, 46 days.

20 THE COURT: Monday, May 6. So you technically get
21 46 days.

22 MR. HANLON: All right. And then with respect to
23 discovery issues, Judge, I know that he's going to file
24 an answer.

1 Discovery is supposed to commence pursuant to
2 Illinois Supreme Court Rule 201(d). Once the parties
3 have appeared, there's no limitation with respect to
4 being at issue and we will be at issue one way or the
5 other.

6 I believe I -- I will be in a position to
7 file a motion for summary judgment on at least one count
8 between now and then.

9 MR. GOOCH: I'm sorry, Judge. I just got a --

10 THE COURT: I don't need editorializing from you.

11 MR. GOOCH: It's not editorial. It's spontaneous
12 laughter, Judge.

13 THE COURT: Okay.

14 MR. GOOCH: At what I would construe to be a
15 ridiculous statement.

16 MR. HANLON: Judge, you (Unintelligible).

17 MR. GOOCH: I know.

18 He wants to be your fault, Mr. Gooch.

19 THE COURT: Let's -- Let's knock it off. I don't
20 want to sanction anyone today, but you guys are coming
21 close.

22 So, all right. So I will give you 45 days.
23 That takes us to May 6th.

24 Why don't we come back 14 days after that,

1 coincidentally 60 days from today, which would be
2 May 20th. By then everybody should know what's at issue
3 with respect to the answer, and we can proceed.

4 Does that work?

5 MR. GOOCH: Thank you, Judge.

6 THE COURT: Okay. All right. We'll so you
7 May 20th.

8 (WHEREUPON, the case was continued
9 to May 20, 2019.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF McHENRY)

3

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
5 McHENRY COUNTY, ILLINOIS

6

7 I, Mary L. Krikorian, an Official Court
8 Reporter of the 22nd Judicial Circuit of Illinois, do
9 hereby certify the foregoing to be a true and accurate
10 transcript of the electronic recording of the proceeding
11 of the above-entitled cause, which recording contained a
12 certification in accordance with rule or administrative
13 order to the best of my ability.

14

15

16

17

18

Mary L. Krikorian,
Official Court Reporter
Cert. #084-002172

19

20

21

22

23

24

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

ANDREW GASSER, ET AL.,)
Plaintiffs,)
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.)

Case No. 17 CH 000435

-----)
KAREN LUKASIK, INDIVIDUALLY)
AND IN HER CAPACITY AS)
ALGONQUIN TOWNSHIP CLERK,)
Defendant/Third-Party Plaintiff,)
v.)
CHARLES LUTZOW,)
Third-Party Defendant.)

REPLY IN SUPPORT OF GASSER'S MOTION
FOR JUDGMENT ON THE PLEADINGS

Now Comes Andrew Gasser with his reply in support of his Motion for Judgment on the Pleadings in re Karen Lukasik's Counter-claim pursuant to 735 ILCS 5/2-615(e) and states as follows:

During the briefing of Plaintiff/Counter-defendant's Motion for Judgment on the pleadings, Defendant/Counter-plaintiff sought leave of court to file an amended counter/cross-complaint without attaching the proposed pleading. On July 31, 2019, Lukasik filed an

Amended Counter/Cross-Complaint (hereinafter “AMCC”). The AMCC still lacks allegations against Andrew Gasser sufficient to obtain any relief including declaratory relief. While, Lukasik’s counsel takes liberty by insinuating that the Motion for Judgment on the Pleadings was not well grounded in fact, it is Lukasik that fails to point to facts and a viable cause that have been alleged by her that Gasser and her need a specific declaration. In a highly cavalier manner, Lukasik, in her AMCC asks this court to “declare the rights of the parties” when Lukasik has no authority (no standing) to bring the action in the first place. In what way is Lukasik asking for declaratory relief, when typically the party to such a declaratory dispute require a determination of something that the court can declare. (E.g. declare loss covered/not covered by policy, declare document void/valid.)

A. Factual Allegations Concerning Gasser Still Insufficient.

Within the AMCC, Gasser is mentioned in paragraphs 3, 22, 23, 36, 37, 38, 47, 48, 52, 53, 54, and the prayer for relief. See Exhibit A. The factual allegations referencing Andrew Gasser in Lukasik’s AMCC now boil down to the claim that purportedly “Gasser and Lutzow” do not allow Karen Lukasik access to rooms where she wants to inventory documents because a FOB system maintained by Lutzow prevents Lukasik from full and complete unfettered access to Gasser’s and Lutzow’s offices. (See ¶¶ 29, 36-42 of the AMCC); as well as her contention that original “Township” records remain in possession of Gasser and Lutzow that she has a right to possess. (See paragraph 38 of the AMCC) Lukasik fails to identify what documents are purportedly in Gasser’s possession or what documents are in Lutzow’s possession that she needs to inventory. Lukasik also claims that a video publically available on you-tube starring her and

Jen Curtis¹ is not available to her and somehow is the fault of somebody but fails to identify what Gasser has done in this regard. But See: <https://www.youtube.com/watch?reload=9&v=Qoaa5C1hPKk>.

