

[Cite as *Cordray v. Internatl. Preparatory School*, 2009-Ohio-2364.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 91912**

---

**RICHARD CORDRAY,  
OHIO ATTORNEY GENERAL, ET AL.**

PLAINTIFFS-APPELLEES

vs.

**THE INTERNATIONAL  
PREPARATORY SCHOOL, ET AL.**

DEFENDANTS

**Appeal by:**

**ESTATE OF DA'UD MALIK SHABAZZ, ET AL.**

DEFENDANTS-APPELLANTS

---

**JUDGMENT:  
AFFIRMED IN PART; REVERSED  
IN PART AND REMANDED**

---

Civil Appeal from the  
Cuyahoga County Common Pleas Court  
Case No. CV-575404

**BEFORE:** Sweeney, J., Stewart, P.J., and Boyle, J.

**RELEASED:** May 21, 2009

**JOURNALIZED:**

**ATTORNEYS FOR APPELLANTS**

Brett E. Horton  
Earle C. Horton  
Horton & Horton Co., L.P.A.  
1410 Tower at Erieview  
1301 East Ninth Street  
Cleveland, Ohio 44114-1817

**ATTORNEYS FOR APPELLEES OHIO ATTORNEY GENERAL  
AND OHIO DEPARTMENT OF EDUCATION**

Nancy H. Rogers  
Attorney General of Ohio  
BY: Todd R. Marti  
Assistant Attorneys General  
Education Section  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

**ALSO LISTED**

**For The International Preparatory School and Receiver Hilary Taylor**

Donald N. Jaffe, Esq.  
Weston Hurd, L.L.P.  
1900 The Tower at Erieview  
1301 East 9<sup>th</sup> Street  
Cleveland, Ohio 44114-1862

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme

Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendants-appellants, Estate of Da'ud Abdul Malik Shabazz ("Da'ud") and Hasina Shabazz ("Hasina"),<sup>1</sup> appeal from the trial court's decision that granted plaintiffs-appellees, the Ohio Attorney General<sup>2</sup> ("OAG") and the Ohio Department of Education's ("ODE"), motion for summary judgment and held the defendants personally liable in the amount of \$1,407,983 plus interest, for overpayments made to The International Preparatory School ("TIPS"), an Ohio non-profit corporation organized under Chapter 1702 of the Ohio Revised Code. For the reasons that follow, we affirm in part, reverse in part and remand for further proceedings.

{¶ 2} The undisputed facts of this case include that TIPS was an Ohio non-profit corporation, which operated as a community school under Chapter 3314 of the Ohio Revised Code until it closed in October 2005. TIPS entered into a Community School Contract with its state-approved sponsor, Lucas County Educational Service Center ("LCESC"). The OAG petitioned the trial court for a temporary restraining order along with its verified complaint against TIPS on

---

<sup>1</sup>Collectively referred to herein as "defendants."

<sup>2</sup>The original caption of this case was "*Marc Dann, Ohio Attorney General, et al. v. The International Preparatory School, et al.* In accordance with App.R. 29(C), the court substitutes Richard Cordray, the present Attorney General, for Marc Dann.

October 20, 2005. In the verified complaint, OAG averred that “TIPS’ directors passed a resolution on October 17, 2005 terminating its contract with LCESC, thereby terminating its status as a community school.” (Verified Complaint at ¶7.) OAG further averred that “R.C. 3314.072(C) provides that assets of a defunct and insolvent community school should be distributed pursuant to R.C. chapter 1702.” Id. at ¶10.

{¶ 3} The trial court appointed a receiver in January 2006 to oversee the closure and distribution of the assets pursuant to R.C. 3314.074 and Chapter 1702. Sometime later, the Auditor of the State of Ohio (“AOS”) completed an audit of TIPS. Relevant to this appeal, the AOS audit issued a “Finding of Recovery” as follows:

{¶ 4} “The School permanently closed and ceased its operation as a community school in October 2005. Between July 1, 2004 and October 18, 2005, the School was over funded by the Ohio Department of Education in the amount of \$1,407,983, which was deposited into the School’s account. The Ohio Department of Education calculated the amount overpaid for the year end[ing] June 30, 2005 was \$361,446 and for the year end[ing] June 30, 2006 was \$1,046,537. Since the School was not eligible for these funds, the funds were due the Ohio Department of Education and should have been returned.

