CASE NO. 125133

IN THE
ILLINOIS SUPREME COURT

RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC. Plaintiffs-Appellees, v. THE BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE-COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE, Defendants, (The Board of Education of Proviso Township High Schools District 209, Defendant-Appellant.)	On Appeal from the Illinois Appellate Court, First District, Case No. 1-18-1580 There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Law Division Case No. 2015 L 010904 Hon. Bridgid Mary McGrath, Presiding

DEFENDANT-APPELLANT BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209'S BRIEF ON APPEAL

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POINTS AND AUTHORITIES

NATURE OF THE CASE

This case involves a claim by Restore Restoration, Inc. and/or Restore Construction Co., Inc. ("Restore") brought in *quantum meruit* to recover funds from a public school district based upon work it performed pursuant to a contractual agreement which was void *ab initio.* Specifically, Restore seeks remuneration for work performed pursuant to two no-bid construction contracts which were never approved by the Board of Education of Proviso Township High Schools ("Proviso") as required by law but, instead, were executed by individuals who lacked lawful authority to enter into the Agreements and which were not executed in conformity with Illinois law.

This case is presented to the Court based upon the pleadings following the Circuit Court's order granting Proviso's motion to dismiss on June 26, 2018. The Circuit Court based its ruling on long-standing precedent holding that no contract or liability may be implied against a municipal corporation where there has been a failure to comply with a statute or ordinance prescribing the method by which the entity can enter into a contract and/or create a liability. The First District Appellate Court reversed the Circuit Court's order on June 28, 2019 and it found that a claim for *quantum meruit* was available against a public entity for work performed pursuant to a contractual agreement that was void *ab initio*. *Restore Construction Co. v. Bd. of Ed. of Proviso Twp. H.S. Dist. 209,* 2019 IL App (1st) 181580. Proviso filed a timely Petition for Leave to Appeal with this Court which was granted on September 25, 2019.

ISSUE PRESENTED FOR REVIEW

The issue presented for review is whether a liability can be created against a public entity when work is performed pursuant to a contractual arrangement that is void *ab initio.*

STANDARD OF REVIEW

This case is based upon the Circuit Court's grant of a motion for summary judgment. As such, this Court's review is *de novo. Solaia Technology, LLC v. Specialty Publishing Co.,* 221 Ill.2d 558, 579 (2006).

JURISDICTION

The Circuit Court entered its final order dismissing all claims brought by Restore against all Defendants on June 26, 2018. C2628; C2628. Restore filed a notice of appeal seeking only review of the dismissal of the *quantum meruit* claim against Proviso on July 24, 2018. C2461. The Appellate Court exercised jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303. On June 28, 2019, the Appellate Court reversed the order of the Circuit Court. Proviso filed a timely Petition for Leave to Appeal with this Court pursuant Rule 315(a) on August 2, 2019. This Court granted the Petition for Leave to Appeal on September 25, 2019 and its jurisdiction is proper pursuant to Illinois Supreme Court Rule 315(a).

STATEMENT OF FACTS

Proviso is a public high school district governed by its Board of Education pursuant to Article 10 of the Illinois School Code and which operates and controls the public high schools within the jurisdictional boundaries of the

school district. C. 2050. One of those high schools is Proviso East High School ("East"). C. 2051. On May 10, 2014, there was a fire at East which caused damage to the school. C. 2051.

At all times relevant to this suit, Proviso was subject to the authority of a Financial Oversight Panel ("FOP") appointed by the State of Illinois. C 2050. "The purposes of [an FOP] shall be to exercise financial control over the district and to furnish financial assistance so that the district can provide public education within the district's jurisdiction while permitting the district to meet its obligations to its creditors and the holders of its debt." 105 ILCS 5/1H-25(a). The FOP is a separate legal entity which may sue and be sued. 105 ILCS 5/1H-25(a)(1). It also has the authority to hire its own employees including a Chief Financial Officer ("CFO"). 105 ILCS 5/1H-25(a)(4); 105 ILCS 5/1H-30(3). At all relevant times hereto, the FOP employed Mr. Todd Drafall as its CFO. C. 1134.

On May 22, 2014, Dr. Nettie Collins-Hart, then employed as the Superintendent for Proviso, signed a contract with Restore Restoration, Inc. authorizing it to perform "Emergency Work" at East ("Agreement One"). C. 2053; C2124-2126. This agreement for construction work, which was not let through a competitive bidding process as required by the Illinois School Code, did not set forth a price for the work nor define the scope of work that was to be performed by Restore. C. 2124. Agreement One was also never presented to the Board of Education for approval despite the fact that a meeting of the

Board of Education took place on May 13, 2014, which was between the date of the fire at East and Dr. Collins-Hart's execution of Agreement One. C. 2377. Restore contends that the work performed pursuant to Contract One is valued at $331,109.83. C. 2060. In sum, Restore contends that it is entitled to an amount in excess of Three Hundred Thousand Dollars for construction work based upon a contract that was never presented to nor approved by Proviso's Board of Education. C. 2377.

On August 12, 2014, then Board President Daniel Adams executed an "Amended Agreement" with Restore Construction Co., Inc. with respect to the work at East ("Agreement Two"). C. 2056; C. 1205-1207. Agreement Two, much like Agreement One, was not let through a competitive bid as required by the Illinois School Code and also did not specifically define a price for the work but, instead, set the price for Restore's work at "the reasonable value thereof". C. 1205. It also required that progress payments be made for the work by Proviso's insurance company. C. 1205.

Despite the fact that a meeting of the Board of Education was held on August 12, 2014, Agreement Two was not provided to the Board of Education for approval and no vote authorizing the construction work pursuant to Contract Two was ever taken by the Board of Education. C. 2377. Restore values this work performed pursuant to Contract Two at $6,939,890.17. C. 2060. In other words, Restore claims that it is entitled to remuneration for a

multi-million dollar construction contract that was never presented to nor approved by Proviso's Board of Education. C. 2060.

Proviso at all relevant times was a member of an insurance cooperative, the Collective Liability Insurance Cooperative ("CLIC") which procured insurance policies for it. C. 1140. Gallagher Bassett Services ("GBS"), acting as a claims administrator on behalf of CLIC, issued payments for the work done by Plaintiffs. C. 1141. CLIC also maintained for its members an excess property insurance policy through Travelers Indemnity Company ("Travelers"). C. 1141. Travelers and GBS retained Madsen, Kneppers and Associates ("MKA") to assist with the construction work at issue. C. 1141. Travelers, through GBS and MKA "gave Restore directives and demanded performance" from it. C. 1141. In addition, GBS' agent, Michael Becich, "directed that the chain of command on the Project was that only GBS was to deal with and communicate with Travelers" and further that "Proviso was not the party paying Restore on the Project; that payments were coming from GBS, CLIC and Travelers." C. 1142.

Proviso's insurance carrier authorized numerous payments to Restore through two-party checks which were endorsed by the FOP's CFO, Mr. Drafall, which were then provided to Restore. C. 1137. These payments resulted in Restore being paid $5,843,245.78 for work at East by Proviso's insurance carrier. C. 1137. The insurance carrier eventually refused to pay additional

monies to Restore and the lawsuit against Proviso followed. C. 1143-1144; 2072.

Restore's original cause of action against Proviso consisted of a one count breach of contract claim alleging a breach of Contract Two. C. 37-164. After Proviso filed a motion to dismiss the Complaint asserting that the underlying contract was void since it was never bid nor approved by the Board as required by law, Restore filed an Amended Complaint. The Amended Complaint added an additional claim for a breach of Contract One and further sought relief from Proviso through claims of estoppel, *quantum meruit*, and unjust enrichment. C. 342-708. The Amended Complaint also pursued various other claims against other corporate and individual defendants regarding payment for the construction work. C. 342-708. Restore subsequently filed a Second Amended Complaint which stated the same causes of action as the Amended Complaint while adding additional counts alleging that the underlying construction contracts were authorized by the FOP and therefore binding upon Proviso. C. 1459-1518.

The Circuit Court dismissed the Second Amended Complaint and determined that the underlying contracts set forth by Restore were void *ab initio* since they were never approved by Proviso's Board of Education as required by the Illinois School Code and, instead, were executed by individuals who did not have the authority to bind Proviso. C. 1906-1907; C. 1934-1935. Restore asked the Circuit Court to reconsider its decision again arguing that

the contracts at issue were valid and should be enforced, but that motion was denied. C. 1913-1954.

Restore then filed a Third Amended Complaint seeking to recover funds from the Board of Education for the construction work based upon a *quantum meruit* theory of relief and also pursued fraud claims against the signatories of the underlying contracts and against one of the insurers. C. 2049-2344. This Third Amended Complaint was dismissed by the Circuit Court with prejudice on June 26, 2018, again based upon the fact that the underlying contractual agreements were void *ab initio*. C. 2635.

On August 2, 2018, Restore filed its Notice of Appeal in the Illinois Appellate Court. In the Appellate Court, Restore conceded that both Contract One and Contract Two were void *ab initio* and it proceeded solely against Proviso on a theory of *quantum meruit.* The Illinois Appellate Court reversed the Circuit Court's Order granting Proviso's Section 2-619 motion to dismiss on Restore's *quantum meruit* claim. Although the Appellate Court acknowledged that the signatories of the underlying agreements did not have the lawful authority to bind Proviso, a knowledge which was imputed to Restore under Illinois law, it determined that a claim for *quantum meruit* would still be authorized despite the fact that the agreements were void *ab initio*. *See Restore Construction Co., Inc. v. Board of Ed. of Proviso Township High Schools Dist. 209*, 2019 IL App (1st) 181580, ¶ 16. It is from this decision that Proviso seeks relief before this Court.

ARGUMENT

I. The Circuit Court properly granted Proviso's motion to dismiss by holding that a claim for *quantum meruit* cannot lie where the underlying agreement creating the financial obligation against a public entity is void *ab initio*.

A. The Illinois School Code requires that only the Board of Education may approve a financial liability against the district through a proper vote of its elected members.

A school board is a body politic and corporate created to perform governmental functions relating to the education of children in its district and has such powers as are expressly conferred or as may be necessary to effect powers granted by the General Assembly. *Weary v. Bd. of Ed.,* 46 Ill.App.3d 182, 184 (5th 1977). Statutes conferring authority on a board of education must be considered not only as a grant of power, but as a limitation thereof. *Wesclin Education Association v. Bd. of Ed.,* 30 Ill.App.3d 67, 75 (5th Dist. 1975); *Evans v. Benjamin School District No. 25,* 134 I11.App.3d 875 (2nd Dist. 1985); *Ill.Const.1970,* art. VII, §8 ("Townships, school districts, special districts and units, designated by law as units of local government, which exercise limited governmental powers or powers in respect to limited governmental subjects shall have only powers granted by law.") An action undertaken by a school district which is prohibited by law or is beyond its lawful authority is *ultra vires* and void. *Lewis-Connelly v. Bd. of Ed. of Deerfield Public Schools, Dist.109,* 277 Ill.App.3d 554, 560 (2nd Dist. 1996).

The Illinois School Code provides that, "on all questions involving the expenditure of money, the yeas and nays shall be taken and entered on the

records of the proceedings of the board." 105 ILCS 5/10-7. Unless otherwise provided, when a vote is taken upon any measure before the board, a quorum being present, a majority of the votes of the members voting on the measure shall determine the outcome thereof. 105 ILCS 5/10-12. It is clear that an individual board member has no legal authority and decisions are only made by a majority vote of the board of education at a public board meeting. 105 ILCS 5/10-16.5.

Moreover, a board of education is specifically bestowed with the discretionary power to award contracts for work involving an expenditure in excess of $25,000 to the lowest responsible bidder. 105 ILCS 5/10-20.21.[1] Specifically enumerated discretionary powers of a board of education are non-delegable and may only be exercised by the board of education itself. *Illinois Education Association v. Bd. of Ed. of School District 218*, 62 I11.2d 127, 130 (1975). The contours of the Illinois School Code make clear that the award of a construction contract in excess of $25,000 can only be authorized by the board of education after a formal vote of its members. It is undisputed that this vote never occurred in this case and that this vote was necessary in order to create a contractual liability against Proviso.

[1] The School Code would permit the Board of Education to approve "contracts for repair, maintenance, remodeling, renovation, or construction, or a single project involving an expenditure not to exceed $50,000 and not involving a change or increase in the size, type, or extent of an existing facility" without a bid. The amounts at issue in this case far exceed this threshold and its reference here is for completeness only.

Where a party lacks the legal authority to form a contract, the resulting contract is void *ab initio. 1550 MP Road LLC v. Teamsters Local Union No. 700,* 2019 IL 123046 ¶28. "A contract that is void *ab initio* is treated as though it never existed; neither party can choose to ratify the contract by simply waiving its right to assert the defect." *See id. citing Illinois State Bar Ass'n Mutual Insurance Co. v. Coregis Insurance Co.,* 355 Ill.App.3d 156, 164 (1st Dist. 2004). "A party without authority to enter into a contract may avoid enforcement of the contract as void even if the other contracting party has performed satisfactorily." *See id.*

A municipal corporation cannot be obligated under a contract that is *ultra vires,* contrary to statutes or contrary to public policy. *Matthews v. Chicago Transit Authority,* 2016 IL 117638 ¶98. The failure of a municipal corporation to comply with the legally mandated voting requirements of its elected officials in forming such a contract renders it void *ab initio. See id.; South Suburban Safeway Lines, Inc. v. Regional Transportation Authority,* 166 Ill.App.3d 361, 367-368 (1st Dist. 1988); *Lindahl v. City of Des Plaines,* 210 Ill.App.3d 281, 294 (1st Dist. 1991). The failure of Proviso's Board of Education to consider and vote on the underlying contractual arrangements with Restore which were executed by unauthorized agents rendered these agreements void *ab initio* as a matter of law and as conceded by Restore.

There is a noted difference between contracts which are void *ab initio* and those which are merely voidable. A voidable contract can be ratified and

enforced by the obligor while a void contract cannot. *Illinois State Bar Ass'n Mut. Ins. Co. v. Coregis Ins. Co.,* 355 Ill.App.3d 156, 164 (1st Dist. 2004). There is a marked distinction between those cases where a municipal corporation was utterly without power to make the contract in question and those cases in which it possessed the requisite power but exercised it in an irregular fashion. *D.C. Consulting Engineers, Inc. v. Batavia Park Dist.,* 143 Ill.App.3d 60, 63 (2nd Dist. 1986). In the latter case, the contract is merely voidable, and the plaintiff may recover in *quantum meruit. See id.* When a contract is void *ab initio*, however, a contract cannot be implied in fact or law against a municipal agency. *See id.* The second scenario is applicable here as it is clear that the contractual agreements at issue are void *ab initio.*

B. For over 140 years, Illinois Courts have barred recovery against Illinois municipal corporations under *quantum meruit* or implied in law theories where the underlying contract was void *ab initio*.

There is longstanding jurisprudence in this State which holds that a public entity shall not be liable to pay for debts allegedly incurred when the ability to incur the same is prohibited by existing law. This legal question was first addressed nearly 145 years ago when this Court first expressly rejected a *quantum meruit* claim against a municipal corporation for a purchase which failed to conform to law. *Clark v. School Directors of Dist. No. 1*, 78 Ill. 474 (1875). In *Clark,* a private salesperson sold certain science equipment to the board of school directors which was were subject to a procurement statute which prescribed the method by which the school's purchases could be made.

See id. at 476 (1875). The school received and enjoyed the use of the science equipment but refused payment for it on the ground that the order was void since the purchase had been made in violation of the procurement statute. *See id.* The statute permitted the procurement of the equipment by the directors by either levying an annual tax on the taxable property of the district or appropriating surplus funds for that purpose. See *id.* The school directors, however, purchased the equipment on credit, and there was no evidence that a tax had been levied or that there were surplus funds in the treasury when the contract had been made. See *id.* This Court found the contract to be *ultra vires.* See *id.* at 477. It also specifically considered whether "there may be a liability upon ***quantum meruit***," but rejected that theory because the contract was "unauthorized and void, and . . . there should not be any contract **implied by law** . . ." *See id.* at 476-477. (Emphasis added). The Court further determined that the plaintiff's only remedy was to reclaim the property itself. See *id.* at 477. This appears to be the earliest case in which this Court considered and rejected recovery of an implied in law contract where the underlying contract was void *ab initio*.[2]

[2] Interestingly, in 1910, the Supreme Court of Oklahoma reviewed *Clark* and other decisions nationwide and summarized its research as follows: "An exhaustive examination of the authorities on this subject discloses that, while courts have been astute to require and compel private corporations to pay for property purchased ultra vires by their agents and officers, where it has been of value and retained and used, they have guarded zealously the rights of taxpayers under statutes similar to the one we are now considering, and have with practical unanimity held that persons dealing with public officers of municipalities do so at their peril and are charged with full knowledge of the

Thirty years later, this Court again confirmed the principles established in *Clark*. In *Hope v. City of Alton,* 214 Ill. 102 (1905), an attorney who had rendered services to the City and whose work was authorized by an action of the city council sued the City when it failed to pay him. *See id.* at 103. The contractual agreement for the services was void because there was a valid ordinance limiting legal representation of the City to its corporation counsel and the plaintiff attorney was not the appointed corporation counsel. *See id.* Despite the fact that a municipal ordinance barred the contract at issue, the attorney still sought payment for his services since they were provided and accepted by the City. Much like Restore, he contended it would be unfair for the City to obtain the benefit of his services without paying him for the same. This Court found that such payment was not authorized by law and refused to award him any compensation. The Court held as follows:

> "In other words, the proposition is that, when a city gets what it had the authority to get in some way, it should pay for what it gets, whether it exercised the power in the prescribed way or not. The obvious answer is that this contract was prohibited by a valid ordinance, and that the city council had no right to make it in some other way or by some other method. The city council has no authority, by any method or process, to agree that the city should pay for legal services to be rendered by the plaintiff…" *See id.* at 105-106.

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rights and powers of these agents and officers to make contracts which will bind their principals. The question has arisen in almost every conceivable form; but the conclusion reached by the courts has been one, and that to relieve the municipality of any liability whatsoever, either on the contract or for the actual value of the property delivered and received." *Superior Mfg. Co. v. Sch. Dist. No. 63, Kiowa County*, 1910 OK 366, 28 Okla. 293, 114 P. 328, 330 (1910).

