

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

STATE EX REL.)	
WOODRIDGE LOCAL SCHOOLS)	CASE NO.
4411 Quick Road)	
Peninsula, Ohio 44264)	
)	
and)	
)	
CUYAHOGA FALLS CITY)	
SCHOOL DISTRICT)	
431 Stow Avenue)	
Cuyahoga Falls, OH 44221)	
)	
and)	
)	
CITY OF DAYTON PUBLIC)	
SCHOOLS)	
115 S. Ludlow Street)	<u>COMPLAINT FOR RECOVERY</u>
Dayton, OH 45402)	<u>OF FRAUDULENT TRANSFERS</u>
)	<u>UNDER O.R.C. §§ 1336.04(A)(2)</u>
and)	<u>AND 1336.05(A)</u>
)	
LOGAN HOCKING LOCAL)	
SCHOOL DISTRICT)	
2019 East Front Street)	<u>JURY DEMAND ENDORSED</u>
Logan, OH 43138)	<u>HEREON</u>
)	
and)	
)	
SPRINGFIELD CITY SCHOOL)	
DISTRICT)	
1500 W. Jefferson Street)	
Springfield, OH 45506)	
)	
and)	
)	

LAKE LOCAL SCHOOL)
DISTRICT)
28090 Lemoyne Road)
Millbury, OH 43447)
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and)
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TOLEDO CITY SCHOOL)
DISTRICT)
1609 N. Summit St.)
Toledo, OH 43604)
))
and)
))
NORTHERN LOCAL SCHOOL)
DISTRICT)
8700 Sheridan Road NW)
Thornville, OH 43076)
))
Plaintiffs,)
))
vs.)
))
FACEBOOK PAYMENT INC.)
c/o CSC - Lawyers Incorporated)
Service)
50 West Broad Street, Suite 1800)
Columbus, Ohio 43215)
))
Defendant.)

For their Complaint against Defendant Facebook Payment Inc., Plaintiffs
Woodridge Local Schools, Cuyahoga Falls City School District, City of Dayton Public
Schools, Logan Hocking Local School District, Springfield City School District, Lake
Local School District (Wood County), Toledo City School District and Northern Local
School District (collectively, the "School Districts") hereby allege and state as follows:

1. Plaintiffs Woodridge Local Schools and Cuyahoga Falls City School District are public school districts located in Summit County, Ohio.
2. Plaintiff City of Dayton Public Schools is a public school district located in Montgomery County, Ohio.
3. Plaintiff Logan Hocking Local School district is a public school district located in Hocking County, Ohio.
4. Plaintiff Springfield City School District is a public school district located in Clark County, Ohio.
5. Plaintiff Lake Local School District is a public school district located in Wood County, Ohio.
6. Plaintiff City of Toledo School District is a public school district located in Lucas County, Ohio.
7. Plaintiff Northern Local School District is a public school district located in Perry County, Ohio.
8. Defendant Facebook Payment Inc. is a Florida corporation which does business in Ohio.
9. This Court has jurisdiction over this action pursuant to O.R.C. §§ 2305.01 and 2307.382.
10. Venue is proper in Summit County pursuant to Ohio Rule of Civil Procedure 3(B)(3) and (6).
11. This is an action for avoidance of transfers under the fraudulent transfer statutes of Ohio. Defendant Facebook received more than \$200,000 in payments from a

community school at the same time the school was experiencing several financial problems. Not only did Facebook did not provide reasonably equivalent value in exchange for these payments, it knew about the significant problems the community school was facing at the time it accepted the payments.

12. A “community school” is a school created by a contract between a “governing authority and a supervisory entity known as a “sponsor” and is commonly referred to in Ohio as a charter school. O.R.C. Chapter 3314.
13. The Electronic Classroom of Tomorrow (“ECOT”) was an Ohio community school which operated from 2000 until its operations were suspended in January 2018.
14. ECOT was a kindergarten through 12th grade community school which functioned fully online. ECOT had students in all of Ohio’s 88 counties.
15. Ohio’s community schools are funded with two types of public monies: a) State operating funds; and b) Federal grant funds.
16. The state operating funds which community schools receive are transferred from the traditional school districts where the community schools’ students reside.
17. Every dollar of state funding which ECOT received came from other Ohio School Districts, including the Plaintiffs.
18. ECOT received a set amount of state operating funds for each 920 hours of instruction in which its students participate. Each unit of 920 hours is known as a “full time equivalency,” or FTE. A community school obtains those funds by

submitting monthly enrollment reports to the Ohio Department of Education (“ODE”).