In paragraph 52 there is an allegation that Gasser should be restrained to allow Lukasik unfettered access to storage areas. Yet, Lukasik has never alleged that Gasser controls the access to storage areas or other township property locations. Despite the aforementioned contentions, Lukasik actually alleges that Lutzow is in charge of the FOB system. See AMCC ¶¶ 29 & 30.

Just as the prior complaint failed to show that Andrew Gasser has done anything warranting any relief, the AMCC does not allege any fact that Mr. Gasser has done anything commanding relief or intervention by this court. Ironically, in AMCC ¶ 13 Lukasik now admits that she found the purportedly missing RD-T files in the morning on June 17, 2017² in the supervisor's office. See Exhibit A. So we no longer have to identify the "who done it" as to the non-missing RD-T files because two years after Lukasik found them, she is still complaining about someone other than Gasser having had them momentarily.

B. No Standing

60 ILCS 1/95-10 provides:

In all suits and proceedings, the township shall sue and be sued by its name, except where township officers are authorized by law to sue in their name of office for the benefit of the township. 60 ILCS 1/95-10.

Lukasik fails to identify the section of any statute that allows Karen Lukasik to bring suit in her own name for the benefit of the Township or in the name of the Office of the Township Clerk. (Thus, no standing to advance this case.) Counsel for the Road District has not been able to locate any statutory authority to support the Clerk was authorized by statute to sue in the

¹ The referenced video depicts Karen Lukasik in the office of Charles Lutzow, after regular hours, removing public documents from the Supervisor's office. It is available on line for viewing.

² More than two years ago Lukasik found the documents and after Mr. McArdle continued to rely upon the alleged missing RD-T files in response to a motion for sanctions.

official capacity as Clerk as now alleged in the AMCC and in the Response to the Motion for Judgment on the Pleadings.

C. Declaratory Relief.

In Lukasik's response (attached as Exhibit B), she claims that she has pled an action for Declaratory Relief in the AMCC. She has not and pled out of a cause of action. A declaratory judgment action allows the parties to a dispute to learn the consequences of their action before acting, not after. *Beahringer v. Page*, 204 Ill. 2d 363, 373, 789 N.E.2d 1216, 273 Ill. Dec. 784 (2003). Thus, a declaratory judgment action is proper when the potentially breaching act has not yet occurred. *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 379, 806 N.E.2d 1273, 282 Ill. Dec. 685 (2004). For declaratory relief there must be an actual controversy that is a concrete dispute that admits the need of an immediate and definitive determination of the party's rights before a party acts. *Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 305, 783 N.E.2d 658, 270 Ill. Dec. 696 (2003). The declaratory judgment process allows a court to address controversies after a dispute arises but before steps are taken that give rise to claims for damages or other relief. *Beahringer*, 204 Ill. 2d at 372-73. The procedure "was designed to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right." *Banos v. Xamplas*, 2013 IL App (1st) 122537-U, P36, 2013 Ill. App. Unpub. LEXIS 1604, *19, 2013 WL 3873979.

In the case at bar, Lukasik is not entitled to any relief under the Declaratory Judgment Act because according to her AMCC, the parties have gone beyond the potentially breaching act at least as it relates to Lutzow or that she has failed to assert a potentially breaching act. See AMCC ¶¶ 38, 42, 43. But see *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 379, 806 N.E.2d 1273, 282 Ill. Dec. 685 (2004). *Adkins* addressed a complaint similar to Lukasik's

where late in the game a “Hail Mary” amendment under the Declaratory Judgment Act resulted in the court denying relief because the parties were not seeking relief on how to proceed.

The Declaratory Judgment Act is often used in insurance settings where a contract under certain conditions provides for coverage and in other conditions no coverage; to avoid the mistake of the wrong action, a declaratory action is implemented. We do not have this situation in this case, according to Lukasik. Here, Lukasik claims that Lutzow has acted and attributes Lutzow’s action to both Gasser and Lutzow in the context of unfettered access. See AMCC ¶ 30 establishing that Lutzow controls the FOB system, not Gasser. Thus, the use of the Declaratory Judgment Act is not appropriate because Lukasik is complaining about positions already taken and not for an interpretation of how to proceed. She said it, she is locked out by Lutzow.