The Court went on to explain:

> "The doctrine of ultra vires is applied with greater strictness to municipal bodies than to private corporations. Persons dealing with a municipal corporation are chargeable with notice of its power to contract, and plaintiff was chargeable with notice of the ordinance in question. A municipal corporation is not estopped from denying the validity of a contract when there was no authority for making it. To hold otherwise would be to expose the taxpayer to all the evils which statutes or ordinances passed for his protection were designed to prevent." *See id.*

Lest there be any doubt whether this Court was restricting the concepts in *Hope* to contracts implied in fact, the Supreme Court clarified the matter in *May v. City of Chicago*, 222 Ill. 595, 598 (1906). In *May*, an employee in the Chicago city clerk's office worked overtime and was not paid. He sued for the overtime pay which had been denied because there had been no appropriation for it and a city ordinance prohibited the city from incurring expenses unless there had been such an appropriation. *See id.* Among other theories, the employee argued that "recovery could be had upon an implied contract on the ***quantum meruit*** for services rendered." *Id.* (Emphasis added). This Court rejected that theory and held that since there was no valid appropriation, "it [was] impossible by any act of the city officials to create a liability against the city for the work." *Id.* at 599. Citing *Hope* and other cases, the Supreme Court concluded that "[a] person dealing with a municipal corporation is charged with the knowledge of the limitations of the power of that corporation for any contract attempted to be entered into by any of its officials." *See id.* at 599-600.

One year later, the Court issued its decision in *Roemhold v. City of Chicago*, 231 Ill. 467 (1907). Again, the Court maintained that there could be no liability against public corporations like Proviso under *any* theory when an underlying arrangement is void *ab initio* for failing to comply with a statutory contracting provision. In *Roemhold*, the Court held that:

> "Where there is a statute or ordinance prescribing the method by which an officer or agent of a municipal corporation may bind the municipality by contract, that method must be followed, and there can be no implied contract **or implied liability** of such municipality. Where the agents of a city are restricted by law as to the method of contracting, the city cannot be bound otherwise than by a compliance with the conditions prescribed for the exercise of the power. *School Directors v. Fogleman*, 76 Ill. 189; *Tamm v. Lavalle*, 92 Ill. 263; *Rogne v. People*, 224 Ill. 449, 79 N. E. 62. The performance of work or furnishing material for a city, and the acceptance of the resulting benefits, will not render it liable to pay if the work was not authorized. The fact that the labor is beneficial will not create **a liability**. *Hope v. City of Alton*, 214 Ill. 102, 73 N. E. 406."

See id. at 470–71 (1907). (Emphasis added).

The common thread woven through all of these cases was expressed most succinctly by the Illinois Supreme Court in *Hope.* It is that the laws related to various expenditures of funds by public entities were designed with the purpose of protecting taxpayers and that by allowing them to be ignored in favor of the contactor, it would ultimately expose the taxpayer to all the evils which statutes or ordinances which were passed for his protection were designed to prevent. *Hope v. City of Alton,* 214 Ill. at 105-106. Absent compliance with these expenditure laws, liabilities could be created against

public entities through the conduct of individuals who lacked the requisite legal authority. The end result would be that the legal protections built in for taxpayer would be obviated and the unlawful expenditures of public funds would be authorized without the approval of the locally elected representatives tasked with protecting the public's interest and whom can be held accountable by the same.

The Appellate Court here categorically distinguished these cases by determining that the plaintiffs in those cases based their claim for relief on the contracts under a theory of a contract implied in fact, whereas Restore seeks recovery under *quantum meruit* or a theory of a contract implied in law. As set forth above, however, there is clearly case law which relates to the denial of relief on *quantum meruit* for a liability imposed in violation of a procurement law. In addition, while the *Hope* holding did not use the phrase *quantum meruit*, the plaintiff in that case was clearly seeking remuneration for work performed arguing that it would be unfair for the city to retain the benefits of his labor without payment. This is unquestionably the impetus behind a *quantum meruit* claim. *See generally, Archon Construction Co., Inc. v. U.S. Shelter, LLC,* 2017 IL App (1st) 153409 ¶30 ("A quasi-contract, or contract implied in law, is one in which no actual agreement between the parties occurred, but a duty is imposed to prevent injustice."); *Austin v. Parker,* 317 Ill. 348 (1925) (*Quantum meruit* claim creates an implied liability.)

In any event, this feature which the Court found distinguishing creates a distinction without difference when dealing with an underlying contract which is void *ab initio*. The cases which confront these types of arrangements all uniformly deny the vendor access to public funds based upon the public entity's failure to follow the legally mandated processes which were necessary in order to create a financial liability that the public entity's taxpayers become obligated to fund. Whether that is through a contract implied in fact or a contract implied in law is irrelevant. That is why *Roemhold* and numerous subsequent cases expressly state that there shall be no "implied contract" or "implied liability" where the necessary legal steps required in order to create a contract with a municipal body are not followed. To permit otherwise would allow vendors to collect public funds when they knowingly fail to follow the statutorily mandated contracting process by executing contractual arrangements with an agent of the public entity the contractor knows lacks legal authority to bind the same. This Court has traditionally refused to permit a vendor to benefit from those arrangements with public entities which were knowingly outside the confines of the applicable procurement laws.

This Court's holdings as discussed herein are hardly an anomaly in this area of law. Numerous Illinois Appellate Courts have also denied contractors and others the ability to recover in *quantum meruit* against public entities where the underlying agreement creating the financial obligation on behalf of the public entity was deemed void *ab initio* .

In *Galion Iron Works & Mfg Co. v. City of Georgetown*, 322 Ill. App. 498 (3rd Dist. 1944), the City refused payment for the purchase of a road grader entered into pursuant to a contract with a private citizen which was void because a statute prohibited the creation of a liability against the municipality absent a prior appropriation for the expense that had been made. The Appellate Court, citing *Hope* and *May* amongst other cases, specifically rejected the plaintiff's claim for *quantum meruit*. *See id.* at 504. The Court held that both "the plaintiff and the city officials are presumed to have known that the law required an appropriation in order to effect a valid sale." *Id.* The Court concluded that "[t]o now permit the plaintiff to have a recovery would be to permit it to do directly what it could not lawfully do directly, and would permit the plaintiff to profit from its own unlawful acts. The law furnishes no relief to parties under such circumstances, but leaves them where it finds them." *Id.* at 505.

A year after *Galion Iron Works* was decided, the Illinois Appellate Court again reached the same conclusion while specifically focusing on a claim of *quantum meruit*. *Gregg v. Town of Bourbonnais*, 327 Ill.App.253 (2nd Dist. 1945). In *Gregg,* after rejecting a claim for an implied contract in fact, the Appellate Court also rejected a claim for *quantum meruit* based upon the same void act. *See id.* at 267. The Court determined that holding the township liable on a *quantum meruit* theory merely because the plaintiff's services were requested was not tenable. *See id.* Rather, the Court determined that the

services were never requested by an authorized person and, therefore, the plaintiff's claim for *quantum meruit* liability had no foundation. *See id.* In its decision, the Court stated as follows:

> If a township is liable on a *quantum meruit* for services furnished by a person over a period of three years, without being authorized to do so in some method prescribed by the statute, on the theory that the services were of some benefit to the needy inhabitants, then the provisions of the statutes prescribing and limiting the manner in which the township can become indebted are meaningless. The rule is that a party dealing with such corporations must take notice of such limitations, and, in order to recover, must bring himself within them. We are of the opinion that under the law and the evidence in this case there can be no recovery from the township on account of the services furnished by the plaintiff. In view of this conclusion it is unnecessary to discuss other contentions urged by the parties. *See id.* at 267 (2nd Dist. 1945).

The Appellate Court here determined that *Gregg* was inapplicable because it had been succeeded in statute and/or "limited to situations where a plaintiff was attempting to hold a municipality liable for *quantum meruit* 'for services furnished *** on the theory that the services were of some benefit to the needy inhabitants'." *Restore Construction Company, Inc.* 2019 IL App (1st) 181580 at ¶ 30 quoting *Gregg*, 327 Ill. App. at 267. This conclusion, however, contradicts jurisprudence on this theory issued both before and after the Appellate Court's decision in *Gregg*. None of the other cases cited within this brief involve "needy inhabitants" and there is no indication that *Gregg* sought to limit its holding to cases where needy inhabitants were the beneficiaries of the private entity's work. In addition, the fact that the underlying statute setting forth how a liability could be created against a township was modified

in no way changed the underlying rationale of the Court in determining that financial remuneration would not be permitted to a contractor who knowingly failed to follow applicable law in reaching its contractual arrangement with a public entity through an unauthorized agent.

During the latter part of the 20th century, Illinois Appellate Courts continued to consistently reject implied in law contracts against municipal corporations where the contract was void *ab initio*. In 1986, the Illinois Appellate Court held that an engineer who had performed services for the Batavia Park District could not recover in *quantum meruit* even though he had performed services that were beneficial to the park district. See *D.C. Consulting Engineers, Inc. v. Batavia Park Dist.*, 143 Ill.App.3d 60 (2nd Dist. 1986). In that case, as in this one, the contract between the park district and the plaintiff was void because the individual executing the agreement, the superintendent of the park district, was prohibited from entering into contracts because the financial obligation created required the express authority and vote of the park district board under Illinois law. *See id.* at 62-63. In denying the claim for *quantum meruit*, the Court ruled that the contract was utterly void and "[t]here can be no implied contract." *See id.* at 63. The fact that the park district benefited from the engineer's work was not a basis to validate the contract or to otherwise provide financial relief to the consultant. *See id.* at 63.

Two years later, the Illinois Appellate Court while citing to *D.C. Consulting Engineers, Inc.* reaffirmed the proposition that "a municipal corporation cannot be obligated upon an alleged contract which is *ultra vires, contrary to statute or charter provisions*, or contrary to public policy." *South Suburban Safeway Lines, Inc. v. Regional Transportation Authority,* 166 Ill.App.3d 361, 366 (1st Dist. 1988) quoting 10 E. McQuillin, The Law of Municipal Corporations, § 29.111(a), at 514. (Emphasis in original.) In *South Suburban*, the issue before the court was whether the plaintiff could recover under a theory of implied contract where the municipal corporation failed to satisfy the statutory requirements necessary to bind the entity contractually. The Circuit Court in *South Suburban* found that the plaintiffs could not prevail on a breach of contract theory due to the failure to conform to the legal requirements necessary to approve a financial obligation, but that they could recover under a theory of implied contract or estoppel. *South Suburban,* 166 I11.App.3d at 363-364.

The Appellate Court reversed the Circuit Court's finding. It addressed both contracts implied in fact and implied in law against a municipal agency when the underlying promise is void. Citing to *Roemheld* and four other Illinois cases, the Appellate Court held that "no contract **or liability** may be implied against a municipal corporation where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation by contract." *Id.* at 366 (emphasis added).

It further held, citing McQuillin on The Law of Municipal Corporations as follows:

> "If a statute or charter requires certain express contracts of a municipality to be preceded by certain steps or to be made in a certain way, and expressly or impliedly forbids the execution of such contract in any other way, then no implied contract can arise when the express contract is invalid for failure to comply with such statutory or charter provisions, no, where in the absence of an express contract, the implied contract would have come within such statute if it had been express. The fiction of an implied promise or agreement, ***or the theory of liability based on quantum meruit***, cannot be substituted for an express contract which is void for noncompliance with the mandatory terms of the statute or charter." *Id.* at 366 citing 10 E. McQuillin, The Law of Municipal Corporations, § 29.112, at 518 (3d ed. rev. 1981), citing, *inter alia*, *Gregg v. Town of Bourbonnais*, 327 Ill.App. 253 (2d Dist. 1945). (Emphasis added).

Despite the citation to McQuillin, which includes express reference to "liability based on *quantum meruit*," the Appellate Court in this case concluded that *South Suburban* was a case only about contracts implied in fact because "the court did not once mention a contract implied in law or quasi-contract" and "when referencing the trial court proceedings, the appellate court stated, '[t]he court [below] examined the rules pertaining to contracts implied in fact and to contracts entered into by municipal corporations.' " *Restore Construction Company, Inc.*, 2019 Il App (1st) 181580 at ¶ 32 quoting *South Suburban*, 166 I11.App.3d at 363.

The Board of Education disagrees with the Appellate Court's conclusion and rationale distinguishing this case. The Court in *South Suburban* did not discuss *quantum meruit* because the plaintiffs did not specifically sue under

that theory and further because the plaintiff in the case was seeking remuneration for stopping its operations in running its bus services in Chicago as opposed to performing any service on behalf of the defendant. As such, a discussion of *quantum meruit* or a contract implied in law was not relevant to the Court's disposition. However, it is clear that the Court in *South Suburban did* review cases regarding contracts implied in law. It acknowledged that its conclusion was "not without some contradiction," but, citing to *D.C. Consulting Engineers, Inc.*, 143 Ill.App.3d 60 (2nd Dist. 1986), which just two years earlier specifically rejected a *quantum meruit* claim, it concluded that its holding "reflects the current Illinois authority on the subject of a municipal corporation's liability for implied contracts." *Id.* at 366-367.

Five years later in *Lindahl v. City of Des Plaines,* 210 Ill.App.3d 281 (1st Dist. 1991) the Appellate Court again reaffirmed this principle. In that case, the Appellate Court affirmed the Circuit Court's dismissal of an employee's claim for *quantum meruit*, amongst other claims, wherein the employee sought overtime pay that was not authorized by the corporate authorities of the city but authorized by his supervisor. *See id.* at 283-284. In affirming the dismissal of the plaintiff's *quantum meruit* claim, the Appellate Court held that "[n]o liability may be imposed upon defendant because defendant cannot be held liable for an implied contract which is contrary to statutory provisions." *See id.* at 294. The Court, citing to *May*, South *Suburban* and other authorities, held that Section 3-11-17 of the Municipal Code, which required the passage of

any ordinance which created a liability against a municipality be approved by a concurrence of a majority of the corporate authorities, barred plaintiff's claims for relief. *See id. at* 294. This Court in *Matthews v. Chicago Transit Authority,* 2016 IL 117638 ¶98 affirms the holding of *Lindahl* and makes clear that the failure to have the governmental agency vote to approve an expenditure when the same is required by law renders the contract void *ab initio* and denies an ability to obtain relief.

It is clear that the opinion of the Illinois Appellate Court in this matter conflicts with the precedential and binding opinions of this Court and numerous other decisions of the Illinois Appellate Court. In addition these deficiencies, the Appellate Court's decision also creates a rule that is inimical to good government and should be reversed.

II. The Appellate Court's decision permitting claims to proceed in *quantum meruit* based upon contracts which are void *ab initio* was without precedent and rewards those who fail to conform to law.

As stated above, the Appellate Court determined that claims seeking a contract implied in law are enforceable against public entities involving contracts deemed void *ab initio*, but contracts implied in fact are not. It used a recent holding of this Court case to justify its decision. Proviso respectfully submits that the Appellate Court misstated the holding of this Court.

In *Matthews v. Chicago Transit Authority*, 2016 IL 117638, this Court was reviewing claims brought by five current and retired employees of the Chicago Transit Authority regarding their right to certain health care benefits.

See *id.* at ¶1-7. In addressing the claims of a group of retired workers, the Court reviewed a claim that the health insurance benefits desired by the employees should be reinstated based upon a claim of promissory estoppel. *See id.* at ¶91-102. In addressing this claim, this Court denied the ability of the retirees to proceed under a claim of promissory estoppel in part because there was no ordinance or approval of the Chicago Transit Board to approve the benefits and the financial expenditure for the same desired by the retirees. *See id.* at ¶98-99. It held that "[a] municipal corporation cannot be held liable under a contract implied in fact where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation or contract." The Court did not discuss *quantum meruit* claims in its decision since that claim was not specifically raised by the retirees and, furthermore, there was an express collective bargaining agreement in place at the time that the employees were performing services for the CTA which set forth their pay and benefits. There was simply no work being performed by the employees post-retirement on behalf of the CTA which could have served as the basis for a *quantum meruit* claim.

The Appellate Court found it significant that this Court explicitly included the words "implied in fact" in its order in *Matthews. See Restore Construction Company, Inc.* 2019 IL App (1st) 181580 at ¶ 33. The Appellate Court thus chose to distinguish between contracts implied in fact which are concededly not permitted against a public entity for void *ab initio* contracts and

contracts implied in law. It concluded that *Matthews* "makes clear" that only contracts implied in fact are barred when they are void *ab initio* while contracts implied in law are not. *See id.* This Court did hold as such in *Matthews* and it would be unusual for this Court to overrule hundreds of years of its own precedents without even discussing or referencing them at all.

The Appellate Court's conclusion in this regard cannot be reconciled with the fact that *Matthews* cited *Roemheld*, *South Suburban*, *Lindahl*, *Schiaverelli v. Chicago Transit Authority*, 355 Ill.App.3d 93 (1st Dist. 2005) and *Chicago Patrolmen's Ass'n v. City of Chicago,* 56 Ill.2d 503, 507 (1974) as authority when all of these cases which expressly disavow *any* implied liability for a void *ab initio* contract even when the governmental entity benefits from the services provided therein. In fact, *May,* which plainly addressed a *quantum meruit* claim, was cited as authority in *Schivaerlli, Lindahl* and *Chicago Patrolmen's Ass'n*. Simply put, the cases relied upon by this Court in *Matthews* would all have to be overruled in order to support the Appellate Court's reading of it in this case.

The two cases primarily relied upon by the Illinois Appellate Court – *Woodfield Lanes, Inc. v. Village of Schaumburg*, 168 Ill.App.3d 763 (1st Dist. 1988) and *Karen Stavins Enterprises, Inc. v. Community College Dist. No. 508*, 2015 IL App (1st) 150356 are also inapposite.

In *Woodfield Lanes,* a landowner built a bowling alley on its property abutting a particular roadway and constructed a sewer and water main in the

adjoining roadway which connected its property to the Village's sewer and water lines in 1979. *See id. at* 765. This construction project permitted four other parcels of property which abutted the same roadway to also readily connect into the Village's water main and sewers. *See id.* Two years later in 1981, the Village through its corporate authorities approved a recapture ordinance which accepted the sewer and water line created by plaintiff and which further required future owners of defined parcels to be required to connect to the sewer and water line created by plaintiff and to pay the Village a fee which would be paid to the plaintiff for the proportionate cost of the improvements as a condition of a permit. *See id.* at 765-766. at 766. A fourth landowner did not want to connect to the water and sewer line created by plaintiff and the Village permitted this landowner, in violation of its ordinance, to connect at an alternate location without paying the fee due to the plaintiff. *See id.* The Court imposed a liability on the Village for its voluntary acceptance of plaintiffs' services coupled with its failure "to enforce its ordinance" which required compensation to be paid to the plaintiff. *See id.* at 767-768. The Court further held that "the Village had a duty to enforce its ordinance, and its voluntary acceptance of the benefit from plaintiff together with its failure to meet its duty constitutes unjust enrichment, even in the absence of a prior request for plaintiff's work." *See id.*

There are a few major distinctions between *Woodfield Lanes* and the case at bar. First, the corporate authorities of the municipality in *Woodfield*

Lanes unquestionably passed a lawful ordinance directing that payment be made to the plaintiff from the defined property owners as a condition of obtaining a building permit. Under the Illinois Municipal Code:

> "whenever a municipal ordinance…requires the installation of water mains, sanitary sewers, drains, or other facilities for sewers and drains….as a condition of either the acceptance of a preliminary or final subdivision or plat…or the issuance of a building permit and where, in the opinion of the corporate authorities, the facilities, roadways, or improvements may be used for the benefit of property…outside the property for which a building permit has been issued, and the water mains, sanitary sewers, drains…or improvements are to be dedicated to the public, the corporate authorities may by contract with the subdivider or permittee agree to reimburse and may reimburse the subdivider or permittee for a portion of the cost of the facilities, roadways and improvements from fees charged to owners of property….for which a building permit has been issued when and as collected by owners." 65 ILCS 5/9-5.1.