{¶ 5} “In accordance with the foregoing facts, and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public funds due the State that has not been remitted is hereby issued against The International Preparatory

School, Hasina Shabazz, Treasurer and the Estate of Da'ud Abdul Malik, Chairman of the Board of Trustees, jointly and severally, and in favor of the Ohio Department of Education in the amount of \$1,407.983.” (R. 129, Ex. A.)

{¶ 6} After receiving the AOS audit, the OAG requested and was granted leave to file an amended complaint, which added the Shabazzes as party defendants. The amended complaint identifies Da'ud as the chairman of the governing authority for TIPS and Hasina as the treasurer for TIPS. The OAG based its claims against the defendants upon the above-quoted finding for recovery made in the AOS audit. Neither the amended complaint nor the AOS audit make any specific allegations of any wrongdoing by either Da'ud or Hasina with regard to the over funding received by TIPS from ODE.<sup>3</sup> The defendants answered the amended complaint and asserted it failed to state a claim upon which relief could be granted against them individually.

{¶ 7} Both parties moved for summary judgment. OAG moved for judgment maintaining the AOS's finding of recovery provided “prima facie evidence” pursuant to R.C. 117.36 of the validity of their claims under R.C. 117.28 against the defendants and TIPS. TIPS did not respond. The defendants invoked the principle that shareholders, officers, and directors of a corporation

---

<sup>3</sup>We note the AOS audit did flag a potential abuse by these individuals with regard to lease payments made by TIPS to a corporation affiliated with the defendants, which payments over a three-year period exceeded the value of the property. However, the finding for recovery at issue did not pertain to those payments.

are generally not liable for the debts of the corporation and that provisions of R.C. 3314.071 precluded recovery against them individually.

{¶ 8} OAG asserted that “defendants overstated enrollment in FY2005 and FY2006 and received funds that they were not entitled to.” In response, Hasina submitted an affidavit where she averred, among other things, that “the corporate officers/school administrators managed the day-to-day operations of The International Preparatory School” and that she and Da’ud were board members. In reply to the OAG opposition, the defendants submitted an affidavit of Patricia Ali, who averred to having personal knowledge of the fact that “The International Preparatory School hired employees whose duties included the monitoring of student enrollment, and the preparation and submission of monthly attendance reports.”

{¶ 9} The trial court denied the defendants’ motion for summary judgment and granted the OAG’s motion for summary judgment. The defendants now appeal, assigning three errors for our review. Because all of the defendants’ assignments of error essentially challenge the trial court’s decision which awarded summary judgment to OAG, they will be addressed together for ease of discussion.

{¶ 10} “1. The trial court erred as a matter of law in concluding that the factual information contained in the report of a regular audit of The International Preparatory School for the period of July 1, 2004, through October 18, 2005, issued by the auditor of the State of Ohio on or about January 30, 2007, supported the finding of

personal liability against the appellants, Estate of Da'ud Abdul Malik Shabazz and Hasina Shabazz.

{¶ 11} “II. The trial court erred as a matter of law in concluding that R.C. §1702.55 does not shield the appellants, Estate of Da'ud Abdul Malik Shabazz and Hasina Shabazz, from personal liability for funds paid to The International Preparatory School, a non-profit corporation.

{¶ 12} “III. The trial court erred as a matter of law in concluding that R.C. §3314.071 did not shield the appellants, Estate of Da'ud Abdul Malik Shabazz and Hasina Shabazz, from personal liability for funds paid to The International Preparatory School.”

{¶ 13} No one is challenging that portion of the summary judgment order which held TIPS liable to OAG and, therefore, we do not address it herein. The sole focus in this appeal is whether the trial court properly determined by summary judgment that certain select individual officers or directors of TIPS, an Ohio non-profit organization, were personally and strictly liable for ODE's payment of a certain amount of funding to it when TIPS was “not eligible for these funds.”

