No. 126139
IN THE ILLINOIS SUPREME COURT

MOORE LANDSCAPES. LLC APPELLANT. -vs- SAMUEL VALERIO, JOSE PAZ, RUBEN GARCIA, BARDOMIANO PAZ, EVARISTO VALERIO, LUIS MONDRAGON, SERGIO APARICIO, RAUL BERMUDEZ, RODRIGO VALERIO, JAVIER MORA, MARCO HUERTA, JAIME MORA, APPELLEES.	On Petition for Leave to Appeal from the Order entered by the Appellate court of Illinois, First Judicial District, number 1-19-0185, on March 26, 2020, rehearing denied on April 22, 2020 There heard on Appeal from the Order of the Circuit Court of Cook County, case number 2018 L 009656, entered January 25, 2019.

BRIEF OF APPELLEES' SAMUEL VALERIO ET AL.,

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The Appellate Court Properly Considered The Strong Public Policy In Favor of Workers Receiving The Prevailing Wage on Public Works Projects

NATURE OF THE CASE

This is a lawsuit brought by 12 plaintiffs employed as landscape workers by Moore Landscapes, pursuant to 820 ILCS 130-11, claiming that, under the Prevailing Wage Statute, and the contracts between Moore Landscapes and the Chicago Park District, they were entitled to receive the prevailing wage of $41.25 per hour rather than $18 per hour they actually received.

The Circuit Court granted Moore Landscapes Section 2–619.1 Motion to Dismiss on the grounds that they could not sue under the statute.

The Appellate Court in a unanimous decision reversed the trial court and held that plaintiffs could sue under on 820 ILCS 130- 11. The Supreme Court accepted a Petition for Review.

The Appeal comes before the Supreme Court on the pleadings.

ISSUES PRESENTED FOR REVIEW

Was the Appellate Court correct in holding that the statute, 820 ILCS 130-11 Unambiguously Provided Plaintiffs with A RIGHT TO SUE TO OBTAIN the prevailing wage.

If the statute, 20 ILCS 130-11 is ambiguous, where it reads "stipulated rate for work done under such "since the public policy of the State of Illinois, as set forth in 820 ILCS 130-1, is that the workers be paid the prevailing wage when working on Public Works Contracts, does this require the Statute to be construed in favor of Plaintiffs' right to sue, under section 11.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Illinois Supreme Court Rule 303 in that this is an appeal from a final judgment entered in the Circuit Court of Cook County on January 25, 2019. (C-177-180) On February 1, 2019, Plaintiffs timely filed their notice of appeal (C-181).

On March 26, 2020 the Appellate Court reversed the trial court's dismissal of the case and then denied Moore Landscaping Petition for Rehearsing.

On September 30, 2020 the Supreme Court granted Moore Landscapes Petition for Review.

STATEMENT OF FACTS

Samuel Valerio and the 11 other plaintiffs who brought the lawsuit are landscape workers, specifically tree planters, employed by the defendant Moore Landscapes, Moore Landscapes is located in Northbrook, Illinois. (C- 2-4) It regularly enters into contracts with public bodies to perform landscaping and related work for public entities such as the Chicago Park District. (C-4)

Moore entered into contracts with the Chicago Park District in 2012, Exhibit A, 2015 Exhibit B, and 2018 Exhibit C, all of which provided in pertinent paid. (C-4)

> "**32. Prevailing Wage Rates:**
>
> Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable. As a condition of making payment to the Contractor, the Park District may request the Contractor to submit and affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers employed on contracts in accordance with Illinois Law." (C-46)

In their complaint Plaintiffs argued that pursuant to both the Contracts with the Park District, and the Prevailing Wage Act, 820 ILCS 130/11, they were entitled to be paid the prevailing wage. (C-8, C-9)