Once the Village determined that sewer and water lines were going to be accepted and dedicated to the public, it had the ability to require other benefitted property owners to reimburse the property owner who created the public improvement which it did through its ordinance. It is axiomatic that a municipality must follow its own ordinances. *Beneficial Development Corp. v. City of Highland Park,* 161 Ill.2d 321, 329 (1994). In essence, the proper claim which should have been at issue in *Woodfield Lanes* was one for mandamus since the Village refused to follow its lawfully adopted ordinance. *See generally, People ex rel. Shell Oil Co. v. City of Chicago,* 9 Ill.App.3d 242, 245 (1st Dist. 1972)(Mandamus is proper remedy to compel municipality to follow its ordinances.")

Secondly, there was no issue regarding the payment of public funds directly to the plaintiffs in *Woodfield Lanes* based upon the ordinance at issue. Instead, the funds which were due to be paid to the plaintiff were to be collected from private landowners. The Village's involvement was nothing more than serving as a conduit to pass through private funds from private party to another. When a particular party applied for a permit, the Village would require it to pay a sum of money to compensate the plaintiffs and require it to connect to the sewer and water main previously constructed by the plaintiffs as a condition of the permit. The issue in this case is markedly different, however, because it dealt with the ability of Proviso to directly expend public funds without approval from its Board of Education.

The only other case relied upon by the Appellate Court specifically to support its holding was *Karen Stavins Enterprises, Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356 ("*Stavins*"). This holding is also inapposite. In *Stavins,* the plaintiff alleged that the defendant City Colleges "personally selected and hired" actors "through [the] plaintiff in [the] plaintiff's capacity as the talent agent for each of the actors" for the value of $13,909.37, but that the City Colleges refused to pay the plaintiff. *See id.* at ¶2;6. It sought relief pursuant to a claim for a contract implied in law since there was no actual contractual agreement between the parties. *See id.* City Colleges filed a motion to dismiss pursuant to Section 2-615 arguing that the underlying approval of the expenditure did not comport with its policies and procedures

and it supported this defense with affidavits and other materials outside of the pleadings. *Id.* at ¶5. Focusing solely on the allegations within the four corners of the complaint, the Appellate Court found that there were sufficient factual allegations to state a cause of action predicated upon a contract implied in law for the services rendered. *Id.* at ¶ 10. The Appellate Court expressed no opinion on whether there were "matters outside of the allegations in the complaint which may defeat the plaintiff's right to recover against City Colleges for its services in booking the actors". *Id.* Given that there were no facts to demonstrate an unlawful expenditure in the Court's review pursuant to Section 2-615, the discussion regarding a contract implied at law is simply dicta since, as pled, the complaint alleged a direct hire by the City which was not unlawful.

In this case, however, the Circuit Court was reviewing a section 2-619 motion which was properly supported by material outside of the complaint which plainly showed the unlawfulness of the approval of the underlying contracts. The facts presented through the affidavit demonstrate the now conceded issue that the agreement was void *ab initio* since it was never voted upon by the Board of Education. This makes the cases distinguishable as the affirmative matter of lack of compliance was clearly established.

III. The Illinois Appellate Court's Decision exposes taxpayers to the errors, frauds, and thefts of its elected officials and vendors.

This Court has established and consistently followed a well-reasoned line of judicial authority which denies a vendor the ability to create a liability

against a public entity where the underlying contracts for work are void *ab initio*. As set forth above, these holdings protect the interests of the taxpayers of these entities by not exposing them "to all the evils which statutes or ordinances passed for [their] protection were designed to prevent." *Hope v. City of Alton*, 214 Ill. 102, 106 (1905). The Appellate Court's decision in this case, however, establishes a holding by which private contractors and governmental officials can simply flaunt statutory contracting limitations designed to protect public funds without consequence.

It is well-established under Illinois law that anyone dealing with a governmental entity takes the risk of having accurately ascertained that he who purports to act for the public entity stays within the bounds of his authority and this is so even though the agent himself may have been unaware of the limitations on his authority. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶36 (2012). If the unauthorized acts of a governmental employee were allowed to bind a municipal corporation to pay for these unauthorized expenditures, the public agency would be helpless to correct errors or, worse, to escape the financial effects of frauds and thefts by unscrupulous public servants. *Id.*

As noted by the Illinois Appellate Court in *D.S.A. Finance Corp. v. County of Cook,* 345 Ill.App.3d 554, 563 (1st Dist. 2003), the "risk of a raid on the public treasury" is important to the Court's analysis in this regard. If the Court permitted private companies to recover public monies pursuant to

contracts exercised without the proper authorization of the required public entities required by law, it "would make large public agencies vulnerable to frauds and thefts beyond the agency's control." *See id.* This is why "someone who plans to seek payment of a substantial amount of public funds should first determine that the obligation exists." *See id.*

Prior to the Illinois Appellate Court's opinion in this case, no Illinois court has found that the policy against unjust enrichment must bow to the policy that no contracts or liabilities may be imposed on a contractual agreement that is void *ab initio*. Indeed, by applying the doctrine of *quantum meruit* to these types of claims, it permits the raid of public funds specifically cautioned against by the Appellate Court in *D.S.A. Finance Corp.* and it would further expose taxpayers' funds to various frauds, thefts or other schemes of unscrupulous vendors or public officials. In removing the bar to recovery in those circumstances where liabilities were attempted to be created against public agencies through individuals without lawful authority, the Appellate Court's decision discourages steadfast compliance with governmental purchasing laws and opens local taxpayers to numerous forms of misconduct. In essence, it allows the contractors to do indirectly that which it is conceded that they could not do directly and permits the contractors to be financially rewarded for engaging in conduct that they were bound under Illinois law to know was impermissible.

This Court has previously determined that a plaintiff is precluded from recovering in a suit involving an illegal contract because the plaintiff is the wrongdoer. *Kedzie and 103rd Currency Exchange, Inc. v. Hodge,* 156 Ill.2d 112, 121-122 (1993). Enforcement of the illegal contract makes the court an indirect participant in the wrongful conduct. *See id.* In addition, this Court has also held that when work is performed pursuant to an invalid contract, it is barred from proceeding under a *quantum meruit* theory. *First Nat. Bank of Springfield v. Malpractice Research, Inc.,* 179 Ill.2d 353, 366 (1997). This is because it has been held that "where enforcement of an illegal contract is sought, the courts will aid neither party but will leave them where they have placed themselves". *Leoris v. Dicks,* 150 Ill.App.3d 350, 354 (1st Dist. 1986). To permit recovery in this case would render those provisions of the School Code which require a vote of a board of education in order to create a financial obligation such as the one in this case nugatory. It would also permit Restore to benefit from its knowingly unlawful conduct. Neither of these scenarios is in the best interest of Illinois public school districts.

Under the facts of this case, it is equally clear that by imposing a contract implied in law, Restore would be obtaining the same benefits as if the Court would have imposed a contract implied in fact which everyone concedes could not have occurred. Specifically, neither Contract One nor Contract Two sets forth a price to be paid for the work to be performed by Restore much less a scope of work. (C2124-2126; C380-382). Both contracts merely state that

Proviso will be liable for either the amounts not reimbursed by the insurance carrier or that Restore will be paid for the "reasonable value" of the work. (C2124; C2126; C382). In other words, permitting recovery in *quantum meruit* would not only allow the Restore to recover without legal authority, it would allow the Restore to recover the exact same amount as if its underlying contracts were valid for all of the work performed. The "reasonable value" which was undefined in the contracts at issue, would ultimately need to be determined by a Court after protracted litigation. The bottom line, however, is that if the Appellate Court's analysis is correct, Restore would be placed in exactly the same position it would have been in had Proviso actually approved the contracts at issue. Its knowing failure to comply with the School Code would be rewarded in contravention of the long-standing holdings of this Court.

For these reasons, the decision of the Illinois Appellate Court was erroneously entered and should be reversed by this Court.

CONCLUSION

In this case, the liability of Proviso is based upon a contractual arrangement that Restore concedes was void *ab initio* as it was not approved by Proviso's Board of Education as required by law. Restore was charged under Illinois law with an understanding that the individuals who authorized Contracts One and Two did not have the lawful authority to bind Proviso to make payments. This Court should not permit Restore to benefit from its knowingly unlawful conduct. Instead, it should continue to follow its long-

standing precedents which prohibit an implied contract or an implied liability from being assessed against a public body when the underlying arrangement is void *ab initio.*

WHEREFORE, Defendant-Appellant, BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209 prays that this Honorable Court:

1. Reverse the order and decision of the Illinois Appellate Court;
2. Affirm the Order of the Circuit Court of Cook County dismissing Restore's claims against Proviso;
3. Grant it any further relief that this Court deems just and equitable.

Respectfully submitted,

BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209

By: /s/ William F. Gleason
One of Its Attorneys

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CERTIFICATE OF COMPLIANCE

I, William F. Gleason, attorney for Defendant-Appellant Board of Education of Proviso Township High Schools District 209, do hereby certify that this memorandum conforms to the requirements of Rules 341(a) and (b). The length of this memorandum, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance and those matters set forth within the Appendix, the certificate of service, is 35 pages.

/s/ *William F. Gleason*

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APPENDIX

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2019 IL App (1st) 181580

SIXTH DIVISION
June 28, 2019

No. 1-18-1580

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RESTORE CONSTRUCTION COMPANY, INC., and RESTORE RESTORATION, INC., Plaintiffs-Appellants, v. THE BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSET SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC. and COLLECTIVE LIABILITY INSURANCE COOPERATIVE, Defendants (The Board of Education of Proviso Township High Schools District 209, Defendant-Appellee).	Appeal from the Circuit Court of Cook County. 15 L 010904 Honorable Bridgid Mary McGrath, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court, with opinion.
Presiding Justice Delort and Justice Cunningham concurred in the judgment and opinion.

OPINION

¶ 1 The dispute at issue here arose between plaintiffs, Restore Construction Company, Inc. (Restore Construction), and Restore Restoration, Inc. (Restore Restoration),[1] and defendant, the

[1]Plaintiffs are affiliate corporations of one another and share common ownership and management. Restore Construction is engaged in the business of repairing fire damaged structures and providing related construction services. Restore Restoration is engaged in the business of providing

Board of Education of Proviso Township High Schools District 209 (the Proviso Board)[2], after the Proviso Board refused to pay for construction and restoration services rendered by plaintiffs after one of the high schools in the Proviso Township High Schools District 209 (District) was damaged by fire. Although plaintiffs were paid for a portion of their work, the Proviso Board refused to tender payment for the remainder after becoming aware that the contracts for restoration services were entered into without proper approval. The Proviso Board moved to dismiss plaintiffs' *quantum meruit* counts, arguing that a school district cannot be held liable under a theory of *quantum meruit* when the contracts purporting to bind the District were never properly approved and were void *ab initio*. The circuit court agreed with the Proviso Board and dismissed plaintiffs' complaint. Plaintiffs appeal, arguing that the court below improperly dismissed the complaint because a finding that the contract was void *ab initio* did not prevent a claim based on a contract implied in law for the value of the work performed in reliance on the presumed contract. For the following reasons, we reverse the circuit court's decision.

¶ 2 BACKGROUND

¶ 3 Facts Taken From Plaintiffs' Third Amended Complaint

¶ 4 Proviso East High School (Proviso East) is a public high school located within the boundaries of the District at 807 South First Avenue in Maywood. The District is an Illinois body politic and is governed by the Proviso Board, which is comprised of seven members and is subject to the authority of a financial oversight panel (FOP) appointed by the State of Illinois. During the time period relevant to this case, Todd Drafall was the FOP's chief financial officer.

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disaster mitigation and related restoration services. We refer to them collectively as plaintiffs but refer to them by their individual names, *i.e.*, Restore Construction and Restore Restoration, when necessary.

[2] The Proviso Board was incorrectly sued as "The School Directors of Proviso Township High School District 209." The Proviso Board pointed out this misnomer in its motion to dismiss plaintiffs' third amended complaint, stating that "[a]s this was a mere misnomer, the [Proviso Board] will respond as though properly named."

Defendant Nettie Collins-Hart was the superintendent of the District from approximately July 1, 2008, to June 30, 2016. She was also the District's chief executive officer responsible for the administration and management of the District's schools in accordance with its policies and state and federal law. Defendant Daniel J. Adams was a member of the Proviso Board until April 11, 2017. [3] Adams was the Proviso Board president from approximately January 15, 2013, to April 30, 2015, and his duties included presiding over the business of the Proviso Board at official meetings and signing official District documents.

¶ 5 The District, at all times relevant, was a member of the Collective Liability Insurance Cooperative, which was insured by Travelers Indemnity Company (Travelers). The excess property policy issued by Travelers to the District stated, "in return for the payment of the premium, [Travelers] agrees with [the District] to provide the insurance afforded by this policy." After the loss payment of $1 million by the underlying lead insurer, Travelers was responsible for the 100% share of the next $1 billion of the loss.

¶ 6 On May 10, 2014, a fire broke out at Proviso East, causing significant property damage and dangerous conditions within the school. The upcoming school year was to begin on August 13, 2014, and the District was in need of prompt remediation and repairs. The District had previously contracted with plaintiffs for flood damage in April 2013. At that time, the District and plaintiffs entered into a contract for plaintiffs' restoration services "without concern, repudiation, dispute or a recorded Board vote, as was [the District's] customary practice for the repair and payment of losses covered by its property loss insurance." Promptly after the fire, the District's representatives contacted Restore Restoration and asked it to provide emergency mitigation services to the District. Plaintiffs were advised that the District would approve a

[3]To be clear, defendants Collins-Hart and Adams are not parties to this appeal. The Proviso Board is the only defendant named in plaintiffs' third amended complaint that is participating in this appeal.

contract with Restore Restoration to mitigate and remediate damage from the fire and with Restore Construction to repair the property loss damage to Proviso East. Immediately thereafter, Restore Restoration provided emergency mitigation services. The District hired Legat Architects, Inc. (Legat), to prepare plans and work specifications for the fire damage and to act as contract administrator for the District on the renovation project.

¶ 7 On May 22, 2014, Collins-Hart signed two contracts on behalf of the District—one with Restore Restoration to mitigate and remediate fire damage and the other with Restore Construction to repair the fire-damaged school. This agreement did not go through the typical competitive bidding process. Further, the Proviso Board was never presented with a copy of the agreement for approval and never conducted a vote to approve it. The value of plaintiffs' work stemming from the initial agreement was $331,109.83.

¶ 8 On June 24, 2014, Legat published the District's project manual, identified as project No. IN14-0001 and titled "Fire Damage Renovations at Proviso East High School for the Board of Education Proviso Township High School District 209" (Specifications Manual). The Specifications Manual set forth the responsibilities of the District, Legat, plaintiffs, and Travelers. On July 9, 2014, Collins-Hart affirmed the hiring of Legat by the District and the adoption of the Specifications Manual.

¶ 9 Thereafter, Drafall attended fire loss project construction meetings regarding the remediation, restoration, and repair of the school in accordance with the Specifications Manual. In addition to Drafall, the following attended these meetings: plaintiffs' personnel; the District's project manager, Ron Anderson; the District's buildings and grounds manager, L.T. Taylor; representatives from Legat, Gallagher Bassett Services, Inc., Madsen Knepper and Associates, Inc., Travelers; and various subcontractors.

¶ 10 On August 12, 2014, Adams, who was then the president of the Proviso Board, signed an amended agreement with Restore Construction to repair the school on behalf of the District. The amended agreement signed by Adams was represented by him to be on behalf of the District. Like the initial agreement, the amended agreement was never presented to the Proviso Board for approval and a vote. Pursuant to the amended agreement, plaintiffs performed emergency mitigation and repair work valued at $6,939,890.17.

¶ 11 Between the two agreements, the total value of plaintiffs' work was $7,271,000. Plaintiffs expected to be paid in full for their work through the Travelers policy. Gallagher Bassett Services, Inc., acted as a claims administrator on behalf of Travelers by issuing payments to the District and plaintiffs using funds supplied by Travelers.

¶ 12 On February 20, 2015, Legat issued its cumulative certificate for payment, which certified that Restore Construction[4] had, to date, completed $5,816,223.08 of work. The total value of the mitigation, remediation, and repairs performed by plaintiffs was $7,271,000. In total, plaintiffs were paid $5,816,223.08 by Travelers. The outstanding balance owed plaintiffs was $1,428,553.90 when the District ceased payment.

¶ 13 Procedural History

¶ 14 On October 28, 2015, plaintiffs filed their initial complaint, which contained a single count for breach of contract. Subsequently, on April 11, 2016, plaintiffs amended their complaint to include equitable claims against the Proviso Board for equitable estoppel, unjust enrichment, and *quantum meruit*. Plaintiffs filed a second amended complaint, but that pleading is not

[4]In their complaint, plaintiffs allege that Restore Construction was improperly credited for receiving the payment made to Restore Restoration in the amount of $331,109.83. Thus, Restore Construction actually only received $5,512,135.95 of the $5,816,223.08 that was certified completed by Legat, which leaves a payment shortage to Restore Construction in the amount of $304,087.13.

contained in the record.[5] On November 4, 2016, the Proviso Board filed a motion to dismiss plaintiffs' second amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The Proviso Board's motion asserted that plaintiff's unjust enrichment and *quantum meruit* counts should be dismissed for failure to set forth sufficient well-pled facts.

¶ 15 On June 7, 2017, the court granted the Proviso Board's motion with prejudice as to all counts of plaintiffs' second amended complaint, except plaintiffs' counts for unjust enrichment, which the court granted without prejudice. The court stated that it was dismissing plaintiffs' breach of contract counts because "the contracts with [the District] are void *ab initio* because a board vote was required to be taken before any sort of expenditure, even in an emergency. But no board vote was taken." The court explained its decision to dismiss plaintiffs' counts for unjust enrichment and *quantum meruit* as follows:

> "First, the *quantum meruit* counts are duplicative of the unjust enrichment claims. Under Illinois law, *quantum meruit* is used as an equitable remedy to provide restitution for unjust enrichment.
>
> That's [*Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 522 (2009)].
>
> Second, the counts incorporate allegations regarding the contracts at issue, which isn't allowed under Illinois law.
>
> Third, they don't allow elements or the facts necessary to state causes of action for quantum meruit. And the 'wherefore' clauses appear to request damages that go beyond the damages available for recovery under *quantum meruit*.