{¶ 14} An appellate court reviews a trial court's grant of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336. De novo review means that this Court uses the same standard that the trial court should have used, and we examine the evidence to determine if, as a matter of law, no genuine issues exist for trial. *Brewer v. Cleveland City*

*Schools* (1997), 122 Ohio App.3d 378, citing *Dupler v. Mansfield Journal* (1980), 64 Ohio St.2d 116, 119-120.

{¶ 15} We afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate.

{¶ 16} Summary judgment is appropriate where it appears that: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co., Inc.* (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C).

{¶ 17} The burden is on the movant to show that no genuine issue of material fact exists. *Id.* Conclusory assertions that the nonmovant has no evidence to prove its case are insufficient; the movant must specifically point to evidence contained within the pleadings, depositions, answers to interrogatories, written admissions, affidavits, etc., which affirmatively demonstrate that the nonmovant has no evidence to support his claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107; Civ.R. 56(C).

**Action to Recover Public Money - R.C. 117.28**



{¶ 18} OAG, through its amended complaint, sought to hold the defendants personally liable pursuant to R.C. 117.28 for overpayments the ODE made to TIPS. That statute provides in relevant part:

{¶ 19} “Where an audit report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money is due has not been collected, or that any public property has been converted or misappropriated,\*\*\*

{¶ 20} “The auditor of the state shall notify the attorney general in writing of every audit report which sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money is due has not been collected, or that any public property has been converted or misappropriated and the date the report was filed.

{¶ 21} “\*\*\* The attorney general or his assistant may appear in any such action on behalf of the public office and may, either or in conjunction with or independent of the officer receiving the report, prosecute an action to final determination \*\*\*.”

{¶ 22} R.C. 117.36 provides that “[a] certified copy of any portion of the report containing factual information is prima-facie evidence in determining the truth of the allegations of the petition.”

{¶ 23} “[I]n an action to recover funds, the single and crucial inquiry is whether those who obtained such funds were legally entitled to receive them.”

*State v. Hale* (1991), 60 Ohio St.3d 62. According to the AOS audit, the subject funds were “deposited into the School’s account.”

{¶ 24} As stated, the OAG averred that the AOS audit reported a finding of recovery that summarily concluded that the defendants were jointly and severally liable for TIPS receiving payments for which it was “not eligible.”

**R.C. 3314.071**

{¶ 25} The individual defendants maintain that the trial court erred by not applying the provisions of R.C. 3114.071, which provides:

{¶ 26} “Any contract entered into by the governing authority or any officer or director of a community school, including the contract required by sections 3314.02 and 3314.03 of the Revised Code, is deemed to be entered into by such individuals in their official capacities as representatives of the community school. No officer, director, or member of the governing authority of a community school incurs any personal liability by virtue of entering into any contract on behalf of the school.”

{¶ 27} The trial court correctly found that this matter does not involve a breach of contract nor does it seek to hold the defendants personally liable for any contract that they entered in their official capacities as representatives of the community school. Therefore, the protections of R.C. 3314.071 do not apply to this recovery action commenced under R.C. 117.28.

{¶ 28} Assignment of Error III lacks merit and is overruled.

**Personal Liability of Corporate Officers Operating Community Schools.**

{¶ 29} The gravamen of the dispute among these parties is whether the defendants are afforded the protections of incorporating under R.C. Chapter 1702 or whether they are strictly liable as “public officials” for the payments of “public funds” to a community school.

None of the cases cited by the parties are directly on point nor could we locate any case in Ohio jurisprudence that held officers, directors, or shareholders of an Ohio non-profit corporation that operated as a community school personally liable as a matter of law pursuant to R.C. 117.28.

{¶ 30} OAG in its brief and at oral argument advocated that the defendants be held personally and strictly liable upon the theory that they were “public officials” who received public money. OAG relies heavily on the precedent of *Seward v. Natl. Surety Co.* (1929), 120 Ohio St. 47. *Seward* held a postmaster liable for public money stolen by a party connected with the post office management. *Seward* did not involve or address the personal liability of an officer, director, or shareholder of an Ohio corporation for the corporation’s improper receipt of public funds.