19. ODE periodically reviewed ECOT’s records in order to document ECOT’s entitlement to the amount of state operating funds transferred to ECOT. This review process is referred to as an FTE review.
20. In 2016 ODE conducted an FTE review of ECOT for the 2015-2016 school year, and determined that ECOT could not document any basis for 58.8% of the payments ECOT had requested and received from ODE pursuant to O.R.C. § 3314.08. ODE determined that ECOT must return those funds.
21. ODE also conducted a FTE Review of ECOT for the 2016-17 school year and determined that ECOT could not document any basis for 18.5% of the payments it had requested and received from ODE pursuant to O.R.C. § 3314.08. ODE determined that ECOT must return those funds.
22. ECOT appealed ODE’s 2015-16 and 2016-17 FTE reviews. These appeals were exhaustively litigated.
23. On May 10, 2017 a state hearing officer issued a report and recommendation concluding that ECOT was unable to document bases for between \$60,054,630 and \$64,054,630 of state funds it had received in 2015-16.
24. The State Board of Education subsequently determined that ECOT must return \$60,350,791 of the state operating funds ECOT had received during the 2015-16 school year. *See* Exh. 1, attached hereto.

25. In January of 2018 a state hearing officer issued a report and recommendation concluding that ECOT was unable to document bases for between \$19,295,957.70 of state funds it had received in 2016-17.
26. The State Board of Education subsequently determined that ECOT must return \$19,234,109.11 of the state operating funds ECOT received during the 2016-17 school year. *See* Exh. 2, attached hereto.
27. ODE began enforcing the State Board of Education's findings against ECOT in July of 2017 by reducing state operating funds otherwise payable to ECOT and ECOT began experiencing financial difficulties.
28. ECOT's monthly state funding was reduced by approximately \$2.5 million starting in July of 2017.
29. ECOT's state sponsor, the Educational Service Center of Lake Erie West, suspended ECOT's operations pursuant to O.R.C. § 3314.072, effective January 19, 2018.
30. On January 11, 2018, ECOT's sponsor filed an action for appointment of a receiver to protect ECOT's assets. In response to this motion a special master was appointed for ECOT on January 24, 2018.
31. For the fiscal year ending June 30, 2017, ECOT's liabilities far exceeded its assets.
32. Between 2012 and ECOT's January of 2018 suspension of operations, \$1,484,453 in monies that otherwise should have gone to the Logan Hocking Schools were sent to ECOT.

33. Between 2012 and ECOT's January of 2018 suspension of operations, more than \$20,000,000 in monies that otherwise should have gone to the Dayton Public Schools were sent to ECOT.
34. Between 2012 and ECOT's January of 2018 suspension of operations, more than \$3,655,897.98 in monies that otherwise should have gone to the Springfield Public Schools were sent to ECOT.
35. Between 2004 and ECOT's January of 2018 suspension of operations, more than \$440,000 in monies that otherwise should have gone to the Lake Local Schools were sent to ECOT.
36. Between 2012 and ECOT's January of 2018 suspension of operations, more than \$9,123,797.36 in monies that otherwise should have gone to the Toledo Public Schools were sent to ECOT.
37. Between 2002 and ECOT's January of 2018 suspension of operations, more than \$3,367,668 in monies that otherwise should have gone to the Northern Local Schools were sent to ECOT.
38. Cuyahoga Falls City Schools also lost money from state operating funds that were sent to ECOT instead.
39. Between 2003 and ECOT's January of 2018 suspension of operations, more than \$660,557.04 in monies that otherwise should have gone to the Woodridge Local Schools were sent to ECOT instead.
40. O.R.C. § 3314.074(A) governs the distributions of assets of a closed community school and provides that the assets be distributed first to retirement funds to

employees of the school, then to school employees, then to private creditors, and then to ODE for “redistribution to school districts in which the students who were enrolled in the school at the time it ceased operation were entitled to attend school” in an amount proportional to the district’s share of the total enrollment in the community school.

41. This action is brought in order to have ODE redistribute monies, pursuant to O.R.C. § 3314.074(A), to school districts which had students enrolled in ECOT at the time it closed, including the Plaintiffs.