[5]Plaintiffs' brief contains a footnote acknowledging that the second amended complaint was not in the record and stating that it would be supplied in a supplemental record. However, plaintiffs never filed a motion to supplement the record.

So the court is dismissing these counts, the *quantum meruit* counts, without prejudice, with leave to replead, and the unjust enrichment counts with prejudice."

¶ 16 Plaintiffs filed a motion to reconsider, which was denied as to all counts except those for *quantum meruit* because those counts were previously dismissed without prejudice and still pending. At the hearing on the motion to reconsider, the court explained its decision to deny the motion as follows:

"You know, under the plain language and the applicable statutes, the proper steps weren't taken in the formation of this contract. And I have no doubt that all of the parties believe that there was an enforceable contract between the plaintiff, and [the District] during the time periods in question, but that doesn't affect it.

***

As I said, I have no doubt probably every party in this room was working under the illusion that this—there was an enforceable contract between plaintiff and [the District]."

¶ 17 On February 20, 2018, plaintiffs filed their third amended complaint containing amended *quantum meruit* counts and all the counts of plaintiffs' second amended complaint that were dismissed with prejudice for purposes of preserving plaintiffs' rights on appeal.

¶ 18 On April 10, 2018, the Proviso Board filed a motion to dismiss the remaining *quantum meruit* counts pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)). The Proviso Board's motion argued that the *quantum meruit* counts should be dismissed because a school district cannot be liable under *quantum meruit* where the agreements purporting to bind the Proviso Board were never properly approved and void *ab initio*, as the court had already determined.

¶ 19 On June 26, 2018, the court entered an order granting the Proviso Board's section 2-619 motion to dismiss and dismissing all counts of the third amended complaint with prejudice.

¶ 20 Plaintiffs filed their timely notice of appeal on July 24, 2018.

¶ 21 ANALYSIS

¶ 22 On appeal, plaintiffs contend that the circuit court erred in granting the Proviso Board's section 2-619 motion to dismiss because where a school district accepts the benefits of work for which it contracted, but the contract is void for procedural reasons, the Proviso Board is subject to a *quantum meruit* claim for the value of the work performed. Plaintiffs assert that the circuit court's finding that the agreements were void *ab initio* did not preempt a claim based on a contract implied in law for the value of the work performed in reliance on the presumed agreements. We agree and reverse the decision of the court below.

¶ 23 "A motion brought pursuant to section 2-619 admits the sufficiency of the complaint, but asserts an affirmative defense or other matter that avoids or defeats that claim." *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29. When ruling on such a motion, the court must accept as true all well-pleaded facts, as well as any reasonable inferences that may arise therefrom, but a court cannot accept as true mere conclusions that are not supported by facts. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Our review of a dismissal pursuant to section 2-619 is *de novo*. *Id.*

¶ 24 Plaintiffs argue that in scenarios like the one at bar, *i.e.*, where an actual contract does not exist because the agreements were void *ab initio*, a contract implied in law may be enforceable against a municipality. Plaintiffs specifically contend that it is important to recognize the distinction between contracts implied in law and contracts implied in fact and that the circuit court likely conflated the two concepts, which resulted in its erroneous ruling. The record on

appeal does not contain an explanation as to why the circuit court dismissed plaintiffs' *quantum meruit* claims. Rather, the court's June 26, 2018, order merely stated that the Proviso Board's motion was granted, and thus, we do not know the circuit court's reasoning. However, "[i]t is a fundamental principle of appellate law that when an appeal is taken from a judgment of a lower court, [t]he question before [the] reviewing court is the correctness of the result reached by the lower court and not the correctness of the reasoning upon [which it relied]." (Internal quotation marks omitted.) *Slovinski v. Elliot*, 237 Ill. 2d 51, 61 (2010). Therefore, although we find that the circuit court improperly granted dismissal, we make no determinations regarding its reasoning.

¶ 25 Initially, we clarify that although the parties agree that, at some point, they may have believed otherwise, no express contract ever existed in this case. According to the Illinois School Code, "[o]n all questions involving the expenditure of money, the yeas and nays shall be taken and entered on the records of the proceedings of the board." 105 ILCS 5/10-7 (West 2016). Further, when a vote is taken upon any measure before the board when a quorum, *i.e.*, a majority of the full membership of the board, is present, the outcome shall be determined by a majority of the votes of the members voting. 105 ILCS 5/10-12 (West 2016). Each board member takes an oath of office that requires him to recognize that "a board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public board meeting." 105 ILCS 5/10-16.5 (West 2016). For all contracts involving the purchase of supplies or services over $25,000, the board is required to award the contract "to the lowest responsible bidder, considering conformity with specifications, terms of delivery, quality and serviceability, after due advertisement." 105 ILCS 5/10-20.21 (West 2016). Our supreme court recently reiterated that "[w]here a party lacks the legal authority to form a contract, the resulting contract is void *ab initio*," and specifically, "where a municipality exceeds its statutory authority in entering into

a contract, the municipality's act is *ultra vires*, and the resulting contract is void *ab initio*." *1550 MP Road LLC v. Teamsters Local Union No. 700*, 2019 IL 123046, ¶ 28.

¶ 26 The two intended contracts at issue here were the agreement signed by superintendent Collins-Hart on May 22, 2014, and the amended agreement signed by Proviso Board president Adams on August 12, 2014. Both of these intended contracts were void *ab initio* because the Proviso Board never took a vote on either intended contract, and neither of the intended contracts were ever subject to the bidding process.

¶ 27 The Proviso Board argues that because purchases by an Illinois school district must be approved by its board of education, it cannot incur contractual liability or debt where the underlying approval was not in conformity with the purchasing process required by law. Conversely, plaintiffs argue that even though the agreements at issue here were void *ab initio*, they may still recover from the Proviso Board in equity, specifically, under the theory of *quantum meruit* based on a contract implied in law. The Proviso Board asserts that in addition to not being liable in contract, it also cannot be liable in equity. We disagree with the Proviso Board and find that despite not being able to bring a contract-based claim against the Proviso Board, plaintiffs' *quantum meruit* claims were improperly dismissed.

¶ 28 Although the terms "contract implied in law" and "contract implied in fact" both contain the word "contract," only a contract implied in fact actually involves a claim based on an implied contract. "A contract implied in law, or a quasi contract, is not a contract at all. Rather, it is grounded in an implied promise by the recipient of services or goods to pay for something of value which it has received." *Karen Stavins Enterprises, Inc. v. Community College District No. 508*, 2015 IL App (1st) 150356, ¶ 7. "A quasi-contract, or contract implied in law, is one in which no actual agreement between the parties occurred, but a duty is imposed to prevent

injustice." (Internal quotation marks omitted.) *Archon Construction Co. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 30. "The term *quantum meruit* means literally as much as he deserves and is an expression that describes the extent of liability on a contract implied in law (also called a quasi-contract); it is predicated on the reasonable value of the services performed." (Internal quotation marks omitted.) *Id.*

¶ 29 The Proviso Board contends that it is longstanding jurisprudence in Illinois that a public entity shall not be liable, even in equity, to pay for debts allegedly incurred in violation of law. In support, the Proviso Board cites two supreme court cases from the early 1900s that do not apply here. In *Hope v. City of Alton*, our supreme court held that "[a] municipal corporation is not estopped from denying the validity of a contract when there was no authority for making it." 214 Ill. 102, 106 (1905). Such a holding has no impact here, where a valid contract did not exist and plaintiffs are not seeking recovery based on any such contract. The Proviso Board similarly relies on *Roemheld v. City of Chicago*, wherein our supreme court held "[w]here there is a statute or ordinance prescribing the method by which an officer or agent of a municipal corporation may bind the municipality by contract, that method must be followed, and there can be no implied contract or implied liability of such municipality." 231 Ill. 467, 470-71 (1907). This case differs from *Roemheld* because, here, plaintiffs' claims are brought pursuant to a contract implied in law, and in *Roemheld*, the claims stemmed from work performed in excess of the terms of an express contract, and thus were premised on a contract implied in fact. *Id.* at 470. Thus, the claims at issue were all based in contract, not equity, as they are here.

¶ 30 The Proviso Board also cites *Gregg v. Town of Bourbonnais*, 327 Ill. App. 253 (1945), as support for its contention that *Hope* and *Roemheld* also apply in the *quantum meruit* context. In *Gregg*, the Second District held that the town supervisor did not have the corporate authority to

authorize expenditure of town funds for an engineering contract without prior approval of the town electors at a town meeting. *Id.* at 265. We do not find *Gregg* controlling because the holding in *Gregg* was superseded by statute. See *Evers v. Collinsville Township*, 269 Ill. App. 3d 1069, 1073 (1995) (recognizing that in 1973 the legislature effectively overruled *Gregg* by giving a township board of trustees exclusive power over the expenditure of township funds); see also 60 ILCS 5/13-20 (West 1992). Further, even if *Gregg* is still good law, it does not apply here because its holding was limited to situations where a plaintiff was attempting to hold a municipality liable for *quantum meruit* "for services furnished *** on the theory that the services were of some benefit to the needy inhabitants." *Gregg*, 327 Ill. App. at 267. Such is not the case here, and thus, *Gregg* does not apply.

¶ 31 The Proviso Board most heavily relies on *South Suburban Safeway Lines, Inc. v. Regional Transportation Authority*, 166 Ill. App. 3d 361 (1988), to assert that dismissal was proper. Specifically, the Proviso Board cites *South Suburban*'s holding that "no contract or liability may be implied against a municipal corporation where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation by contract." *Id.* at 366. On first look, this holding appears to prohibit *any* type of implied contract, *i.e.*, implied in law and implied in fact, because the court stated generally that "no contract or liability may be implied" and did not expressly limit its holding to contracts implied in fact. However, a closer review of the analysis in *South Suburban* makes clear that the court's holding only applied to contracts implied in fact, and thus does not apply here.

¶ 32 In *South Suburban*, the trial court entered judgment for the plaintiff and against the defendant transportation authority despite its finding that the agreement sued upon did not provide for the payment of monies to the plaintiffs, and that any recovery " 'must be predicated

on a theory of implied contract or estoppel.' " *Id.* at 363. However, on appeal, the court reversed the trial court's decision and entered judgment for the defendant. *Id.* at 368. The appellate court's decision was based on its determination that "a municipal corporation cannot be obligated upon an alleged implied contract which is *ultra vires*, *contrary to statutes or charter provisions*, or contrary to public policy." (Emphasis in original and internal quotation marks omitted.) *Id.* at 366. Although the appellate court used broad language in its holding, when referencing the trial court proceedings, the appellate court stated, "[t]he court [below] examined the rules pertaining to contracts implied in fact and to contracts entered into by municipal corporations." *Id.* at 363. Despite recognizing that the trial court's analysis was limited to contracts implied in fact, the appellate court did not expressly state that its holding was limited to contracts implied in fact—*i.e.*, the only form of liability before the court. Further, the court did not once mention a contract implied in law or quasi-contract. Thus, the holding in *South Suburban* was limited to cases involving contracts implied in fact.

¶ 33 Beyond the underlying facts and analysis in *South Suburban*, further support for our reading of that case is found in *Matthews v. Chicago Transit Authority*, 2016 IL 117638, a recent decision from our supreme court. In *Matthews*, 2016 IL 117638, ¶ 98, our supreme court cited *South Suburban* and recited its holding as follows: "A municipal corporation cannot be held liable under a contract *implied in fact* where there has been a failure to comply with a statute or ordinance prescribing the method by which an officer or agent can bind such corporation by contract." (Emphasis added.) (citing *South Suburban*, 166 Ill. App. 3d at 366).That our supreme court included the words "implied in fact" when citing the holding in *South Suburban* is significant. As previously stated, the court in *South Suburban* did not expressly limit its holding to contracts implied in fact, and instead broadly referenced implied contracts. However,

Matthews makes clear that the holding of *South Suburban* was actually limited to cases involving contracts implied in fact, not contracts implied in law.

¶ 34 In this case, plaintiffs are not trying to enforce a contract implied in fact against the Proviso Board. Plaintiffs seek to hold the Proviso Board liable in quasi-contract, or a contract implied in law, which is not a contract at all. See *Stavins*, 2015 IL App (1st) 150356, ¶ 7. The issue before us is not whether the Proviso Board can be held liable under a void contract, but whether the principles that preclude the enforcement of a void contract also preclude the application of *quantum meruit*. As such, we do not find *South Suburban* applicable to the facts of this case.

¶ 35 Instead, we find case law cited by plaintiffs guides our decision. In *Woodfield Lanes, Inc. v. Village of Schaumburg*, 168 Ill. App. 3d 763, 765 (1988), the plaintiff sued the defendant village, seeking to recover, *inter alia*, on a contract implied in law. The defendant appealed from the trial court's order granting summary judgment in the plaintiff's favor on that count. *Id.* The case arose after the plaintiff sought to build a bowling alley on its property in Schaumburg and constructed a sewer and water main under Golf Road that connected its property with the defendant's sewer and water lines in a manner that readily allowed connections for four other parcels of property with frontage on that road. *Id.* The plaintiff's claim stemmed from the defendant village's enactment of an ordinance that allowed the plaintiff to recover part of its cost for construction of the sewer and water main. *Id.* Three of the four owners of the other parcels developed their properties and paid the defendant the amounts mandated by the ordinance and the defendant, in turn, paid those amounts to the plaintiff. *Id.* at 766. The owner of the fourth parcel sought to develop his property but preferred to connect his lines to the defendant's lines under another road, not under Golf Road. *Id.* The defendant approved the plans of the owner of

the fourth parcel and did not require that owner to pay any part of the plaintiff's costs for sewer construction. *Id.*

¶ 36 On appeal, the defendant argued that the plaintiff had not established grounds for the court to imply a contract at law. *Id.* This court recognized that "[t]he essence of a cause of action for a contract implied in law, or quasi-contract, is the defendant's failure to make equitable payment for a benefit which it voluntarily accepted from the plaintiff" and that such a cause of action "is predicated on the fundamental principle that no one should unjustly enrich himself at another's expense." (Internal quotation marks omitted.) *Id.* The court found that the defendant had accepted the sewer and water main as improvements and assumed ownership of the sewer when it enacted the ordinance. *Id.* The plaintiff's improvements facilitated development of the defendant's property, which increased the defendant's tax base. *Id.* As a result, this court concluded that the defendant received a benefit when the plaintiff constructed the sewer. *Id.* at 766-67. The court rejected the defendant's contention that it could not be liable for accepting the benefit from the plaintiff's improvements pursuant to common law immunity because it did not request the benefit by recognizing that "a party may be liable in quasi-contract even if it did not request the benefit received." *Id.* at 768. The court expressly recognized that "Illinois courts have held municipalities and other governmental units liable on contracts implied in law despite the absence of proper contractual forms." *Id.* at 769.

¶ 37 In this case, the Proviso Board brought its motion to dismiss pursuant to section 2-619 of the Code, arguing that plaintiffs' *quantum meruit* claims were barred due to noncompliance with the requisite procedures necessary to create an enforceable contract. In *Woodfield Lanes*, the defendant similarly asserted it was not liable because "a municipality may not be held liable on an implied contract." *Id.* at 768. The argument from the defendant in that case and the Proviso

Board here are nearly identical. Thus, we reject the Proviso Board's argument, as the court in *Woodfield Lanes* did, based on its recognition that Illinois courts have held governmental units, like a school district, liable on contracts implied in law even where proper contractual forms were not followed. *Id.* at 769 (citing *Great Lakes Dredge & Dock Co. v. City of Chicago*, 353 Ill. 614, 627 (1933), *Town of Montebello v. Lehr*, 17 Ill. App. 3d 1017, 1021-22 (1974), and *Welsbach Traffic Signal Co. v. City of Chicago*, 328 Ill. App. 467, 480 (1946)). The court in *Woodfield Lanes* noted that the aforecited cases found actionable contracts implied in law even though claims based on express contract or contracts implied in fact were not viable. *Id.*

¶ 38 We also find convincing plaintiffs' reliance on *Stavins*, 2015 IL App (1st) 150356, a case that is substantially similar to the one at bar. *Stavins* is also the most recent decision from this court to rely upon *Woodfield Lanes*. In *Stavins*, the plaintiff, a talent agency, sought to recover the value of the services of nine actors who performed in a commercial produced for the defendant, a community college district. *Id.* ¶ 1. According to the plaintiff's complaint, the defendant hired each of the actors, the actors performed their parts, and the commercial was repeatedly broadcast on TV and the Internet. *Id.* ¶ 2. The plaintiff's complaint sought the reasonable value of the services and specifically alleged that the defendant did not have an express contract with the plaintiff but accepted the services without objection. *Id.* The defendant moved to dismiss pursuant to section 2-615 of the Code, asserting that, as a body politic, the defendant was required to comply with policies and procedures governing contracts and purchase orders and that the plaintiff had not alleged that an individual with authority to enter contracts accepted the plaintiff's services. *Id.* ¶ 3. The circuit court granted the motion to dismiss and the plaintiff appealed, arguing that it was not seeking recovery based on either an express contract or a contract implied in fact. *Id.* ¶ 6.

¶ 39 On appeal, this court set forth the law applicable to contracts implied in law as follows:

> "A contract implied in law is one in which no actual agreement exists between the parties, but a duty to pay a reasonable value is imposed upon the recipient of services or goods to prevent an unjust enrichment. [Citation.] The essence of a cause of action based upon a contract implied in law is the defendant's failure to make equitable payment for a benefit that it voluntarily accepted from the plaintiff. [Citation.] No claim of a contract implied in law can be asserted where an express contract or contract implied in fact exists between the parties and concerns the same subject matter. [Citation.] In order to state a claim based upon a contract implied in law, a plaintiff must allege specific facts in support of the conclusion that it conferred a benefit upon the defendant which the defendant has unjustly retained in violation of fundamental principles of equity and good conscience. [Citation.] Stated otherwise, to be entitled to a remedy based on a contract implied in law, a plaintiff must show that it has furnished valuable services or goods which the defendant received under circumstances that would make it unjust to retain without paying a reasonable value therefore. [Citation.]" *Id.* ¶ 7.

¶ 40 The defendant in *Stavins* argued that dismissal was proper because it could not be liable to the plaintiff absent compliance with its policies and that a contract cannot be implied if the prescribed method of executing contracts is not followed. *Id.* ¶ 8. The court rejected the defendant's argument, stating that such an argument "would have merit if the plaintiff were seeking to recover on the theory of an express contract or a contract implied in fact." *Id.* (citing *Woodfield Lanes*, 168 Ill. App. 3d at 768-69). The court further explained, "when as in this case, a plaintiff seeks recovery based upon a contract implied in law, recovery may be had from a governmental unit despite the absence of compliance with its policies and procedures for

awarding contracts." *Id.* The court concluded that the plaintiff's complaint stated a cause of action, but expressed no opinion "as to the plaintiff's standing to seek a recovery for the reasonable value of the actors' services or whether there may be factual matters outside of the allegations in the complaint which may defeat the plaintiff's right to recover." *Id.* ¶ 10.