D. “CLERK” does not mean “She Who May Interfere with Work of Others”.

In this case, Clerk Lukasik claims that she is the keeper of the records of the Township. See Amended complaint ¶46. It is accurate, that a Township Clerk, as keeper of the records of the Township, is similar to the Clerk of the Court who keeps records of the Court. However, Clerk Lukasik takes it a step further. By way of analogy, if she were the Clerk of the Court she would want to be in the chambers of each judge inventorying the documents within the judge’s chambers each night and that she would have the right to enter into chambers to perform her purported duty of securing the court’s records. Would we have the clerk of the court between each attorneys’ draft of an order for inventorying purposes? It was never the statutory intent of a Clerk serving the people’s needs to retain records of the Public Body by requiring other public officials to have her serve as an intermediary in the process of business of the Road District. Here, Gasser is a public official who by virtue of his position creates public documents. The Clerk need not inventory each draft before action is taken or before a document is finalized.

Moreover, the Highway Commissioner ought not be in a position that he must empty his desk each night to return to his work the next morning as the clerk doles out his prior work by the spoonful, especially when she is not present in the morning.

E. Township is not the Road District.

Lukasik's contention relates to "Township records". See AMCC paragraphs 20, 36, 38, 42, 43, 47, 48, 50, 51, and 53. If that is true she has nothing to fear concerning Mr. Gasser because his office creates documents for the Road District, not the Township. It is clear from reading the response and the AMCC that this distinction is lost on Lukasik or her counsel.

F. Failure to Verify AMCC.

Lukasik was granted leave to file an Amended Complaint, after the court received Gasser's Motion for Judgment on the pleadings. The Original Counter-Complaint was verified. The Counter-Complaint was not verified. But See 735 ILCS 5/2-605 requiring subsequent pleadings to be verified. Because Attorney McArdle did not attach the AMCC to the Motion for Leave to Amend the Counter-Complaint, the court never had the opportunity to excuse the failure to verify. Thus, Lukasik's AMCC violates the aforementioned section.

G. Conclusion.

For the reasons stated herein and in the original motion, Andrew Gasser Prays that this honorable court grant judgment on the Counter complaint directed at Andrew Gasser in favor of Andrew Gasser and dissolve the preliminary injunction entered previously.

ANDREW GASSER & ALGONQUIN TOWNSHIP
ROAD DISTRICT, Plaintiffs

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

PROOF OF SERVICE

I, Robert T. Hanlon, an attorney, depose and state that I served a copy of Andrew Gasser's **REPLY IN SUPPORT OF GASSER'S MOTION FOR JUDGMENT ON THE PLEADINGS** upon the attorneys of record, referenced above, at their respective addresses, by e-mailing a true and correct copy of same to the e-mail addresses shown on attached Service List and by automatic notice in the I2File system on this 27st day of August, 2019.

Service List

Mr. Thomas Gooch, III
THE GOOCH FIRM
209 South Main Street
Wauconda, IL 60084
Phone: (847) 526-0110
Fax: (847) 526-0603
Email: gooch@goochfirm.com

David McArdle, Jacob Caudill, R. Mark Gummerson
ZUKOWSKI ROGERS FLOOD & McARDLE
50 North Virginia Street
Crystal Lake, IL 60014
Phone: (815) 459-2050
Fax: (815) 459-9057
E-Mails: dmcardle@zrfmlaw.com
jcaudill@zrfmlaw.com
mgummerson@zrfmlaw.com

James P. Kelly
LAW OFFICES OF MATUSZEWICH & KELLY, LLP
101 North Virginia Street, Suite 150
Crystal Lake, IL 60014
Phone: (815) 459-3120
Fax: (815) 459-3123
Email: jpkelly@mkm-law.com

Steven J. Brody
STEVEN J. BRODY & ASSOCIATES, LTD.
15 West Woodstock Street
Crystal Lake, IL 60014
Phone: (815) 479-8800
Fax: (815) 479-8880
E-Mail: steve@sjbrodylaw.com

/s/Robert T. Hanlon

Robert T. Hanlon, ARDC #6286331
Law Offices of Robert T. Hanlon & Associates P.C.
131 East Calhoun Street
Woodstock, IL 60098
(815) 206-2200
(815) 206-6184 (Fax)
Email: robert@robhanlonlaw.com