**Public Officials**

{¶ 31} Primarily, in maintaining that the defendants were public officials, OAG erroneously relies upon the definition of “public official” contained in R.C. 2921.01(A), which provides:

***“As used in sections 2921.01 to 2921.45 of the Revised Code:***

**“(A) ‘Public official’ means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers.” (Emphasis added.)**

{¶ 32} The statutory definition supplied by R.C. 2921.01(A) is explicitly limited “as [the term] is used in sections 2921.01 to 2921.45,” which concerns criminal offenses against justice and public administration in general. OAG brings this claim pursuant to R.C. 117.28.<sup>4</sup>

{¶ 33} Without a statutory definition we must give the terms their ordinary meaning. See *Washington Cty. Home v. Ohio Dept. of Health*, 178 Ohio App.3d 78, 2008-Ohio-4342, at ¶36. In *Washington*, the court reasoned:

{¶ 34} “To determine the plain meaning of ‘public official,’ we look to the ordinary use of that term. Blacks Law Dictionary, Sixth Edition, 1990, defines ‘public official’ as: ‘A person who, upon being issued a commission, taking required oath, enters upon, for a fixed tenure, a position called an office where he or she exercises in his or her right some of the attributes of sovereign he or she serves for the benefit of public. The holder of a public office though not all persons in public employment are public officials, because public official's position requires the exercise of some portion of the sovereign power, whether great or small.’ See *State ex rel. Sperry v. Licking Metro. Hous. Auth.* (Sept. 18, 1995), Licking App. No. 95CA52, 1995 Ohio App. LEXIS 4683.

---

<sup>4</sup>OAG also cites to R.C. 9.39 pertaining to liability of public officials for public monies received; however, that statute does not define “public officials.”

Merriam-Webster's Collegiate Dictionary, Tenth Edition, 1993, defines 'public officer' as: 'A person who has been legally elected or appointed to office and who exercises governmental functions.' See *id.*"

{¶ 35} There is no evidence in the record to find that the defendants were "public officials" within the ordinary meaning of that term. Therefore, the case law relied upon by the OAG, which requires public officials to be held strictly and personally liable for public monies is not dispositive here. See *Seward*, *supra*.

{¶ 36} Secondly, the Ohio law governing community schools, mandated that TIPS be established as a nonprofit corporation under Chapter 1702 of the Revised Code.<sup>5</sup> R.C. 3314.03(A)(1). As such, the provisions of R.C. 1702.55, that its members, directors, and officers "shall not be personally liable for any obligation of the corporation," would apply.

{¶ 37} The law does not support the OAG's argument that individuals of community schools, that are required by law to be corporate entities under R.C. chapter 1702, be deemed "public officials" who are personally and strictly liable for the corporations improper receipt of public funds.

**Personal Liability of Corporate Shareholders, Officers, and Directors**

---

<sup>5</sup>There is no dispute that TIPS was organized under R.C. Chapter 1702. See Verified Amended Complaint at ¶4.

{¶ 38} The Ohio Supreme Court has held that “[t]he principle that shareholders, officers, and directors of a corporation are generally not liable for the debts of the corporation is ingrained in Ohio law.” *Dombroski v. Wellpoint, Inc.*, 119 Ohio St.3d 506, 510, 2008-Ohio-4827, citing Section 3, Article XIII, Ohio Constitution; *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.* (1993), 67 Ohio St.3d 274 [other citation omitted]. From this rule, the Ohio Supreme Court carved an exception by creating a claim whereby the corporate veil may be “pierced” and the individuals held personally liable. See *Belvedere*, supra, as modified by *Dombroski*, supra.<sup>6</sup>

{¶ 39} The OAG’s complaint incorporated the findings of the certified AOS audit report, which made generalized factual findings and a legal conclusion that the individual defendants were jointly and severally liable. In the trial court, the individual defendants made specific denials in their complaint, asserted that the complaint failed to state a claim against them, and also asserted that they could not be held personally liable without establishing a basis to pierce the corporate veil throughout the summary judgment proceedings in the court below. Therefore, this issue was not waived.<sup>7</sup>

---

<sup>6</sup>In *Dombroski*, the Ohio Supreme Court modified (by expanding) the second prong of a corporate veil piercing claim so that a plaintiff had to demonstrate that a defendant shareholder exercised control over a corporation in such a manner as to commit fraud, an illegal act, or a similarly unlawful act.