¶ 41 In this case, the Proviso Board argues that *Stavins* is inapplicable because that case dealt with a section 2-615 motion to dismiss and this case involves a section 2-619 motion to dismiss. We reject the Proviso Board's argument. *Stavins* expressly found that the plaintiff's complaint stated a claim based on a contract implied in law against a municipal entity that failed to follow proper procedures for awarding contracts, which mirrors the instant case. Here, the Proviso Board's motion to dismiss was brought pursuant to section 2-619 and made reference to subsection (a)(9) (735 ILCS 5/2-619 (a)(9) (West 2016)), which allows dismissal when an affirmative matter bars or defeats the plaintiff's claim. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 121 (2008). The Proviso Board argued that lack of compliance with contracting policies was the affirmative matter that defeated plaintiffs' claims. However, this contention has no merit because *Stavins* expressly recognized that the plaintiff could state a claim based on a contract implied in law against a municipal entity despite lack of compliance with its policies, which is essentially the affirmative matter that the Proviso Board argues defeats plaintiffs' claims. A section 2-619(a)(9) motion "otherwise admits the legal sufficiency of the plaintiff's cause of action." *Id.* Thus, assuming the legal sufficiency of plaintiffs' allegations and because *Woodfield Lanes* and *Stavins* recognized that recovery may be had against a municipality for a contract implied in law despite failure to abide by its contracting policies, we find that the Proviso Board has not presented any affirmative matter that would defeat plaintiffs' claims.

¶ 42 The parties have not cited, and we have not found, any case that holds that recovery under *quantum meruit* is barred where the intended contract with a municipal unit has been determined to be void *ab initio*. We decline to make such a holding for the first time here. We find that allowing plaintiffs' claims to proceed is consistent with principles of equity and the well-settled reasoning that a contract implied in law "exists independent of any agreement or consent of the parties" and that "no one may unjustly enrich himself at another's expense." *Marque Medicos Farnsworth, LLC v. Liberty Mutual Insurance Co.*, 2018 IL App (1st) 163351, ¶ 16. The Proviso Board suggests that plaintiffs "are seeking the assistance of this [c]ourt to validate and reward them for engaging in conduct which was not permitted as a matter of law and to allow them the opportunity to siphon public funds from the [District] on remand." Such a suggestion is meritless where, as here, plaintiffs and the District believed they were acting pursuant to a valid contract. The Proviso Board does not dispute that it accepted all of plaintiffs' services without objection. Further, plaintiffs are not seeking to recover more than the value of their work, and as they have pointed out, the amount owed is not in dispute. It would be unjust to allow the Proviso Board to retain said services without paying a reasonable value for them. See *Stavins*, 2015 IL App (1st) 150356, ¶ 7.

¶ 43 Here, plaintiffs' claims are based on the theory of *quantum meruit*, which means literally " 'as much as he deserves' and is an expression that describes the extent of liability on a contract implied in law (also called a "quasi-contract"); it is predicated on the reasonable value of the services performed.' " *Archon*, 2017 IL App (1st) 153409, ¶ 30 (quoting *Barry Mogul & Associates, Inc. v. Terrestris Development Co.*, 267 Ill. App. 3d 742, 749 (1994)) . "To recover under a *quantum meruit* theory, a plaintiff must prove that (1) it performed a service to the benefit of the defendant, (2) it did not perform the service gratuitously, (3) defendant accepted

the service, and (4) no contract existed to prescribe payment for the service." *Id.* ¶ 31. Plaintiffs' third amended complaint contains factual allegations establishing these four elements, and the Proviso Board has not presented any affirmative matter that defeats these claims. Plaintiffs provided restoration and construction services to the District for the District's benefit. These services were not to be performed gratuitously, and the District accepted the services. Finally, the parties agree that no contract ever existed because the agreements were void *ab initio*. Because more recent case law than that cited by the Proviso Board establishes that a municipal entity may be sued under the equitable theory of a contract implied in law even when the proper procedures for incurring contractual debt were not followed, and taking as true the well-pled facts from plaintiffs' third amended complaint, we find that the Proviso Board has not presented any affirmative matter that defeats plaintiffs' *quantum meruit* claims. Therefore, we reverse the trial court's decision and remand for further proceedings.

¶ 44 CONCLUSION

¶ 45 Based on the foregoing, we reverse the trial court's order granting the Proviso Board's section 2-619 motion to dismiss as to plaintiffs' *quantum meruit* counts and remand for further proceedings consistent with this opinion.

¶ 46 Reversed and remanded.

RESTORE
RESTORATION Inc.
YOUR Complete Team of
RESTORE Professionals

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Franklin Park, IL 60131
FEIN # 20-0817305

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Emergency Work

Disaster Restoration • Contents Storage • Clothing Restoration
Residential/Commercial Cleaning

WORK AUTHORIZATION AND DIRECT PAYMENT AUTHORIZATION

This authorization is made this 22nd day of May, 2014 by and between Restore Restoration Inc. (Contractor) and Proviso Township High School, herein referred to as the CUSTOMER, to proceed with Restore Restoration Inc.'s recommended procedures to preserve, protect and secure from further damage the property located at: 807 S. 1st Ave Maywood.

Providing the CUSTOMER has valid effective insurance coverage for all or part of the services to be performed by Restore Restoration Inc. the CUSTOMER further authorizes and directs their insurance carrier to pay Restore Restoration Inc. direct, and to name Restore Restoration Inc. on any and all insurance drafts applicable to this loss. Customer and/or owner by executing this agreement authorizes Restore Restoration Inc. (Contractor) to execute, in owner's name, place and stead, Proof of Loss, endorsement of drafts or checks, and to sign receipt for same and to sign any other paper or instruments that may be necessary to process the claim.

Restore Restoration Inc. shall bill all charges and/or costs directly to the INSURANCE COMPANY and, as a courtesy, a copy of these invoices may be provided to the Insured. It is fully understood and agreed to by the CUSTOMER that any and all charges are due upon completion of work. It is fully understood that the CUSTOMER is personally responsible for any and all deductible, depreciation or any charges or costs not covered by insurance. Any and all charges for services not reimbursed by an insurance carrier are the sole responsibility of the CUSTOMER and are to be paid upon completion of work. Any exceptions must be approved by Restore Restoration Inc. and a finance charge of 1.5% per month (minimum of $2.00), will be applied to any unpaid balance after thirty (30) days.

The liability of Restore Restoration Inc. is expressly limited to the total amount of the services authorized herein and in no event shall Restore Restoration Inc. its agents or assigns, be liable for consequential damages of any kind. In the event any legal proceedings must be instituted to recover the amount due, Restore Restoration Inc. shall be entitled to recover the cost of collection including reasonable attorney's fees.

EXECUTED AT Cook (County), IL (State), on the day and year first above written.

I have read the Storage Agreement and Receipt of Goods on the reverse side hereof and agree to all terms and conditions specified thereof.

Restore Restoration Inc.

Authorized Signature [signature]
Print Name Michael Santoro
Title V.P.

5/23

Homeowner/Insured X Dr. Nettie Collins-Hart (Print)
Signature X Dr. Nettie Collins-Hart
Policy/Claim No.
Insurance Company
Home/Work Phone
Address

C 2124 V2

STORAGE AGREEMENT AND RECEIPT OF GOODS

1. RESTORE RESTORATION, INC (RRI) agrees to remove and store certain household items delivered to them by owner under the terms and conditions described below.

2. _____ are the owners of the items described in the inventory attached hereto and made a part hereof. They have full legal authority to allow RRI to remove the items in the inventory for storage and to return.

3. The items RRC will be storing are as described on the inventory list which is made a part of this agreement.

4. Duty of Care Relating to Storage of Goods:
   a. RRC shall be responsible for the care and condition of the stored goods and will use ordinary care and control.
   b. Unless RRC undertakes the packing and unpacking of articles being provided by Owner for storage, RRI shall not be responsible for the condition of any fragile articles except for damage caused by RRI s own negligence. RRI shall not store nor be responsible for storage of any jewelry, coins, paintings, collectibles, artifacts, or other similar items of personal property including items of extraordinary value not disclosed or accepted by RRI in writing.
   c. RRI offers and recommends the service of unpacking the boxed items on the move-back. If the owner does not wish to have the boxes unpacked by RRI then the owner waives his/her rights to claim missing or damaged articles.
   d. RRI shall not be responsible for any goods stored in boxes over the amount of $250.00 unless Owner declares in writing the value and RRI accepts in writing.
   e. Due to the inherent nature of furniture constructed of particle-board, press-wood, or fiber-board, they cannot usually be disassembled/reassembled multiple times. If RRI is required to move this furniture, you understand the risk involved and agree to release RRI from any liability concerning the normal transportation of said furniture.
   f. RRI will offer one (1) free delivery of items needed by the homeowner while contents are in storage. Items needed after the initial free delivery will be delivered upon approval of your insurance company. If the additional delivery request is declined by your insurance company, then a service fee will be applied to customer accordingly, payable at time of service requested.

5. Ownership Verification and Change of Address: Owner by signing of this agreement is verifying that he/she is the sole and exclusive owner of the personal property and in the event of any change of address the owner shall give written notice of such change to

6. Claims For Loss or Damage of Stored Goods: All claims for loss or damage to any articles stored by RRI must be given in writing to RRC immediately upon receipt by owner or owners agent of the stored items. Owners shall inspect all goods at the time they are returned by RRI and shall execute and tender to RRC a written receipt of the stored items. RRI will be responsible for depreciated value set by insurance company standards for such items claimed. RRI shall not honor any claims for loss or damage to any articles stored by RRI if such claim is not given in writing to RRI at the date and time of the return of the stored articles listed in the inventory. No exceptions shall be allowed to the procedure described in this paragraph unless agreed to in writing by RRI.

7. Damaged Items: RRC will be responsible for depreciated value set by insurance company standards for broken items. If items are damaged, RRC is only responsible to repair the damage to the original like and kind of the item.

8. Disposition of Stored Articles: In the event RRI is denied the ability to return the stored items or such items are not claimed by Owner or Owner's insurance company within 30 days after payment has been made to Owner or RRI. Owner authorizes RRI to dispose of such stored articles without responsibility for return of their items or payment of the value of such stored articles.

C 2125 V2

RESTORE
Disaster Restoration Experts

11241A Melrose Ave.
Franklin Park, IL 60131
Toll Free: (866) 929-2349
Local: (847) 455-3000
Fax: (866) 929-3371

May 10, 2014
Date of Loss

Restore Construction, Inc. is authorized to repair and replace the damage to my building located at 807 South First Avenue, Maywood, IL 60153 per the proposed and agreed upon specifications and architectural plans for the amount of the insurance proceeds. The owner will not pay anything over and above the insurance proceeds.

5/22/2014
Date Signed

Dr. Nettie Collin-Hart
Accepted by Assured

Restore Construction, Inc.

By _____

Dr. Nettie Collin-Hart
Accepted by Assured

Form #102 (3/88)

City of Chicago License #1448299 / GC License# TGC052926

5/23

C 2126 V2

AMENDED AGREEMENT

THIS AMENDED AGREEMENT is entered into by and between RESTORE CONSTRUCTION CO. INC. of 11241 Melrose Ave., Suite A, Franklin Park, Illinois 60131, 847-455-3000 ("Contractor") and Proviso Township High School District (209) ("Owner") with respect to Proviso East High School, (the "Property"). The insurance company of Owner comprises the companies and policies listed on Exhibit A.

Work, Permits, Specifications. The purpose of this Amended Agreement is to further clarify the Agreement heretofore made for Owner to hire Contractor to do all restoration work at the Property which relates to the fire that occurred on May 10, 2014 (the "Fire"). Owner agrees to secure all necessary permits for Contractor to perform the work set forth in the attached "Work Specifications" (the "Work") in a timely, good and workmanlike manner. Contractor agrees to cooperate with Owner in the application process. However, the cost of permits shall be Owner's expenses. Owner shall and does hereby confirm it has hired Contractor to do such work. Contractor is not responsible for delays beyond its control, such as delay in the permitting process or inability to obtain permits, inclement weather, theft, vandalism or Owner's delay. Work may be altered for the purpose of obtaining permits. Contractor will be responsible for code upgrades related to fire affected areas only. The quality of material will be comparable to the pre-loss condition, which is readily available today. Owner will designate, hire and empower PM Adjusting, LLC as its adjuster of claims relating to the Fire at a fee of $100.00

Insurance. Contractor will maintain workman's compensation and general liability insurance.

Price. The price for the Work shall be the reasonable value thereof. Other than as otherwise set forth herein, it is anticipated that Owner will pay nothing over and above insurance proceeds unless the insurance companies refuse to pay for the reasonable value of the Work. It is also understood and agreed that Contractor shall be entitled to progress payments from insurance carriers not more frequently than weekly, and Contractor is hereby authorized to stop work if progress payments are not made on a weekly basis. Subcontractors' payments may change to reflect change orders or discounts. Those changes in Subcontractors' compensation will not affect the price paid by owner unless agreed to in writing by Contractor and Owner.

Owner obligations. Owner will furnish heat, electric and water service to the subject property while Contractor's work is in progress and to its completion. Owner will pay any extra costs not related to the fire, including code upgrades, required outside the immediate Fire damage area, legal fees, consulting fees, and other costs incurred by Contractor. Owner agrees that if Contractor is not paid by any insurance company, Owner shall be liable to Contractor for the value of the Work. Owner agrees to pay any attorney's fees incurred by Contractor in enforcing the terms of this Agreement.

Delays If there is a delay in material selection, issue of permits or loss settlement that may lead to additional expenses of Owner (such as a need for temporary classrooms or other temporary facilities), in no event will Contractor be liable for any additional expenses of Owner.

Power Of Attorney Owner hereby appoints and authorizes Contractor, as Owner's attorney-in-fact, to sign in Owner's name, contact Owner's insurance carriers directly, and to otherwise act for Owner, and in Owner's name, in any way Owner could act in person, with respect to signing, approving, authorizing and endorsing any Proofs of Loss, drafts, checks, receipts and any other document or instrument necessary to satisfy Contractor's claim for payment on the Property to the extent of moneys owed to Contractor under this agreement or otherwise as necessary to satisfy Contractor's claim for payment on the subject project.

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This power of attorney shall become effective on Owner's execution hereof and shall terminate once all payments to Contractor at the subject project have been satisfied. Owner authorizes Contractor to provide notice of this Agreement to any insurance company of Owner which may have insured the loss which is the subject of the Work, and to any other person or entity.

Direct Pay Authorization. Owner hereby authorizes and instructs all insurance carriers who may be liable to Owner for this loss, in whole or in part, under the insurance policies listed below or otherwise, to pay directly to Contractor the amounts due, or in the alternative to include the name of Contractor as an additional payee in all drafts issued in payment of said loss, and to promptly deliver such payment over to Contractor.

Warranty. Contractor warrants that all work to be free from latent defects due to faulty materials, workmanship and major construction defects for a period of one (1) year from the date of completion.

Total Agreement. This Agreement comprises the full understanding between Owner and Contractor regarding the restoration/repairs to be performed. This Agreement overrides any and all prior oral or written statements, and cannot be changed except by a written amendment agreed upon and signed by all parties hereto. Owner has read and fully understands the specifications. The parties agree that the above terms are mutually understood and agreed upon. If any of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease.

Property Address: 807 S. First Ave. (City) Maywood Illinois 60153

Owner Signature: X David J Adams Date 3/12/2014

Print Name: Proviso East High School Owner Ph # (708) 344-7380

Insurance Company: Travelers, Selective and Gallagher Bassett Services, Inc.

Broker Name

Policy Number Exp. Date Broker Ph. Number

Contractor signature:

EXHIBIT P

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC.,	)	
Plaintiffs,	)	
v.	)	
	)	**Case No. 2015 L 010904**
THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE,	)	Calendar U Judge Brigid Mary McGrath
Defendants.	)	

PLAINTIFFS' SECOND AMENDED VERIFIED COMPLAINT

NOW COME the Plaintiffs, RESTORE CONSTRUCTION, INC. and RESTORE RESTORATION, INC., by and through their attorneys, WOLIN & ROSEN, LTD., and for their Second Amended Verified Complaint against THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE (collectively "Defendants"), state as follows:

PARTIES

1. Restore Construction, Inc. ("Restore Construction") is an Illinois corporation with its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, repairing fire damaged structures

and providing related construction services. It has a common ownership and management with its affiliate Restore Restoration, Inc.

2. Restore Restoration, Inc. ("Restore Restoration") is an Illinois corporation with its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, providing disaster mitigation and related restoration services. It has a common ownership and management with its affiliate Restore Construction, Inc.

3. The School Directors of Proviso Township High Schools District 209 and Proviso Township High Schools District No. 209 (collectively "Proviso" or "District") is an Illinois body politic and corporate, governed by a Board of Education comprised of seven (7) members (the "Proviso Board"), and is named in the style authorized by the Illinois School Code, 105 ILCS 5/10-2. Since 2008, Proviso has been subject to the oversight of a statutory school finance authority, the Financial Oversight Panel For Proviso Township High School District 209 ("FOP").

4. Netti Collins-Hart, Ed.D. ("Collins-Hart") was the Superintendent of Schools of Proviso from approximately July 1, 2008 to June 30, 2016. In her capacity as Superintendent, Collins-Hart, was Proviso's chief executive officer responsible for the administration and management of Proviso's schools in accordance with Proviso's policies and state and federal law. Collins-Hart acted on behalf of Proviso and was its agent.

5. Daniel J. Adams ("Adams") is a member of the Proviso Board. Adams was the duly elected President of the Board from approximately January 15, 2013 to April 30, 2015. Among the duties of Board President is to sign official District documents. Adams acted on behalf of Proviso and was its agent.

6. Collective Liability Insurance Cooperative ("CLIC") is a group of approximately 170 Illinois school districts that formed a cooperative to provide to its district members: certain risk managements services, certain levels of self-insurance for property and casualty losses, and certain levels of excess insurance coverage. CLIC pays losses and provides insurance to Proviso.

7. Travelers Indemnity Company ("Travelers") is an insurance company that provides, among its various policy offerings to its Named Insureds, an excess property policy with loss coverage. Travelers does business in Illinois and insures all CLIC members, including Proviso.

8. Gallagher Bassett Services, Inc. ("GBS") is a Delaware corporation authorized to transact business in Illinois with its principal place of business at The Gallagher Centre, Two Pierce Place, Itasca, Illinois 60143. GBS is an insurance claim administrator that handles insurance claims for its clients. It acted as agent of CLIC, Proviso and Travelers in administering Claim No. EOS5606 made by Proviso on its property loss.

