

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

HOMER TOWNSHIP, an Illinois)
township, Sean Reilley, Maria Reilley,)
Rich Polaski, Quinn Polaski, Ed Kalas,)
Margaret Sabo, Ellen Moriarty,)
Kathleen Kruczek, individually and in her)
capacity as Clerk of the Homer)
Township Road District, Kolbe Kruczek,)
Jacob Kruczek, Pamela Meyers,)
Individually and in her official capacity as)
Treasurer of the Homer Township Road)
District and Supervisor of Homer Township,)
Ethel Rodriquez, George Offord, Cheryl)
Bromberek, Bill Bromberek, Denise)
Clements, Roy Adcock, Laura Adcock ,)
James Kuzma, Karen Szykowski,)
and Tom Fijan,)

Plaintiffs,)

v.)

Case No. 2020 CH 808

VILLAGE OF HOMER GLEN,)
an Illinois municipal corporation, the)
HOMER TOWNSHIP ROAD)
DISTRICT, an Illinois special district,)
MIKE DE VIVO, in his official capacity)
as Homer Township Road District)
Highway Commissioner,)

Defendants.)

**VILLAGE OF HOMER GLEN'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Defendant, Village of Homer Glen, by its attorneys, Mahoney, Silverman & Cross, LLC, for its reply in support of its motion for summary judgment, states:

Pursuant to the Court's order entered on February 3, 2021, Plaintiffs were to file a response to Defendants' motions for summary judgment by February 24, 2021. They have filed no response. Instead, they filed – though have not motioned up – a motion to suspend briefing schedule and for leave to file first amended complaint.

A review of the proposed amended complaint, demonstrates that there is no reason to suspend the briefing schedule on the motion for summary judgment as the first three counts of the amended complaint are virtually identical to the first three counts of Plaintiffs' initial complaint. Count I of both the initial complaint and the proposed amended complaint are captioned the same and seek the same relief. The same is true of Counts II and III.

Nevertheless, there is one difference between the initial complaint and the amended complaint. In the initial complaint, Plaintiffs alleged that, under 60 ILCS 1/30-50 the sale of personal property of the Road District can be approved only by the township electors. (Cmplt. ¶31). As the Village pointed out in its memorandum in support of its motion for summary judgment, this allegation is directly contradicted by the very statute that Plaintiffs cited in the initial complaint. (Village's Memorandum filed 1/29/21.) In their proposed amended complaint, Plaintiffs have abandoned their earlier assertion and now claim that only the sale of real property requires approval of the township electors. (Plaintiffs' Motion to Suspend Briefing Schedule and

for Leave to file First Amended Complaint, Exhibit A thereto¹ at ¶32). Accordingly, there is no reason for the Court to delay in entering summary judgment on Count I in favor of Defendants.

Summary judgment should also be entered on Counts II and III of the complaint given that Plaintiffs have yet to provide any authority or argument to oppose the motions for summary judgment with respect to those counts.

The proposed amended complaint contains no new counts against the Village. The only new count is against Mike DeVivo in his capacity as the highway commissioner. Accordingly, the new count does not provide a basis for delaying the Village's motion for summary judgment.

Furthermore, it is questionable whether Count IV is even a valid claim. Count IV of the proposed amended complaint is captioned as being brought by Meyers and the Township Board against Defendant DeVivo. In part, this count seeks an order requiring "discovery." Yet, discovery is neither a cause of action nor a recognize remedy. The count also seeks an accounting of all funds by Homer Township Road District. As the proposed complaint makes clear, Pamela Meyers is the Treasurer of the Homer Township Road District. Thus, in reality, she is suing to compel herself to provide an accounting. Given that Meyers is the Treasurer of the Road District, she presumably has all access to the records and information that she is now seeking through an accounting. Accordingly, it would be improper to grant an accounting. See *Netisingha v. End of the Line, Inc.*, 107 Ill. App. 3d 275, 278 (1982)(an accounting will not be ordered if it is unnecessary). Finally, it appears that that count IV is requesting this Court to delve into the budgeting decisions of the Homer Township Road District, the information upon which budgets were approved, and why they were approved. These are the type of decisions that

¹ Exhibit A consists of two documents, an affidavit of Pamela Meyers and a proposed amended complaint. This is a reference to the proposed amended complaint.

courts have found to be political in nature and thus not appropriate for review by the judicial branch. See e.g. , *West Side Organization Health Services Corp. v. Thompson*, 73 Ill.App.3d 179, 187 (1st Dist. 1979), *rev'd on other grounds*, 79 Ill.2d 503 (1980)(“[t]he judiciary should not attempt to review budgetary decisions when made by the branch of government having the authority to control spending”.)

In sum, there is no reason to delay ruling on the Village’s motion for summary judgment and Plaintiffs have provided no reason for denying the motion. Accordingly, the Village of Homer Glen requests that the Court enter an order granting summary judgment on Counts I, II, and III of the initial complaint.

MAHONEY, SILVERMAN & CROSS, LLC

By: /s/ James A. Murphy

One of the Attorneys for Defendant

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