<sup>7</sup>Case law lends support to the conclusion that the complaint must allege acts sufficient to qualify as an exception to the rule of law. See, e.g., *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, at ¶31; accord *Knotts v. McElroy*,

{¶ 40} Additionally, directors of a nonprofit corporation are charged with the responsibility of carrying out a public purpose. R.C. 1702.30(B) establishes the standard of care of directors in carrying out such public purposes and provides that a director shall “perform his duties as a director \*\*\* in good faith, in a manner he reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.” Directors may be liable for damages resulting from their breach of these duties.

{¶ 41} Defendants were directors of a corporation established as the governing authority of a community school. As such, they were charged by statute with overseeing the running of a public school funded with millions of dollars of public funds. If the State can prove that defendants breached their fiduciary duties as directors of the publicly funded nonprofit corporation, and that the breach resulted in over-funding by the State, then personal liability can be imposed for the results of that breach without the need to pierce the corporate veil.

{¶ 42} The basis of the AOS’s audit finding of recovery against all of the defendants was that ODE over funded TIPS amounts for which it was not eligible between July 1, 2004 and October 18, 2005, and for the year ending June 30, 2005 (as calculated by the ODE itself). The AOS audit specifically found that the amounts were “deposited into [TIPS] account.” The ODE representative

---

Cuyahoga No. 82682, 2003-Ohio-5937 (upholding dismissal of plaintiff’s complaint on basis of qualified immunity where plaintiff had not alleged acts against the governmental entity beyond that of mere negligence).

supplied an affidavit explaining that the over-funding calculations were derived from a failure to reconcile “error flags” concerning TIPS reported student enrollments at various times. Neither the affidavit nor the AOS audit report specifically charges either of the individual defendants with supplying the erroneous enrollment reports, intentionally or otherwise. That is not to say that they are insulated from personal liability, where they occupied the positions of Treasurer and Chairman of the Board; only that their personal liability is not established by this record as a matter of law.

{¶ 43} While there is a substantial amount of discussion in the audit report concerning TIPS failure to provide and maintain proper books and accounts, among other things, there is no direct factual finding that the individual defendants caused the improper payment of public money to TIPS that is the subject of this matter. At the same time, the factual findings of the audit report do create a genuine issue of material fact as to whether the individual defendants should be held personally liable for the public funds at issue.

{¶ 44} The case law relied upon by the trial court does not persuade us to find otherwise. See *Hale*, 60 Ohio St.3d, at 62, 66; *Crane v. Secoy Twp. Trustees* (1921), 103 Ohio St. 258, 259; and *Shuster v. N. Am. Mtge. Loan Co.* (1942), 139 Ohio St. 315, 344. As set forth below, each case is factually distinguishable from this case and/or supports the conclusion that the OAG must establish some factual basis to hold the defendants personally liable for TIPS obligations.



{¶ 45} In *Hale*, the attorney general sought recovery of money from appointed members and executive directors of the Ohio Civil Rights Commission, who had received excess compensation contrary to law. The Ohio Supreme Court in *Hale* upheld the finding of liability against the executive director of the Ohio Civil Rights Commission, who was a public official appointed to his position. In *Hale*, the facts were that this individual “initiated the payroll information that resulted in the illegal payments to the commissioners[;]” he “exacerbated the overpayment situation” by making certain representations in a letter to the State Auditor. The court reasoned that “Brown was the commission’s ‘principal administrative officer’ and, in that capacity, he was required to correctly report the number of hours the commissioners attended meetings. The active misrepresentations made by Brown in order to continue to pay Ellis and Lucas for days when no commission meetings were held clearly contravenes the wording of the statute.” *Hale*, 60 Ohio St.3d, at 66. The court’s determination of liability against Brown was additionally based on his role as a “public officer.” *Id.* In conclusion, the *Hale* court held: “Brown, a public officer, negligently performed his duties by endorsing the overpayments made from the public treasury and assisted in violating the statute.” *Id.*

{¶ 46} *Hale* is distinguishable from the instant matter in at least two notable respects: (1) the court did not hold individuals of a non-profit corporation organized under R.C. Chapter 1702 personally liable for corporate obligations;

and (2) the court's holding was against an individual that was appointed to a public office and based upon factual instances of that individual's involvement in causing or contributing to the illegal expenditures and overpayments to the commissioners.