9. Madsen Kneppers and Associates, Inc. ("MKA") is an Illinois corporation with a place of business located at 820 West Jackson Boulevard, Suite 490, Chicago, Illinois 60607. MKA is a construction, engineering and architecture consultant that provides consulting services to its clients. MKA was hired to provide such services to GBS, Travelers and CLIC and acted as agent of GBS, CLIC, Proviso and Travelers.

JURISDICTION AND VENUE

10. Jurisdiction is proper in this Court pursuant to 735 ILCS 5/2-209(a)(1),(3),(7) and (10), in that Defendants transacted business, entered into agreements and committed the acts and tortious conduct relating to the matters complained of herein in the County of Cook and State of Illinois.

11. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 & 735 ILCS 5/2-102, in that the conduct giving rise to this Amended Complaint occurred in Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

12. On or about May 10, 2014, Proviso was the owner of, and remains the owner of, certain real estate commonly known as Proviso East High School located at 807 South First Avenue in Maywood, Cook County, Illinois; which property is a High School (the "School").

13. On or about May 10, 2014, a fire disaster (the "Fire Loss") occurred at the School.

14. The damage to the School due to the Fire Loss exceeded Seven Million Dollars ($7,000,000.00).

15. Proviso was not prohibited by law from entering into contracts with Restore Construction and Restore Restoration, and other professionals for the repair and renovation of the School. Such contracts are not void *per se*.

16. Proviso's Board, on September 20, 2008, during an emergency board meeting, by a roll call of five (5) ayes and one (1) nay authorized Collins-Hart to execute an emergency flood water remediation contract without prior Board approval, subject only to legal counsel review. Minutes of the September 20, 2008 Emergency Meeting of Proviso Township Schools District 209 Board of Education are attached hereto and made a part hereof as **Exhibit A**.

17. Proviso's Policy Manual at Section 4:60, Purchases and Contracts, states, "Adoption of the annual budget authorizes the Superintendent or Business Manager to purchase budgeted supplies, equipment, and services. Purchases of items not included in the budget require prior Board approval, *except in an emergency*." (*Italics* added). Policy Section 4:60 was originally approved and adopted on September 18, 2012 by a recorded vote of 6 Ayes, 0 Nays, 1 Abstain; Motion Passed. It was subsequently re-adopted without change to the above quoted

policy language on January 13, 2015 by a recorded vote of 5 Ayes, 0 Nays, 1 Absent; Motion Passed. A copy of this Policy is attached hereto and made a part hereof as **Exhibit B**.

18. The Fire Loss was an emergency due to the dangerous condition of the School caused by the fire and the emergent concern of rehabilitating, repairing and readying the School to the extent necessary to re-open on-time, on or about August 13, 2014, for scheduled events and the start of the upcoming 2014-2015 school year.

19. Proviso recognized Restore Restoration and Restore Construction (collectively "Restore") as possessing a high degree of professional skills in their specialized service areas and deemed their ability and fitness for the Fire Loss remediation and repair important, and exempting Restore from bidding under Section 10-20.21 (a)(i) of the Illinois School Code. 105 ILCS 5/10-20.21 (a)(i).

20. Proviso had previously contracted with Restore Restoration on April 22, 2013 to provide emergency mitigation services to Proviso for flood damage in excess of Three Hundred Thousand Dollars ($300,000.00). Without concern, repudiation or dispute, Proviso contracted with Restore Restoration in 2013 pursuant to Proviso's policy of allowing emergency contracting by the Superintendent or Business Manager without a prior Board vote.

21. Proviso's Policy Manual at Section 2:240, Board Policy Development, states. "In the absence of Board of Education policy, the Superintendent is authorized to take appropriate action." Policy Section 2:240 was approved and adopted on November 19, 2007. A copy of this Policy is attached hereto and made a part hereof as **Exhibit C**.

22. On May 22, 2014, Collins-Hart signed two contracts, one with Restore Restoration to remediate fire damage and the other contract with Restore Construction to repair the damaged School. Both contracts were signed on behalf of Proviso by Collins-Hart. Copies of

those contracts ("Superintendent Contracts") are attached hereto and made a part hereof as **Exhibit D**.

23. Collins-Hart, under Proviso policy, was authorized to act on the behalf of Proviso and was its agent in 2014 at the time of the Fire Loss.

24. In 2008, the Illinois State Board of Education found Proviso to be in financial difficulty and by resolution created and thereafter impaneled an oversight panel under the Financial Oversight Panel Law to exercise financial control over Proviso. 105 ILCS 5/1H-5 et seq.

25. Todd Drafall ("Drafall") was hired as an employee of the FOP under Article 1H of the Illinois School Code from May 27, 2014 to June 30, 2016, was assigned to Proviso and served as the FOP's Chief School Business Official for the District. In his capacity as Chief School Business Official for Proviso, Drafall managed Proviso's fiscal and business activities to ensure financial health, cost-effectiveness, and protection of the District's assets.

26. Drafall was designated, appointed and empowered by the FOP to exercise direct control over Proviso's finances, and to act as the FOP's Chief School Business Official for the District and had authority to negotiate and execute contracts for Proviso.

27. Drafall, the FOP's Chief School Business Official for the District, accepted and approved the Superintendent Contracts signed by Collins-Hart by initialing those same contracts. See, **Exhibit D** previously attached hereto and made a part hereof.

28. On August 12, 2014, Adams, then President of the Proviso Board, signed an Amended Agreement with Restore Construction on the behalf of Proviso. A copy of that Amended Agreement ("Board President Contract") is attached hereto and made a part hereof as **Exhibit E**.

29. Drafall accepted and approved the Board President Contract by initialing same. See, **Exhibit E** previously attached hereto and made a part hereof.

30. Drafall, in his capacity as FOP's Chief School Business Official for the District, attended construction meetings concerning the remediation, restoration and repair of the Fire Loss either in-person or on the telephone (or by a designee) on numerous occasions. Attending these meetings were Restore personnel, Proviso's project managers and architects, GBS, MKA, Travelers and subcontractors.

31. On May 22, 2014, the day before Drafall accepted, approved and initialed the Superintendent Contracts, Drafall attended a construction meeting where he affirmed to Restore that Restore was hired to remediate, restore and repair the Fire Loss to a condition to allow the School to safely open on time for the start of the 2014-2015 school year.

32. Under the exigent circumstances created by the Fire Loss, the FOP directed Drafall to manage and oversee the remediation, construction and renovation of all the fire damage to the School (the "Project"). Those duties included but were not limited to approving contracts, quotations, proposals, bids, sales orders, change orders and invoices submitted by contractors and subcontractors, attending construction meetings as representative of the FOP and Proviso, and approving work by the contractors and subcontractors and reporting same to the FOP and Proviso.

33. Drafall, in his capacity as FOP's Chief School Business Official for the District, not only had all the powers of Proviso's chief fiscal officer, he had the power and authority conferred on him by the FOP to perform the duties of the FOP's Chief School Business Official, including without limitation direct contracting authority to bind the District, with or without the District's consent.

34. Drafall, in his capacity as FOP's Chief School Business Official for the District, accepted and approved the following contracts, subcontracts, quotations, bids, sales orders, change orders and invoices for work on the Project by signing or initialing them:

a. July 12, 2014 change order to base contract by subcontractor Prime Electric Co., Inc. in the amount of $17,750.00;

b. July 17, 2014 quotations (311489456 and 311469459) by subcontractor Tyco Simplex Grinnell LP in the amounts of $88,883.00 and $49,775.00, respectively;

c. July 18, 2014 sales order acknowledgment by subcontractor LaForce Inc. in the amount of $106,854.00;

d. July 22, 2014 revision to prime proposal #21360 by subcontractor Prime Electric Co., Inc. in the amount of $148,894.00;

e. July 23, 2014 invoice by subcontractor GMP Development, LLC in the amount of $422,840.00;

f. July 25, 2014 contract by subcontractor Final Touch Decorating Inc. in the amount of $132,000.00;

g. July 25, 2014 pricing by subcontractor O'Malley Construction Co. in the amount of $287,900.00;

h. July 25, 2014 change orders (CO-FA-001 and CO-8D-001) to contracts (979319401 and 979319501) by subcontractor Tyco Simplex Grinnell LP in the amounts of $21,018.00 and $9,816.00, respectively;

i. August 2, 2014 invoices (000124, 000125 and 000126) by subcontractor VK Construction Services, Inc., in the amounts of $11,692.08, $8,500.00 and $7,100.00, respectively;

j. August 7, 2014 contract by subcontractor ABM Janitorial Services Inc. in the amount of $30,605.00;

k. August 11, 2014 extra to prime contract #21316 by subcontractor Prime Electric Co., Inc. in the amount of $3,096.50;

l. September 22, 2014 quotation by subcontractor Kewaunee Scientific Corporation in the amount of $197,500.00; and

m. September 26, 2014 contract by subcontractor Capitol Glass & Architectural Metals, Inc. in the amount of $139,082.00.

35. Ron Anderson, Proviso's Project Manager executed and approved the following bid and sales order at the direction of Drafall:

a. July 17, 2014 bid by subcontractor DePue Mechanical, Inc. in the amount of $312,500.00; and

b. July 21, 2014 sales order by subcontractor Better Blinds Inc. in the amount of $27,800.00.

36. Upon information and belief, L.T. Taylor, Proviso's Buildings and Grounds Manager executed and approved the following invoices with Proviso's knowledge and consent:

a. July 30, 2014 invoice (91092) by subcontractor Service Drywall & Decorating Inc. in the amount of $62,900.00; and

b. July 30, 2014 invoices (9397 and 9437) by subcontractor Absolute Production Services Co. in the amounts of $6,000.00 and $9,560.00, respectively.

37. On or about the following dates, Drafall approved the endorsement of certain checks by permitting the stamping of the District's name on those checks listed below:

Date of Check	Payor	Payee	Check No.	Amount
07/01/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	110745066	$ 500,000.00
07/22/14	Gallagher Basset Serv. Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396060	$1,448,708.38
07/30/14	Gallagher Basset Serv. Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396068	$ 972,156.21
08/14/14	Gallagher Basset Serv. Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396081	$1,062,329.50
10/06/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	113098436	$ 331,109.83
03/06/15	Gallagher Basset Services, Inc For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	116894025	$ 920,000.00
04/08/15	Gallagher Basset Services, Inc For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	117740861	$ 608,941.86
				$5,843,245.78

38. After Proviso's endorsements were affixed to the checks listed in paragraph 39 above, Drafall directed that those checks were to be delivered to Restore in payment for Fire Loss remediation, restoration and repairs.

39. Drafall accepted the services and work performed by Restore and authorized the payments of those checks by Proviso, pursuant to the terms of the contracts, subcontracts, quotations, bids, sales orders, change orders, and invoices he approved.

40. In his capacity as FOP's Chief School Business Official for the District, Drafall gave regular updates to the Board of Proviso and/or to the FOP at meetings held on May 13, 2014, June 10, 2014, July 15, 2014, August 12, 2014, September 16, 2014, October 14, 2014, November 18, 2014, December 9, 2014, January 13, 2015, February 10, 2015, March 10, 2015 and May 12, 2015.

41. At the regular meeting of the Proviso Board held January 13, 2015, Drafall updated the Proviso Board that:

> "the general contractor of the fire project informed the District that the fire damaged area was not ready on January 5, 2015 due to issues with the installer of the lab casework. The installer did not complete the installation in time thus pushing back work that would have followed installation. The general contractor explored multiple options to make up time but at this point in the process no option seemed viable. Terminating the subcontractor was not an option as the general contractor would have been starting from scratch and thus further delaying the project. With the holidays behind, the new anticipated date of completion is January 19, 2015."

42. Drafall reported regularly to the Proviso Board and the FOP on matters including but not limited to the matters and actions detailed herein and the FOP never disapproved any action he took in his role as the FOP's Chief School Business Official for the District. All of his actions were accepted by the FOP and were within the scope of Drafall's authority and duties pursuant to his FOP employment contract and Article 1H of the Illinois School Code.

43. Drafall, pursuant to the Illinois School Code, Financial Oversight Panel Law and Proviso policy, was authorized to act on behalf of both the FOP and Proviso and was a dual agent of both.

44. Collins-Hart, Adams and Drafall acted within the scope and authority of their respective employment and consistent with Restore's past dealings with Proviso by directly

contracting with Restore by executing the Superintendent Contracts and Board President Contract. In so doing, they bound Proviso to these contracts.

45. Restore reasonably and justifiably relied on Proviso's Board approved written policies, and the actions of Collins-Hart, Adams and Drafall, all acting within the scope and authority of their respective employment, to directly contract with Restore and bind Proviso.

46. Restore, as part of the contracting process with Proviso, brought attention to the terms of the contracts at or prior to signing to Collins-Hart and Adams, including but not limited to the terms that Proviso is responsible to pay Restore for services not paid for by Proviso's insurance carrier.

47. Collins-Hart, on July 9, 2014, affirmed Proviso's hire of Legat Architects, Inc. ("Legat"), an Illinois corporation engaged in the business of providing professional architectural services, to prepare all plans and specifications for Proviso's Fire Loss renovation project and to exercise a level of authority over the work of hired contractors and subcontractors on behalf of Proviso through its Architect's review process.

48. Restore Construction agreed to repair and replace Fire Loss damage sustained by Proviso in accordance with the repair and renovation specifications and architectural plans of Legat as expressly incorporated into the contracts. The repair and renovation specifications ("Specifications") were published in the Project Manual for Project Number IN14-0001, entitled Fire Damage Renovations at Proviso East High School for the Board of Education Proviso Township High School District 209, issued June 24, 2014. The Project Manual is attached hereto and made a part hereof as **Exhibit F**.

49. On June 10, 2014, Proviso approved and submitted itself to statutory prevailing wage standards and rates for construction work in the Cook County, Illinois area.

50. The Specifications prepared and issued by Legat incorporated at the direction of Proviso the statutory prevailing wage standards and rates adopted by Proviso on June 10, 2014. Those Specifications were never changed.

51. It was the customary practice of Proviso to provide Legat with Proviso's annual resolution adopting prevailing wage standards and rates, and direct Legat to include said rates of wages in all specifications prepared by Legat for Proviso.

52. During repairs to the School, Proviso attended and participated in Construction Update Meetings ("Construction Meetings"), by and through its employees. Attendees included Restore, Legat, District's engineers, subcontractors, GBS, MKA and Travelers.

53. Proviso was fully aware, as all its Board Members knew, that Restore was hired by Proviso to preserve, protect, secure the School and to repair the Fire Loss damage to the School. Proviso, by and through, its then legal counsel has admitted that Proviso contracted with Restore. Correspondence between Restore's legal counsel and Proviso's legal counsel, dated June 1, 2015, July 7, 2015 and September 1, 2015 is attached hereto and made a part hereof as **Exhibit G**.

54. Proviso contracted with and appointed as its agents Legat, GBS and MKA to assist in the repair and restoration of the School. Each of these entities interfaced with Restore and gave Restore directives on Project performance.

55. Proviso is a member of CLIC. As a member of CLIC, Proviso is a named insured under a series of insurance policies ("Proviso's Insurance Policies") produced, brokered and sold to public schools and further is entitled to payment of losses by CLIC. .

56. GBS was retained as a contract Third Party Administrator ("TPA") for Proviso to process the claim(s) for the repair and restoration of the School after the Fire Loss. GBS issued

claim checks payable to Proviso and Restore Restoration, as co-payees, for services provided by either Restore Restoration or Restore Construction in connection with the Fire Loss.

57. Pursuant to Proviso's membership in CLIC, CLIC is obligated to make self insured retention ("SIR") payment(s) to Proviso for Proviso's Fire Loss. Accordingly, CLIC contracted and directed GBS to issue joint claim loss payments to Proviso and Restore.

58. GBS, acting as a claims administrator on behalf of CLIC, issued payments to Proviso and Restore on behalf of CLIC from a checking account entitled, "Gallagher Bassett Services, Inc. For Collective Insurance Cooperative" in the aggregate amount of Two Million Three Hundred Sixty Thousand Fifty-One and 69/100 Dollars ($2,360,051.69). On information and belief these funds came from CLIC. See Paragraph 37 herein.

59. Under the terms of the Insurance Policies issued to CLIC, an excess property policy by Travelers bearing Policy Number KTK-XSP-546D521-1-13 is the insurance policy under which Restore was to be paid ("the Travelers Policy") for services, including but not limited to emergency mitigation and construction. Policy Number KTK-XSP-545D521-1-13 is attached hereto and made a part hereof as **Exhibit H**.

60. GBS acted as a claims administrator on behalf of Travelers by issuing payments to Proviso and Restore from funds supplied by Traveler to GBS.

61. GBS issued payments to Proviso and Restore from a checking account entitled, "Gallagher Bassett Services, Inc. As Claims Administrator" in the aggregate amount of Three Million Four Hundred Eighty-Three Thousand One Hundred Ninety-Four and 09/100 Dollars ($3,483,194.09). On information and belief these funds came from Travelers. See Paragraph 37 herein.

62. Michael Becich ("Becich"), a Senior Claims Adjuster, employed and assigned by

GBS to Claim No. EOS5606 made by Proviso on the Fire Loss, was its agent and acted on behalf of GBS, CLIC, Proviso and Travelers.

63. GBS operated through its employee, Becich. GBS, in turn, hired MKA, as its agent, to assist GBS in this Project.

64. Michael Berlin ("Berlin") was employed by MKA and, was assigned to the Proviso Fire Loss. He was its agent and acted on behalf of MKA and GBS.

65. On June 12, 2014, and again on June 17, 2014, Becich, on behalf of GBS, Travelers and CLIC, directed Restore that the chain of command on the Project was that only GBS was to deal and communicate with Travelers.

66. On June 13, 2014, Becich, on behalf of GBS, Travelers and CLIC, told Restore that Proviso was not the party paying Restore on the Project; that payments were coming from GBS, CLIC and Travelers.

67. Travelers, at Construction Meetings, directly and through its agents GBS and MKA, gave Restore directives and demanded performance under the Specifications, Superintendent Contracts and Board President Contract.

68. Proviso, Travelers and CLIC accepted the services provided by Restore which were incorporated into and formed a part of the Project improvements which are permanent and valuable improvements to the School.

69. Proviso allocated and issued partial payments to Restore from monies received from CLIC and Travelers from its claim proceeds by endorsing claim checks issued by GBS on behalf of CLIC and Travelers and delivering same to Restore. Proviso ratified its contracting for services with Restore by such actions.

70. Restore performed work to a reasonable value of Seven Million Three Hundred Sixty-Nine Thousand Two Hundred Fifty-Six and 44/100 Dollars ($7,399,094.20) before Restore was unreasonably stopped from working and thereby excused from further performance.