The prevailing wage rate for the work is set by the Department of Labor for each craft or type of worker needed to execute the contract. The prevailing wage for laborers is set by the Department of Labor at $41.20 per hour during the relevant contract periods between Plaintiffs and Defendant. (C-9) Defendant stipulated in the District Park Contract that it would pay its employees, such as the Plaintiffs, the prevailing wage. Defendant paid plaintiffs $18.00 per hour and not the $41.20 per hour prevailing wage set by the Department of Labor under their contract. At all relevant times Plaintiffs were

employed full-time by the Defendant. (C-26) The Prevailing Wage Act 820 ILCS 130/11 provides for a private right of action by workers employed under the contract, who have been paid less that the stipulated rates for the work done on the contract. The statute further provides that an employer found liable for paying employees less than the prevailing wage is also liable for reasonable attorney fees; punitive damages as set for in the statute, and additional monies owed to the Department of Labor. (C-9)

At all relevant times Plaintiffs were full-time employees of Defendant. Plaintiffs, landscape laborers, complied with all work required of them by their contract with defendant. At no time during contract between Plaintiffs and Defendant, did Plaintiffs consent nor stipulate to being paid less than prevailing wage.

Defendant filed a Motion to Dismiss and Memorandum of Law in support of its Section 2-619.1 Motion to Dismiss on November 9, 2018. (C-120-132) One of the arguments raised by the defendant was since the contract read:

> "Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable."

this language did not require it to pay plaintiff the prevailing wage.

Defendant argued that this language gave it discretion to pay plaintiff less than the prevailing wage.

The defendant's Motion To Dismiss, while brought under 735 ILCS 5/5-2-619 (9), did not include any affidavits nor any supporting documents.

The Plaintiffs responded with a Reply Brief, which included affidavits by all of the plaintiffs that their work as tree planters, involved original installation of trees which requires them to be paid to prevailing wage as set forth by this Department Of Labor. (C-135-154)

The defendant filed a Reply Brief, in which for the first time cited as FAQ, from the Department of Labor which dealt only with the notification by the public body of whether the prevailing wage must be paid. (C-164-175).

On January 25, 2019, the trial Court entered a written opinion granting the defendant's 2-619 (9) Motion To Dismiss with prejudice. (C-177-180) stating:

This language used in the contracts at issue says that, "Contractor shall pay all persons employed by Contractor, or its subcontractors, prevailing wages where applicable." As there is no case law addressing this particular issue, the Court defers to the interpretation of the Illinois Department of Labor and finds that this language does not constitute a stipulation under the Prevailing Wage Act. Further, as the contracts at issue contained no stipulated rate of payment, Plaintiffs may not pursue a claim under 820 ILCS 130/11. Accordingly, Moore's Motion to Dismiss pursuant to 735 ILCS 2-619(a)(9) is granted, and Plaintiffs' Complaint is dismissed with prejudice.

Plaintiff timely filed its Notice of Appeal in February 2019. (C-181).

On Appeal, the Appellate Court on March 26, 2020 reversed the Trial Court's dismissal.

The Appellate Court, first pointed out that as the case was dismissed pursuant to Defendant's 2-619 Motion to Dismiss, this was a question of law and it's review would be de novo.

The Appellate Court then looked at the case as a matter of statutory interpretation. whereby the well-established rule is that a court should ascertain and give effect to the intention of the legislature.

Here the Appellate Court cited 820 ILCS 130/1 which provides that the stated policy of the Wage Act is:

> "The stated policy of the Wage Act is that "laborers, workers and mechanics employed by or on behalf of any and all public bodies engages in public works" shall be paid "a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed." 820 ILCS 130/1 (West 2018)."

The Appellate Court Further cited 820 ILCS 130/4 which provides.

> "The public body awarding a contract for public work or the Department "shall ascertain the general prevailing rate of hourly wages in the locality in which the work is to be performed." Id. 4(a). The public body must also cause to be included "in the project specifications and the contract a stipulation to the effect that not less than the prevailing rate of wages as found by the public body or Department or determined by the court on review shall be paid to all laborers, workers and mechanics performing work under the contract." Id. 4 (a-1)"

The Appellate Court then cited the Illinois Department of Labor's own publications that the project specifically must state it is or is not subject to the provision of the Wage Act. It again pointed out that Section 4a of the Wage Act expressly required that contractors and subcontractors pay workers on public work present no less than the prevailing rate of wages.

The Appellate Court then went on to cite Section 11 that the Wage Act created a private right of action for works project paid led than the stipulated rate for the difference between the amount so paid and the rates provided by the contract plus with costs and attorney fees.