{¶ 47} Likewise, the recovery of funds action at issue in *Crane* involved a finding of liability against township trustees who occupied "public office." *Crane*, 103 Ohio St. 258, 261-262 (court found that "[i]t is quite evident from the foregoing that the trustees knowingly and openly permitted and aided the township clerk in thus misappropriating public moneys of the township. That they should respond to the public for this disregard of plain public duty there can be no doubt").

{¶ 48} Finally, *Shuster v. N. Am. Mtg. Loan Co.*, 139 Ohio St. 315, 344, involved a petition by a certificate holder against a mortgage loan company and its directors seeking an accounting of trust property placed in their hands under a reorganization plan. That case was not a recovery action like this case. Rather, the question presented in *Shuster* was: "whether or not the defendants-appellants committed a breach of trust by reinvesting the funds received from the sale of the defaulted bonds instead of immediately distributing the proceeds to the participation certificate holders" and, more narrowly stated, "[d]id the trustee breach its trust by purchasing securities with cash received from the sale of trusteed assets?" *Id.* at 333.

{¶ 49} In 1942, the Ohio Supreme Court affirmed the finding of liability against the trustees in *Shuster* based upon the specific terms of the contract and reconstruction plan<sup>8</sup> and in part upon the principle that “[a]ny officer *who knowingly causes* the corporation to commit a breach of trust causing loss to a trust administered by the corporation is personally liable for the loss to the beneficiaries of the trust.” *Id.* at 344, quoting 3 *Scott on Trusts*, 1767 (emphasis added). This is similar to the exception to limited liability of corporate officers, directors, and shareholders that exists by virtue of a piercing-the-corporate-veil claim. *Dombroski*, *supra*.

{¶ 50} Even in recovery actions concerning private individuals who have received public monies, it must be shown that the private individual had some involvement in procuring an illegal expenditure or actively engaged or facilitated the wrongdoing. See, e.g., *State ex rel. Smith v. Maharry* (1918), 97 Ohio St. 272, 277-278 (finding that anyone who wrongfully took public money or public

---

<sup>8</sup>As the Court in *Shuster* noted, “the plan and the contract [and] the order of the Court of Common Pleas of Cuyahoga County show clearly that a trust was created for the purpose of liquidation and distribution of proceeds to the holders of the certificates of participation \*\*\* The mortgage loan company was created to act in a dual capacity, i.e., owner and trustee. In its own right as a corporation, it was first to borrow funds from the Reconstruction Finance Corporation and pledge the assets which it held as trustee for the certificate holders as security for the repayment of this loan. There was, therefore, necessity for the purpose clause of the corporation in dealing with these securities for the purpose of borrowing from and repaying to Reconstruction Finance Corporation. But after the Reconstruction Finance Corporation loan was satisfied, the authority to treat these assets as the absolute property of the corporation ceased, and from that point on the mortgage loan company was to hold the assets as trustee for the certificate holders.” *Id.* at 339-340.

property could be sued under [the former version of R.C. 117.28]; see, also, *Mahoning Valley Sanit. Dist. v. The Gilbane Bldg. Co.* (6<sup>th</sup> Cir. 2004), 86 Fed. Appx. 856.

{¶ 51} Based on the foregoing, we find that there remain genuine issues of material facts as to whether the individual defendants are personally liable for the obligations of TIPS to repay ODE for over funding related to the identified fiscal years.

{¶ 52} Assignments of Error I and II are sustained to the extent that the trial court erred by granting summary judgment on the issue of personal liability because the AOS audit report did not contain specific factual allegations that either Da'ud or Hasina were responsible for TIPS receiving public funds, which it was deemed ineligible by the ODE.

{¶ 53} Judgment affirmed as to the trial court's decision denying the individual's cross-motion for summary judgment because there is sufficient evidence in the AOS audit report to create a genuine issue of material fact as to whether the defendants can be held personally liable for the obligations of TIPS.

{¶ 54} Judgment affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion.

It is ordered that appellants and appellees shall each pay their respective costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and  
MARY J. BOYLE, J., CONCUR