71. There remains a balance due and owing to Restore pursuant to the Superintendent Contracts and Board President Contract, after all payments made and any other just credits and setoffs, of an amount in excess of One Million Four Hundred Eighty Thousand Three Hundred Thirty-Seven and 12/100 Dollars ($1,480,337.12) which includes amounts for which Restore has made demand, but such demands have not resulted in the issuance of payment, and no further demand by Restore is required.

72. On June 16, 2014, MKA, by its representative Berlin, contacted Restore and agreed and obliged its principals GBS, Travelers and CLIC to pay Restore overhead and profit on the Project.

73. On June 24, 2014, GBS, by its representative Becich, contacted Restore and offered, agreed and obliged its principals GBS, Travelers and CLIC to pay Restore ten percent (10%) overhead and five (5%) profit on the Project.

74. On June 26, 2014, during a conference call construction meeting attended by Proviso, GBS, MKA, and others, Berlin of MKA stated that MKA would not authorize payment to Restore of prevailing wages under The Prevailing Wage Act, 820 ILCS 130.0.01, et seq. MKA, by its representative Berlin, and GBS did, however, approve prevailing wage payments to all of Restore's subcontractors whose employees were not mostly minorities. Restore who employed mostly minorities on the Project was denied payment of prevailing wages at the wage rates adopted by Proviso and paid to its subcontractors.

75. GBS and its principals continue to deny Restore payment due for statutory prevailing wages contrary to Proviso's Board action and contrary to the Specifications prepared by Legat and the rates adopted by Proviso, which are included in the Specifications. The Specifications have never been amended or withdrawn by Legat and Proviso.

76. Restore has made demand upon Proviso, Travelers, GBS, MKA, and CLIC for payment of sums due and owing to Restore, including but not limited to prevailing wages paid, general liability and workers' compensation insurance premium reimbursement, consumables and equipment rental expenses, and overhead and profit.

RESTORE CONSTRUCTION, INC.
COUNT I
BREACH OF CONTRACT (PROVISO by Its Actions)

As and for this Count I of its Second Amended Complaint, Restore Construction complains against Proviso and states:

1-76. Paragraphs 1-76 of above are here incorporated as Paragraphs 1-76 of this Count I, respectively, and they are hereby made a part hereof.

77. The rule of contract law does not change because a municipality is involved.

78. Proviso, by and through its authorized agents Collins-Hart, Adams and Drafall in exercise of adopted Board Policies, including but not limited to Section 4:60 of the Board of Education Policy Manual, knowingly entered into, authorized, and consented to the Superintendent Contract and subsequent Board President Contract with Restore Construction (collectively "Construction Contracts") and granted Restore permission to undertake the work required thereby.

79. As set forth in the Board President Contract that was accepted and approved by Drafall, the price to be paid to Restore for Project work was the reasonable value of the work.

WHEREFORE, the Plaintiff, RESTORE CONSTRUCTION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in the amount of One Million Two Hundred Ninety-Three Thousand Eight Hundred Eighty-One and 24/100 Dollars ($1,293,881.24) plus costs, interest, and attorneys' fees, and for any other relief this Honorable Court deems just and proper.

RESTORE CONSTRUCTION, INC.
COUNT V (in the alternative)
UNJUST ENRICHMENT (PROVISO)

As and for this Count V of its Second Amended Complaint, in the alternative to Count I and II, Restore Construction complains against Proviso and states:

1-113. Paragraphs 1-113 of Count III are here incorporated as Paragraphs 1-113 of this Count V, respectively, and they are hereby made a part hereof.

114. Proviso conducted its Fire Loss claim in an irregular, improper manner by not treating the claim, its construction contracting, its construction bonding, and its handling of its insurance claim proceeds as a "public works" project dealing with "public funds."

115. There remains a balance due and owing to Restore Construction pursuant to the Construction Contracts, after all payments made and any other just credits and setoffs, in the amount of One Million Two Hundred Ninety-Three Thousand Eight Hundred Eighty-One and 24/100 Dollars ($1,293,881.24) which includes amounts for which Restore has made demand, but such demands have not resulted in the issuance of payment, and no further demand by Restore is required.

116. As a direct result and consequence of Proviso's improper conduct and mishandling of public funds and its public works Project, Proviso has unjustly gained the fair and

reasonable value of the work that Restore Construction performed for Proviso, and for which Restore, to its detriment, has not been paid, in the amount of One Million Two Hundred Ninety-Three Thousand Eight Hundred Eighty-One and 24/100 Dollars ($1,293,881.24).

117. Proviso's retention of the fair and reasonable value of the work that Restore performed for Proviso due to Proviso's irregular and improper actions and malfeasance violates the fundamental principles of justice, equity, common honesty, fair dealings and good conscience.

WHEREFORE, the Plaintiff, RESTORE CONSTRUCTION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in the amount of One Million Two Hundred Ninety-Three Thousand Eight Hundred Eighty-One and 24/100 Dollars ($1,293,881.24) plus costs, interest, and attorneys' fees, and for any other relief this Honorable Court deems just and proper.

RESTORE CONSTRUCTION, INC.
COUNT VI (in the alternative)
QUANTUM MERUIT (PROVISO)

As and for this Count VI of its Second Amended Complaint, in the alternative to Count I and II, Restore Construction complains against Proviso and states:

1-76. Paragraphs 1-76 of the sections titled Parties, Jurisdiction and Venue and Allegations Common to All Counts above are here incorporated as Paragraphs 1-76 of this Count VI, respectively, and they are hereby made a part hereof.

77. The claim theory of *quantum meruit* recovery applies to municipal and other public bodies.

includes amounts for which Restore has made demand, but such demands have not resulted in the issuance of payment, and no further demand by Restore is required.

128. As a direct result and consequences thereof, Restore has been damaged in an amount in excess of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

WHEREFORE, the Plaintiff, RESTORE RESTORATION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88) plus costs, interest, and attorneys' fees, and for any other relief this Honorable Court deems just and proper.

RESTORE RESTORATION, INC.
COUNT XIII (in the alternative)
UNJUST ENRICHMENT (PROVISO)

As and for this Count XIII of its Second Amended Complaint, in the alternative to Count IX and X, Restore Restoration complains against Proviso and states:

1-128. Paragraphs 1-128 of Count XII are here incorporated as Paragraphs 1-128 of this Count XIII, respectively, and they are hereby made a part hereof.

129. Proviso at the time of contracting with Restore was intimately familiar with its contracting policies, procedures and practices.

130. Proviso conducted itself in an irregular, improper manner by not treating the claim, its contracting, its bonding, and its handling of its insurance claim proceeds as a "public works" project dealing with "public funds."

131. Restore Restoration performed disaster restoration to a reasonable value of Five Hundred Seventeen Thousand Five Hundred Sixty-five and 71/100 Dollars ($517,565.71), but

received payment of only Three Hundred Thirty-one Thousand One Hundred Nine and 83/100 Dollars ($331,109.83).

132. As a direct result and consequences of Proviso's improper conduct, Proviso has unjustly gained the fair and reasonable value of the services that Restore Restoration performed for Proviso, and for which Restore Restoration, to its detriment, has not been paid, in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

133. Proviso's retention of the fair and reasonable value of the services that Restore Restoration performed for Proviso due to Proviso's irregular and improper actions and malfeasance violates the fundamental principles of justice, equity, common honesty, fair dealings and good conscience.

WHEREFORE, the Plaintiff, RESTORE RESTORATION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88) plus costs, interest, and attorneys' fees, and for any other relief this Honorable Court deems just and proper.

RESTORE RESTORATION, INC
COUNT XIV (in the alternative)
QUANTUM MERUIT (PROVISO)

As and for this Count XIV of its Second Amended Complaint, in the alternative to Count IX and X, Restore Restoration complains against Proviso and states:

1-76. Paragraphs 1-76 of the sections titled Parties, Jurisdiction and Venue and Allegations Common to All Counts above are here incorporated as Paragraphs 1-79 of this Count XIV, respectively, and they are hereby made a part hereof.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC., Plaintiffs, v. THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE, Defendants.	Case No. 2015 L 010904 Calendar U Judge Brigid Mary McGrath

PLAINTIFFS' THIRD AMENDED COMPLAINT

NOW COME the Plaintiffs, RESTORE CONSTRUCTION, INC. and RESTORE RESTORATION, INC., by and through their attorneys, WOLIN & ROSEN, LTD., and for their Third Amended Complaint[1] against THE SCHOOL DIRECTORS OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE COLLINS-HART, DANIEL J. ADAMS, and TRAVELERS INDEMNITY COMPANY, state as follows:

PARTIES

1. Restore Construction, Inc. ("Restore Construction") is an Illinois corporation with

[1] On June 7, 2017, this Court on Defendants' The School Directors of Proviso Township High Schools District 209, Nettie Collins-Hart, Daniel J. Adams, Travelers Indemnity Company, Gallagher Bassett Services, Inc., Madsen Kneppers and Associates, Inc., and Collective Liability Insurance Cooperative, motions to dismiss, ruled that Plaintiffs' Second Amended Complaint (SAC) Counts 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21 and 22 were dismissed *with prejudice*. Counts 6, 7, 8, 14 and 15 against remaining Defendants Proviso, Collins-Hart and Adams were dismissed with leave to amend. On December 19, 2017, following argument on Plaintiffs' Motion To Reconsider This Court's June 7, 2017 Ruling, the Court denied Plaintiffs' Motion To Reconsider and affirmed leave to plead and re-plead counts in quantum meruit and fraud. The Counts of Plaintiffs' SAC *dismissed with prejudice* are being repleaded herein solely for preservation of Plaintiffs' rights on appeal. In re-pleading, the Plaintiffs are not "pleading over" their SAC and are expressly preserving all of their claims for purposes of appeal.

its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, repairing fire damaged structures and providing related construction services. It has a common ownership and management with its affiliate Restore Restoration, Inc.

2. Restore Restoration, Inc. ("Restore Restoration") is an Illinois corporation with its principal place of business at 11241 Melrose Avenue, Franklin Park, Cook County, Illinois 60131. It is engaged in the business of, among other things, providing disaster mitigation and related restoration services. It has a common ownership and management with its affiliate Restore Construction, Inc.

3. The School Directors of Proviso Township High Schools District 209 and Proviso Township High Schools District No. 209 (collectively "Proviso" or "District") is an Illinois body politic and corporate, governed by a Board of Education comprised of seven (7) members (the "Proviso Board"), and is named in the style authorized by the Illinois School Code, 105 ILCS 5/10-2. Since 2008, Proviso has been subject to the oversight of a statutory school finance authority, the Financial Oversight Panel for Proviso Township High School District 209 ("FOP").

4. Netti Collins-Hart, Ed.D, ("Collins-Hart") was the Superintendent of Schools of Proviso from approximately July 1, 2008 to June 30, 2016. In her capacity as Superintendent, Collins-Hart, was Proviso's chief executive officer responsible for the administration and management of Proviso's schools in accordance with Proviso's policies and state and federal law.

5. Daniel J. Adams ("Adams") was a member of the Proviso Board at all times relevant herein. He left the Board on or about April 11, 2017. Adams was the duly elected President of the Proviso Board from approximately January 15, 2013 to April 30, 2015. Among

the duties of Board President is to preside over the business of the Board at official meetings and sign official District documents.

6. Travelers Indemnity Company ("Travelers") is an insurance company that provides, among its various policy offerings to its Named Insureds, an excess property policy with loss coverage. Travelers does business in Illinois and insures Collective Liability Insurance Cooperative ("CLIC") members, including Proviso. Travelers processed coverage claim(s) made by Proviso on its property fire loss of May 10, 2014 insured with Travelers.

JURISDICTION AND VENUE

7. Jurisdiction is proper in this Court pursuant to 735 ILCS 5/2-209(a)(1),(3),(7) and (10), in that Defendants transacted business, entered into agreements and committed the acts and omissions relating to the matters complained of herein in the County of Cook and State of Illinois.

8. Venue is proper in this Court pursuant to 735 ILCS 5/2-101 & 735 ILCS 5/2-102, in that the conduct giving rise to this Amended Complaint occurred in Cook County, Illinois.

ALLEGATIONS COMMON TO ALL COUNTS

9. On or about May 10, 2014, Proviso was the owner of, and remains the owner of, certain real estate commonly known as Proviso East High School located at 807 South First Avenue in Maywood, Cook County, Illinois. Said property is the High School (the "School").

10. On or about May 10, 2014, a destructive fire disaster occurred at the School causing significant property loss (the "Fire Loss").

11. The Fire Loss also created dangerous conditions within the School and an emergent concern of Proviso was to have prompt remediation, restoration and repairs of the School to the extent necessary to safely reoccupy and re-open on-time, on or about August 13, 2014, for scheduled events and the start of the upcoming scheduled student 2014-2015 school

year.

12. Proviso recognized Restore Restoration and Restore Construction (collectively "Restore") as possessing a high degree of professional skills in their specialized service areas and the ability and fitness to mitigate and repair the Fire Loss.

13. Proviso had previously contracted with Restore Restoration on April 22, 2013 to provide emergency mitigation services to Proviso for flood damage in excess of Three Hundred Thousand Dollars ($300,000.00). Proviso contracted and paid Restore Restoration in 2013 for said services without concern, repudiation, dispute or a recorded Board vote, as was Proviso's customary practice for the repair and payment of losses covered by its property loss insurance.

14. Proviso was not prohibited by law from entering into contracts with professionals for loss mitigation, repairs and renovations to the School. Such contracts are not void *per se,* if approved by a board majority.

15. Restore Restoration was contacted by representatives of Proviso promptly after the Fire Loss and asked to provide emergency mitigation services to Proviso due to the fire. Restore was advised that Proviso would approve contracting with Restore Restoration to mitigate and remediate damage due to the fire and with Restore Construction to repair the property loss damage to the School.

16. Restore Restoration immediately provided emergency mitigation services to Proviso to mitigate the damage caused by the Fire Loss.

17. Proviso hired Legat Architects, Inc. ("Legat"), an Illinois corporation engaged in the business of providing professional architectural services, to prepare plans and work specifications for Proviso's fire damage renovations (the "Project Manual") and to act as contract administrator and/or for Proviso on the renovation project (the "Fire Loss Project").

18. On May 22, 2014, Collins-Hart signed two contracts, one with Restore Restoration to mitigate and remediate fire damage and the other contract with Restore Construction to repair the fire damaged School. Both contracts were signed by Collins-Hart and represented by her to be on behalf of Proviso. Copies of those executed contracts are attached hereto and made a part hereof as **Group Exhibit 1**.

19. In 2008, the Illinois State Board of Education found Proviso to be in financial difficulty and by resolution created and thereafter impaneled a Financial Oversight Panel ("FOP") to exercise financial control over Proviso under the Financial Oversight Panel Law. 105 ILCS 5/1H-5 et seq.

20. Todd Drafall ("Drafall") was hired as an employee of the FOP under Article 1H of the Illinois School Code from May 27, 2014 to June 30, 2016. He served as the FOP's Chief School Business Official for the District. He also held the position of Chief School Business Official for Proviso. In those dual capacities, he managed Proviso's fiscal and business activities to ensure financial health, cost-effectiveness, and protection of the District's assets. Affidavits of Todd Drafall, dated July 21, 2016 and October 5, 2016 are attached hereto and made a part hereof as **Group Exhibit 2**.

21. Drafall, pursuant to the Illinois School Code, Financial Oversight Panel Law and Proviso policy, was authorized to act on behalf of both the FOP and Proviso and was the dual agent of both.

22. On June 24, 2014, Legat published Proviso's Project Manual identified as Project Number IN14-0001 and titled, Fire Damage Renovations at Proviso East High School for the Board of Education Proviso Township High School District 209. The repair and renovation specifications ("Specifications") set out the responsibilities of all participants in the repairs of the Fire Loss,

including but not limited to Proviso, Legat, Restore and Travelers in their capacities as owner, architect, contractor and special consultants. The Project Manual is attached hereto and made a part hereof as **Exhibit 3**.

23. The Specifications prepared and issued by Legat incorporated at the direction of Proviso the statutory labor wage standards and rates that the Proviso Board adopted on June 10, 2014. Those Specifications and rates were never changed in the Project Manual throughout the repair work of the Fire Loss.

24. Collins-Hart, on July 9, 2014, affirmed the hiring of Legat by Proviso and the adoption of the published Specifications. Said Specifications lists the duties of Legat, including but not limited to, to review all Project submittals by contractor and subcontractors to architect, and, with Owner's (Proviso) concurrence, to respond to said requests and submittals.

25. Drafall attended Fire Loss Project construction meetings ("Construction Meetings"), in-person or via telephone conference or through a designee, on the remediation, restoration and repair of the Fire Loss in accordance the Specifications. Also, attending these Construction Meetings were Restore personnel, Proviso's Project Manager Ron Anderson ("Anderson"), Proviso's Buildings and Grounds Manager L. T. Taylor ("Taylor"), Legat, Gallagher Bassett Services, Inc. ("GBS"), Madsen Knepper and Associates, Inc. ("MKA"), Travelers and various subcontractors.

26. Drafall accepted and approved the following subcontracts, quotations, bids, sales orders, change orders and invoices as fair and reasonable for subcontracted work on the Project by signing or initialing them:

a. July 12, 2014 change order to base contract by subcontractor Prime Electric Co., Inc. in the amount of $17,750.00;

b. July 17, 2014 quotations (311489456 and 311469459) by subcontractor Tyco Simplex Grinnell LP in the amounts of $88,883.00 and $49,775.00, respectively;

c. July 18, 2014 sales order acknowledgment by subcontractor LaForce Inc. in the amount of $106,854.00;

d. July 22, 2014 revision to prime proposal #21360 by subcontractor Prime Electric Co., Inc. in the amount of $148,894.00;

e. July 23, 2014 invoice by subcontractor GMP Development, LLC in the amount of $422,840.00;

f. July 25, 2014 contract by subcontractor Final Touch Decorating Inc. in the amount of $132,000.00;

g. July 25, 2014 pricing by subcontractor O'Malley Construction Co. in the amount of $287,900.00;

h. July 25, 2014 change orders (CO-FA-001 and CO-8D-001) to contracts (979319401 and 979319501) by subcontractor Tyco Simplex Grinnell LP in the amounts of $21,018.00 and $9,816.00, respectively;

i. August 2, 2014 invoices (000124, 000125 and 000126) by subcontractor VK Construction Services, Inc., in the amounts of $11,692.08, $8,500.00 and $7,100.00, respectively;

j. August 7, 2014 contract by subcontractor ABM Janitorial Services Inc. in the amount of $30,605.00;

k. August 11, 2014 extra to prime contract #21316 by subcontractor Prime Electric Co., Inc. in the amount of $3,096.50;

l. September 22, 2014 quotation by subcontractor Kewaunee Scientific Corporation in the amount of $197,500.00; and

m. September 26, 2014 contract by subcontractor Capitol Glass & Architectural Metals, Inc. in the amount of $139,082.00.