42. This is an action for avoidance of payments made to Facebook Payment Inc. pursuant to the fraudulent transfer statutes of Ohio.

43. In 2016 Facebook was paid at least \$92,903.61 by ECOT.

44. In 2017 Facebook was paid at least \$150,000 by ECOT.

45. In making these payments to Facebook, ECOT transferred an interest in its property in return for which it did not receive reasonably equivalent value. At the time that these payments to Facebook were made, ECOT was insolvent. Consequently, Plaintiffs seek avoidance of the payments made to Facebook in 2016 and 2017.

46. Absent relief from this Court, the Plaintiffs will be unable to recover monies owed.

47. On March 28, 2019, the Plaintiffs verbally asked the Attorney General to pursue these claims, and the Attorney General’s office requested that the Plaintiff make this request in writing. On March 29, 2019, the Plaintiffs complied with this

request and made a written request to the Attorney General that these fraudulent transfer claims be pursued.

48. The Attorney General has not pursued any fraudulent transfer claims against Facebook.

COUNT ONE
(FRAUDULENT TRANSFER UNDER O.R.C. § 1336.04(A)(2))

49. The Plaintiffs incorporate by reference the contents of all preceding paragraphs in this Complaint.

50. The transfers to Facebook described above were made without receiving a reasonably equivalent value in exchange for the transfer.

51. In making the transfers to Facebook ECOT was engaged in business or transactions for which its remaining assets were unreasonably small in relation to the business or transaction or ECOT believed or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

52. The transfers to Facebook were fraudulent under O.R.C. § 1336.04(A)(2).

53. As a direct and proximate result of these fraudulent transfers, pursuant to O.R.C. § 3314.074, ODE, and therefore the Plaintiffs, have been damaged in an amount exceeding \$200,000 and are entitled to a judgment against Facebook in that amount, and any other relief that the circumstances may require.

54. The fraudulent transfers to Facebook were willful, malicious, and done in conscious disregard of the rights of public school districts in Ohio, making an award of punitive damages against Facebook appropriate.

COUNT TWO
(FRAUDULENT TRANSFER UNDER O.R.C. § 1336.05(A))

55. The Plaintiffs incorporate by reference the contents of all preceding paragraphs in this Complaint.

56. Plaintiffs' claims arose before the transfers to Facebook described above.

57. ECOT made the transfers to Facebook described above without receiving a reasonably equivalent value in exchange for the transfer.

58. ECOT was insolvent at the time of the transfers to Facebook described above.

59. The transfers to Facebook were fraudulent pursuant to O.R.C. § 1336.05(A).

60. As a direct and proximate result of these fraudulent transfers, pursuant to O.R.C. § 3314.074, ODE, and therefore the Plaintiffs, have been damaged in an amount exceeding \$150,000 and are entitled to a judgment against Facebook in that amount and any other relief that the circumstances may require.

61. The fraudulent transfers to Facebook were willful, malicious, and done in conscious disregard of the rights of public school districts, making an award of punitive damages appropriate.

WHEREFORE, the Plaintiffs, on behalf of ODE and pursuant to O.R.C. § 3314.074, respectfully request the following relief:

- A. An award of compensatory damages against Facebook in an amount to be determined at trial;
- B. An award of punitive damages against Facebook in an amount to be determined at trial;

- C. Avoidance of the transfers to the extent necessary to satisfy the judgment;
- D. Post-judgment interest at the statutory rate;
- E. Attorney's fees and costs; and
- F. Any other relief the Court determines the circumstances require.

Respectfully submitted,
COHEN ROSENTHAL & KRAMER LLP

/s/ Ellen M. Kramer

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Counsel for Plaintiffs

JURY DEMAND

The Plaintiffs demand a trial by jury of all eligible claims and issues.

/s/ Ellen M. Kramer

Ellen M. Kramer

NOW, THEREFORE, BE IT RESOLVED that the State Board of Education hereby denies the student's right to participate in the program as a result of the student's failure to notify the district of her intention to participate by April 3, 2017, finding that the delay should prevent the student from participating, and that questions concerning the student's prospective participation in college credit plus program based upon failure to comply with the April 3, 2017 deadline should be resolved in favor of the school district; and Be It

FURTHER RESOLVED that the Superintendent of Public Instruction be, and he hereby is, directed to notify the principal of North Royalton High School, and the student of this action.