27. Ron Anderson, Proviso's Project Manager executed and approved the following subcontractor bid and sales order as fair and reasonable at the direction of Drafall:

a. July 17, 2014 bid by subcontractor DePue Mechanical, Inc. in the amount of $312,500.00; and

b. July 21, 2014 sales order by subcontractor Better Blinds Inc. in the amount of $27,800.00.

28. Upon information and belief, L.T. Taylor, Proviso's Buildings and Grounds Manager executed and approved the following subcontractor invoices as fair and reasonable with Proviso's knowledge and consent:

a. July 30, 2014 invoice (91092) by subcontractor Service Drywall & Decorating Inc. in the amount of $62,900.00; and

b. July 30, 2014 invoices (9397 and 9437) by subcontractor Absolute Production Services Co. in the amounts of $6,000.00 and $9,560.00, respectively.

29. On August 12, 2014, Adams, then President of the Proviso Board, signed an Amended Agreement with Restore Construction to repair the fire damaged School. The Agreement signed by Adams was represented by him to be on behalf of Proviso. A copy of the executed Amended Agreement is attached hereto and made a part hereof as **Exhibit 4**.

30. Restore Restoration and Restore Construction, respectively, performed emergency mitigation work and repair work of Fire Loss damage to the School.

31. Restore Construction repaired and replaced Fire Loss damage sustained by Proviso in accordance Specifications prepared by Legat, as approved, adopted and implemented by Proviso for the repair of the Fire Loss, and utilized by its insurance carriers, including Travelers, to adjust the Fire Loss Project.

32. Legat reviewed submitted applications for contractor payment and issued Architect's Certificates for Payment based upon on-site observations and data reviewed, that certified, that "Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED."

33. Legat, during the course of all work under the Fire Loss Project, beginning with

Application No. 1, dated July 15, 2014, through Application No. 5, dated February 20, 2015, certified and distributed to Proviso, Restore and Proviso's Insurers each Architect's Certification For Payment it issued.

34. The Excess Property Policy issued by Travelers to Proviso, states, "in return for payment of the premium, the Company [Travelers] agrees with the Named Insured [Proviso] to provide the insurance afforded by this policy." After the loss payment of One Million Dollars ($1,000,000.00) by the underlying lead insurer, Travelers was responsible for the 100% share of the next One Billion Dollars ($1,000,000,000.00) of loss (the "Travelers Policy"). Policy Number KTK-XSP-545D521-1-13 is attached hereto and made a part hereof as **Exhibit 5**.

35. Restore was paid in part and expected to be paid in full for its Fire Loss Project work by and through the Travelers Policy.

36. GBS acted as a claims administrator on behalf of Travelers by issuing payments to Proviso and Restore from funds supplied by Traveler to GBS.

37. Michael Becich ("Becich"), a Senior Claims Adjuster, employed by GBS and assigned to Proviso's insurance claim, was the agent of and acted on behalf of GBS, CLIC, Proviso and Travelers.

38. On June 12, 2014, and again on June 17, 2014, Becich, on behalf of GBS, CLIC and Travelers, directed Restore that the chain of command on the Project was that "only GBS" was to deal and communicate with Travelers.

39. On June 13, 2014, Becich, on behalf of GBS, CLIC and Travelers, told Restore that Proviso was not the party paying Restore on the Fire Loss Project, rather payments were coming from GBS, CLIC and Travelers.

40. Travelers, at Construction Meetings, directly and through its agent, gave Restore

directives and demanded performance under the Specifications of the Project Manual prepared by Legat as Proviso's architect for the Fire Loss Project.

41. On June 26, 2014, during a Construction Meeting, conducted by conference call, attended by Proviso, GBS, MKA, and others, Michael Berlin of MKA stated that MKA would not authorize payment to Restore of prevailing wages under the Prevailing Wage Act, 820 ILCS 130.0.01, et seq. GBS, MKA, Proviso, CLIC and Travelers did approve prevailing wage payments to all of Restore's subcontractors whose employees were not mostly minorities. Restore, who employed mostly minorities on the Fire Loss Project, was denied reimbursement and/or payment of prevailing wages at the wage rates adopted by Proviso and paid to subcontractors by Proviso, CLIC and Travelers.

42. CLIC and Travelers accepted Legat and Proviso's Architect's Certifications For Payment for Fire Loss Project services performed by Restore, in accordance with adopted Specifications, and caused to be issued payment checks for Fire Loss work.

43. On or about the following dates, Proviso endorsed checks issued to it by its insurance carriers on the Fire Loss, including Travelers, by stamping the District's name on those checks listed below:

Date of Check	Payor	Payee	Check No.	Amount
07/01/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	110745066	$ 500,000.00
07/22/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396060	$1,448,708.38

07/30/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396068	$ 972,156.21
08/14/14	Gallagher Basset Serv, Inc. As Claims Administrator	Proviso Twnshp District 209 and Restore Restoration	105396081	$1,062,329.50
10/06/14	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	113098436	$ 331,109.83
03/06/15	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	116894025	$ 920,000.00
04/08/15	Gallagher Basset Services, Inc. For Collective Liability Insurance Cooperative	Proviso Twnshp District 209 and Restore Restoration	117740861	608,941.86
				$5,843,245.78

44. After Proviso's endorsements were affixed to the checks listed in paragraph 43 above, Proviso delivered the checks to Restore in payment for Fire Loss mitigation, remediation, restoration and repairs.

45. Check No. 113098436 in the amount of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83) was paid towards emergency mitigation and remediation services performed by Restore Restoration. Check and claim adjustment detail are attached hereto and made a part hereof as **Group Exhibit 6.**

46 Legat, on February 20, 2015, issued its cumulative Certificate for Payment certifying that Restore Construction had completed to date, Five Million Eight Hundred Sixteen Thousand Two Hundred Twenty-Three and 08/100 Dollars ($5,816,223.08) of work on the Fire

Loss Project. A copy of Application No. 5 Certificate is attached hereto and made a part hereof as **Exhibit 7**.

47. Proviso accepted the services and work performed by Restore described in **Exhibits 6 and 7** herein, once through Legat and again by its own business office, and authorized and delivered the payments detailed in paragraphs 43, 45 and 46 to Restore, as being fair and reasonable value for the services and work provided and completed.

48. Restore Construction was improperly credited with receiving the payment made to Restore Restoration of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83), in **Exhibit 6** herein, towards performed emergency mitigation and remediation services. As a result, Restore Construction only received Five Million Five Hundred Twelve Thousand One Hundred Thirty-Five and 95/100 Dollars ($5,512,135.95) of the Five Million Eight Hundred Sixteen Thousand Two Hundred Twenty-Three and 08/100 Dollars ($5,816,223.08) certified in **Exhibit 7** herein as completed, leaving a payment shortage of Three Hundred Four Thousand and Eighty-Seven and 13/100 Dollars ($304,087.13) to Restore Construction.

49. The total value of the mitigation, remediation and repairs performed by Restore Restoration and Restore Construction to the damage from the Fire Loss exceeds Seven Million Two Hundred Seventy-One Thousand and no/100 Dollars ($7,271,000.00). Restore Restoration was paid Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83). Restore Construction was paid Five Million Five Hundred Twelve Thousand One Hundred Thirty-Five and 95/100 Dollars ($5,512,135.95). An outstanding unpaid balance for performed services of approximately One Million Four Hundred Twenty-Eight Thousand Five Hundred Fifty-Three and 90/100 Dollars ($1,428,553.90) remains.

50. Legat, Proviso, CLIC and Travelers accepted the Fire Loss Project services performed by Restore, in accordance with adopted Specifications and their Fire Loss Project participation contracted with Proviso.

51. Drafall gave regular updates to the Proviso Board and/or to the FOP on the Fire Loss Project at meetings held on May 13, 2014, June 10, 2014, July 15, 2014, August 12, 2014, September 16, 2014, October 14, 2014, November 18, 2014, December 9, 2014, January 13, 2015, February 10, 2015, March 10, 2015 and May 12, 2015.

52. At the regular meeting of the Proviso Board held January 13, 2015, Drafall updated the Proviso Board that:

> "the general contractor of the fire project [Restore] informed the District that the fire damaged area was not ready on January 5, 2015 due to issues with the installer of the lab casework. The installer did not complete the installation in time thus pushing back work that would have followed installation. The general contractor explored multiple options to make up time but at this point in the process no option seemed viable. Terminating the subcontractor was not an option as the general contractor would have been starting from scratch and thus further delaying the project. With the holidays behind, the new anticipated date of completion is January 19, 2015."

53. Drafall, Anderson and Taylor reported to the Proviso Board on the progress of Proviso's Fire Loss Project. Drafall reported regularly to both the Proviso Board and the FOP on the progress of the Fire Loss Project, including actions taken by him, Anderson and Taylor. Neither the Proviso Board nor the FOP ever disapproved of any actions taken by Anderson, Taylor or Drafall on the Fire Loss Project. All actions of Drafall on the Fire Loss Project were accepted by both the Proviso Board and FOP, and were within the scope of Drafall's authority.

54. The Proviso Board participated in the Project by its actions, including but not limited to having its school employees, Legat and other hires attend Construction Meetings and report back to it.

55. No less than a majority of the Proviso Board knew and informally approved that Restore provide mitigation, remediation, restoration and repairs to the School.

56. Proviso, by and through its school counsel, Scott A. Hadala of the Del Galdo Law Group, LLC, opined in 2015 that "the District signed a contract with Restore understanding that Restore would do the work for what the insurance company agreed to reimburse for the project." Correspondence between Restore's legal counsel and Proviso's school counsel, dated June 1, 2015, July 7, 2015 and September 1, 2015 is attached hereto and made a part hereof as **Group Exhibit 8**.

57. Restore performed Fire Loss mitigation, remediation, restoration and repairs to the School.

58. Restore was not paid for all services it performed and materials it provided in mitigation, remediation, restoration and repairs to the School.

59. Restore paid Fire Loss Project workers statutory prevailing wages in accordance with Proviso's June 10, 2014 vote approving mandatory prevailing wage standards and rates for construction work in the Cook County, Illinois area, as set by statute and incorporated into the Specifications prepared by Legat. The Specifications and prevailing wages therein, during all times relevant hereto, were never amended or withdrawn by Legat and Proviso. Restore was not fully repaid for wages it paid pursuant to the Specifications, Proviso's formally adopted resolution on prevailing wages and Illinois' Prevailing Wage Act .

60. Legat, CLIC, GBS, MKA, Restore and Defendants Proviso and Travelers believed that there were enforceable work contracts between Restore and Proviso for the mitigation, remediation, renovation and repair of the Fire Loss covered by the Travelers Policy, each and all were mutually mistaken. Whereas, the Proviso Board had failed to properly approve

Restores' contracts, despite approving and accepting provided mitigation, remediation, restoration and repairs to the School for which all of them knew Restore was expecting full payment.

61. The last day that Restore performed work on the Fire Loss was July 3, 2015.

RESTORE CONSTRUCTION, INC.
COUNT I
QUANTUM MERUIT (PROVISO)[2]

As and for this Count I of its Third Amended Complaint, Restore Construction complains against Proviso and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count I, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* is an available remedy against a municipality and other public bodies.

63. Restore Construction performed renovation and repair work and provided labor, materials and supplies under the Fire Loss Project to the benefit of Proviso.

64. The work performed and the materials and supplies provided by Restore benefited Proviso by repairing Fire Loss damage, readying the School to the extent necessary to safely re-open on-time for the student school year 2014-2015, and making permanent and valuable improvements to the School.

65. Restore Construction did not perform the work gratuitously, and expected to be compensated for the value of its work.

66. Proviso knew Restore expected payment and with such knowledge accepted the work performed and the materials and supplies provided by Restore on the Fire Loss Project.

[2] Formerly Count VI of the SAC.

67. The Proviso Board knew and approved that Restore was providing restoration and repairs to the School, and expected payment.

68. Though a majority of Board Members knew and approved of the hiring of Restore, there was no recorded vote and no contract between Proviso and Restore.

69. At all times relevant herein, Proviso believed that there were enforceable work contracts between it and Restore Construction.

70. Proviso failed to properly approve Restores' contracts, despite approving and accepting the restoration and repairs made to the School by Restore.

71. Restore has not been paid for and given reasonable value for all work it performed, from which Proviso received benefit.

72. Restore Construction did not receive the payment of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83) earmarked by insurance for Restore Restoration. This resulted in a payment shortage to Restore Construction of Three Hundred Four Thousand and Eighty-Seven and 13/100 Dollars ($304,087.13). Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $304,087.14 without payment to Restore Construction.

73. Restore Construction did not receive payment for work yet to be finished described in **Exhibit** 7 herein that was subsequently completed by Restore in the amount of Four Hundred Eight-Four Thousand Five Hundred Thirty-Three and 68/100 Dollars ($484,533.68). Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $484,533.68 without payment to Restore Construction.

74. Restore Construction did not receive payment for work completed in the amount of Four Hundred Fifty-Three Thousand Four Hundred Seventy-Seven and 21/100 Dollars

($453,477.21) that came after **Exhibit 7** and was not reflected on the February 20, 2015 Payment Application No. 5 Certificate. Proviso has benefited and been unjustly enriched by receiving the reasonable value of this completed work of $453,477.21 without payment to Restore Construction.

75. The fair and reasonable value for the work that Restore Construction performed and completed for Proviso and for which Restore has not been paid is in the amount of One Million Two Hundred Forty-Two Thousand Ninety-Eight and 02/100 Dollars ($1,242,098.02).

WHEREFORE, the Plaintiff, RESTORE CONSTRUCTION, INC., respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in *quantum meruit* in the amount of One Million Two Hundred Forty-Two Thousand Ninety-Eight and 02/100 Dollars ($1,242,098.02), and for any other relief this Honorable Court deems just and proper. Or, in the alternative, direct Defendant to submit same for review and payment under the Travelers Policy.

RESTORE RESTORATION, INC.
COUNT II
QUANTUM MERUIT (PROVISO)[3]

As and for this Count II of its Third Amended Complaint, Restore Restoration complains against Proviso and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count II, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* is an available remedy against a municipality and other public bodies.

[3] Formerly Count XIV of the SAC.

63. Restore Restoration performed emergency mitigation and remediation work to the Fire Loss to the benefit of Proviso.

64. The work performed and the materials and supplies provided by Restore benefited Proviso by mitigating and remediating the Fire Loss damage to the School and readying the School to the extent necessary to safely re-open on-time for the student school year 2014-2015.

65. Restore Restoration did not perform the work gratuitously, and expected to be compensated for the value of its work.

66. Proviso knew Restore expected payment and with such knowledge accepted the work performed and the materials and supplies provided by Restore on the Fire Loss.

67. The Proviso Board knew and approved that Restore was providing mitigation and remediation of Fire Loss damage to the School, and expected payment.

68. Though a majority of Board Members knew and approved of the hiring of Restore, there was no recorded vote and no contract between Proviso and Restore.

69. At all times relevant herein, Proviso believed that there was an enforceable work contract between it and Restore Restoration.

70. Proviso failed to properly approve Restore Restoration's contract, despite approving and accepting the restoration and repairs made to the School by Restore Restoration.

71. Restore Restoration has not been paid for and given reasonable value for all work it performed, from which Proviso received benefit.

72. Restore Restoration billed Proviso Five Hundred Seventeen Thousand Five Hundred Sixty-Five and 71/100 Dollars ($517,565.71) for performed emergency services.

73. Restore Restoration received a partial payment of Three Hundred Thirty-One Thousand One Hundred Nine and 83/100 Dollars ($331,109.83). See, **Group Exhibit 6.**

74. Restore Restoration did not receive payment for work completed in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

75. Proviso has benefited and been unjustly enriched by receiving the reasonable value of this work of $186,455.88 without payment.

76. The fair and reasonable value for the work that Restore Restoration performed for Proviso and for which Restore Restoration has not been paid is in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88).

WHEREFORE, the Plaintiff, RESTORE RESTORATION, INC. respectfully requests that this Honorable Court enter judgment in its favor and against Defendant The School Directors of Proviso Township High School District 209, in *quantum meruit* in the amount of One Hundred Eighty-Six Thousand Four Hundred Fifty-Five and 88/100 Dollars ($186,455.88), and for any other relief this Honorable Court deems just and proper. Or, in the alternative, direct Defendant to submit same for review and payment under the Travelers Policy.

RESTORE CONSTRUCTION, INC. and RESTORE RESTORATION, INC.
COUNT III (in the alternative to Counts I and II)
QUANTUM MERUIT (TRAVELERS)

As and for this Count III of its Third Amended Complaint, Restore Construction, Inc. and Restore Restoration, Inc. complain against Travelers and states:

1-61. Paragraphs 1-61 of this Third Amended Complaint are here incorporated as Paragraphs 1-61 of this Count III, respectively, and they are hereby made a part hereof.

62. *Quantum meruit* recovery is an available remedy available against Travelers.

63. Travelers insured the property loss of its insured, Proviso under the Travelers Policy.

64. Under the Travelers Policy, Proviso could elect to either take a lump sum

COMMON LAW RECORD – TABLE OF CONTENS

CASE NO. 125133

IN THE
ILLINOIS SUPREME COURT

RESTORE CONSTRUCTION COMPANY, INC. and RESTORE RESTORATION, INC. Plaintiffs-Appellees, v. THE BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209, NETTIE-COLLINS-HART, DANIEL J. ADAMS, TRAVELERS INDEMNITY COMPANY, GALLAGHER BASSETT SERVICES, INC., MADSEN KNEPPERS AND ASSOCIATES, INC., and COLLECTIVE LIABILITY INSURANCE COOPERATIVE, Defendants, (The Board of Education of Proviso Township High Schools District 209, Defendant-Appellant.)	)	On Appeal from the Illinois Appellate Court, First District, Case No. 1-18-1580 There Heard on Appeal from the Circuit Court of Cook County, Illinois County Department, Law Division Case No. 2015 L 010904 Hon. Bridgid Mary McGrath, Presiding

NOTICE OF FILING AND CERTIFICATE OF SERVICE

The undersigned, being first duly sworn, deposes and states that on October 30, 2019, there was electronically filed and served upon the Clerk of the Illinois Supreme Court the DEFENDANT-APPELLANT BOARD OF EDUCATION OF PROVISO TOWNSHIP HIGH SCHOOLS DISTRICT 209'S BRIEF and that on the same day it was provided to the attorney noted below by placing the same in a pre-paid properly addressed envelope and placing the same

in a U.S. Postal Box in Olympia Fields, and by also sending a copy of the same by email transmission to the email address set forth below.

Michael W. Rathsack
10 S. LaSalle Street
Suite 1420
Chicago, IL 60603
mrathsack@rathsack.net

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/*William F. Gleason*
William F. Gleason

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