It was Moved by Ms. Fowler and Seconded by Mrs. McGuire that the above recommendation (Item 4) be approved.

President Elshoff called for a roll call vote.

YES VOTES

Pat Bruns
Joe Farmer
Sarah Fowler
Nancy Hollister
Laura Kohler
Charlotte McGuire
Kara Morgan
Lisa Woods

Stephanie Dodd
Cathye Flory
Linda Haycock
Meryl Johnson
Martha Manchester
Antoinette Miranda
Eric Poklar

NO VOTES

Nick Owens

Tess Elshoff

ABSTAIN

Rebecca Vazquez-Skillings

Motion carried.

President Elshoff presented the following recommendation (Item 5):

5. **RESOLUTION TO ACCEPT THE DECISION OF THE HEARING OFFICER IN ELECTRONIC CLASSROOM OF TOMORROW'S APPEAL PURSUANT TO O.R.C. 3314.08(K)(2).**

I **RECOMMEND** that the State Board of Education **ADOPT** the following Resolution:

WHEREAS, Section 3314.08(H) of the Ohio Revised Code sets forth a process for the Department to review the full-time equivalent (FTE) student funding that a community school has claimed and received for a given academic year; and

EXHIBIT

1

Section 3314.08(K) provides that the Department shall complete such an FTE review of a community school and issue its findings within ninety days of the end of the community school's fiscal year; and

Section 3314.08(K)(2) provides that if the Department determined that an overpayment was made to the community school, the community school may appeal the Department's FTE determination; and

On September 26, 2016, the Department issued its FTE determination to Electronic Classroom of Tomorrow ("ECOT") finding that overpayment was made to ECOT for the 2015-2016 school year; and

Electronic Classroom of Tomorrow (ECOT) timely appealed the Department's FTE determination on October 11, 2016; and

The matter was referred to a hearing officer on October 18, 2016 for an informal hearing; and

The informal hearing occurred on December 5, 6, 7, 8, 9, 13 and 23, 2016 and January 12 and 19, 2017 and February 1, 2017; and

The hearing officer heard testimony and received exhibits introduced during the hearing; and

The hearing officer issued his decision on May 10, 2017 based on the testimony and exhibits introduced at the hearing; and

ECOT timely submitted objections to the hearing officer's decision on May 22, 2017; and

ECOT timely submitted an executive summary of its objections on May 30, 2017; and

The Department timely responded to ECOT's objections on May 30, 2017; and

The State Board of Education has reviewed the hearing officer's decision, the objections submitted by ECOT, and the Department's response to ECOT's objections.

NOW, THEREFORE, BE IT RESOLVED that the State Board of Education, based on its review of the hearing officer's decision and ECOT's objections thereto, hereby accepts the hearing officer's decision and finds that ECOT received an overpayment of \$64,054,630 and directs the Department to take such measures as are necessary to collect the overpayment from ECOT; and Be It

FURTHER RESOLVED that the Superintendent of Public Instruction be, and he hereby is, directed to notify ECOT and its sponsor the Educational Service Center of Lake Erie West of this resolution.

It was Moved by Mrs. Flory and Seconded by Mrs. Kohler that the above recommendation (Item 5) be approved.

Representative Brenner asked why the higher of the two amounts was brought forth. Mrs. Flory responded that she felt the children and taxpayers were cheated and ECOT should pay the amount back.

Ms. Johnson stated that she was under the impression the lesser amount was given after additional information was presented.

Dr. Morgan called the question.

Ms. Fowler Moved to amend the resolution by Substitution. She Moved to change the overpayment amount to 60,350,791. Mrs. Haycock Seconded the motion. Ms. Fowler stated this is the recommendation of the Hearing Officer that she read and supported.

President Elshoff called for a roll call vote on the proposed amendment.

YES VOTES

Joe Farmer
Linda Haycock
Laura Kohler
Charlotte McGuire
Kara Morgan
Eric Poklar
Lisa Woods

Sarah Fowler
Meryl Johnson
Martha Manchester
Antoinette Miranda
Nick Owens
Rebecca Vazquez-Skillings
Tess Elshoff

NO VOTES

Pat Bruns
Cathye Flory

Stephanie Dodd
Nancy Hollister

Motion carried.

President Elshoff called for a roll call vote on the resolution as amended.

YES VOTES

Stephanie Dodd
Cathye Flory
Linda Haycock
Meryl Johnson
Martha Manchester
Antoinette Miranda
Nick Owens
Rebecca Vazquez-Skillings

Joe Farmer
Sarah Fowler
Nancy Hollister
Laura Kohler
Charlotte McGuire
Kara Morgan
Eric Poklar
Tess Elshoff

NO VOTES

Pat Bruns

ABSTAIN

Lisa Woods

Motion carried.

Charlotte McGuire
Kara Morgan
Eric Poklar
Lisa Woods

Antoinette Miranda
Nick Owens
Jimmy Sheppard
Tess Elshoff

Motion carried.

VOTING ON THE REPORT & RECOMMENDATIONS OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

President Elshoff called on Superintendent DeMaria for his report and recommendations.

President Elshoff presented the following recommendations (Items 1-2):

1. RESOLUTION TO ACCEPT THE DECISION OF THE HEARING OFFICER IN ELECTRONIC CLASSROOM OF TOMORROW'S APPEAL PURSUANT TO OHIO REVISED CODE 3314.08(K)(2).

The State Board of Education hereby **ADOPTS** the following Resolutions:

Section 3314.08(H) of the Ohio Revised Code (ORC) sets forth a process for the Department to review the full-time equivalent (FTE) student funding that a community school has claimed and received for a given academic year;

ORC Section 3314.08(K) provides that the Department shall complete such an FTE review of a community school and issue its findings within ninety days of the end of the community school's fiscal year;

ORC Section 3314.08(K)(2) provides that if the Department determined that an overpayment was made to the community school, the community school may appeal the Department's FTE determination;

On September 28, 2017, the Department issued its FTE determination to Electronic Classroom of Tomorrow ("ECOT") finding that overpayment was made to ECOT for the 2016-2017 school year;

ECOT timely appealed the Department's FTE determination on October 12, 2017;

The matter was referred to a hearing officer on October 18, 2017 for an informal hearing;

The informal hearing occurred on December 4, 5 and 11, 2017 and during that hearing, the hearing officer heard testimony and received exhibits that were introduced;

The hearing officer issued his decision on January 22, 2018 based on the testimony and exhibits introduced at the hearing;

ECOT timely submitted its objections on January 30, 2018 and the Department has responded to such objection; and

EXHIBIT

2

The State Board of Education has reviewed the hearing officer's decision, the objections submitted by ECOT, and the Department's response to the objections.

NOW, THEREFORE, BE IT RESOLVED that the State Board of Education, based on its review of the hearing officer's decision, ECOT's objections, and the Department's response to the objections, hereby accepts the hearing officer's decision and finds that ECOT received an overpayment of 18.5 percent but modifies the hearing officer's report and recommendation to reflect the amount of the overpayment of \$19,234,109.11 and directs the Department to take such measures as are necessary to collect the overpayment from ECOT; and

FURTHER RESOLVED that the Superintendent of Public Instruction be, and he hereby is, directed to notify ECOT and its sponsor the Educational Service Center of Lake Erie West of this resolution.

It was Moved by Mr. Owens and Seconded by Ms. Johnson that the above recommendation (Item 1) be approved. Mr. Owens spoke in favor of the resolution.

President Elshoff called for a roll call vote.

YES VOTES

Pat Bruns
Cathye Flory
Nancy Hollister
Laura Kohler
Charlotte McGuire
Kara Morgan
Eric Poklar
Tess Elshoff

Stephanie Dodd
Linda Haycock
Meryl Johnson
Martha Manchester
Antoinette Miranda
Nick Owens
James Sheppard

ABSTAIN

Lisa Woods

Motion carried.

**2. RESOLUTION TO ACCEPT THE DECISION OF THE HEARING OFFICER
IN CINCINNATI CITY SCHOOL DISTRICT'S APPEAL PURSUANT TO
OHIO REVISED CODE 3314.16**

The State Board of Education hereby **ADOPTS** the following background information and resolutions:

Ohio Revised Code 3314.16(B) sets forth a process for the Department to annually rate and assign an overall rating to entities that sponsor community schools;

ORC 3314.16(B)(7)(c) provides that community school sponsors rated poor have their sponsorship authority revoked as a matter of law, subject to a right to appeal;