The Appellate Court then went on to conclude

"Applying the principles of statutory construction to the present case, we conclude based on the unambiguous language of the statute that the trial court's interpretation of section 11 of the Wage Act cannot stand. If the project at issue in this

appeal was covered by the Wage Act, then the contract between the Chicago Park District and defendant, which stated merely that defendant would pay all employees "prevailing wages where applicable," failed to comply with sections 4(a-1) and 4(b) of the Wage Act. However, any failure by the Chicago Park District and defendant to include in their contract a proper stipulation pursuant to sections 4(a-1) and 4(b) regarding whether the project was or was not subject to the provisions of the Wage Act has no effect on plaintiffs' right of action for prevailing wages under section 11 of the Wage Act. The trial court's interpretation of section 11, contrary to the plain language of the statute and clear legislative intent, improperly places a limitation on the right of action of any laborer, worker, or mechanic who has been denied a prevailing wage on a public works project covered by the Wage Act. "

Therefore, we hold that the trial court erred in dismissing plaintiffs' complaint under section 2-619(a)(9) of the Code as barred under the provisions of section 11 of the Wage Act.

Subsequently defendant filed with the Appellate Court a petition for rehearing which was denied.

There after defendant filed a Petition for Review with the Supreme Court which was granted.

ARGUMENT
Introduction

The issue in this Appeal is fairly simple. The defendant Moore Landscapes is contending that for the 12 workers to be able to sue under section 11, (820 ILCS 130-11) what the Legislature meant by the term. "stipulated rates for work done under such

contract" was that, in this case, the contract had to actually state plaintiffs were to receive $41.25 per hour.

The Appellate Court held otherwise as the prevailing wage statute, in section 4, could not be more specific in its language that the worker was to receive the prevailing wage set by the Department of Labor.

Furthermore, the contract, which again expressly provided that workers were to be paid the "prevailing wage where applicable", also provided clearly that plaintiffs in this case were to be paid the prevailing wage.

In other words, since both the statute and the contract provided that the workers must receive the prevailing wage, section 11 did not require that the actual wage $41.25 be specified in the contracts.

Any review of the brief filed by Moore Landscapes, which argues that the Appellate Court was wrong in it's opinion, shows the following:

A) At no time does it cite 820 ILCS 130/1 which sets forth that it is the public policy of the State of Illinois that the prevailing wage be paid to all laborers working on Public Contract.

B) It fails to cite a single case interpreting or dealing with the Prevailing Wage Act, 820 ILCS 130/1 et. al., for the obvious reason that no reviewing court has interpreted the Prevailing Wage Act, so as to deny workers the relief provided by said statute.

C) It fails to explain why the Legislature would have provided a private right of action under Section 11 to the Plaintiffs, the class of persons whom the statute

is designed to benefit, and then basically excluded them from suing on a private right of action.

D) More important, Moore Landscapes seems to be ignoring the very definition of a stipulation. The fact is that Moore Landscapes in its contracts did stipulate that it would pay Plaintiffs the prevailing wage as required by statute.

STANDARD OF REVIEW

A motion to dismiss under section 2-619 "admits the legal sufficiency of the plaintiff's claim, but asserts certain defects or defenses outside the pleadings which defeat the claim asserted by plaintiff." Dloogatch v. Brincat, 396 Ill.App.3d 842, 846 (2009) When ruling on a section 2-619 motion, the court should construe the pleadings and supporting documents in the light most favorable to the plaintiff, the nonmoving party. Vitro v. Mihelic, 209 Ill.2d 76, 81 (2004). The court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that may reasonably be drawn in the plaintiff's favor. Id. The question on appeal is "'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." Illinois Graphics Co. v. Nickum 159 Ill.2d 469, 494 (1994)

If the grounds for dismissal do not appear on the face of the pleading attached, the Motion to Dismiss must be supplemented by affidavit. Young v. Caterpillar, 258 Ill.App.3d 792, 629 N.E.2d. 830 (1st Dist. 1994); Mogul v. Tucker, 152 Ill.App.3d 610, 504 N.E.2d. 872 (1st Dist. 1987) Review of a decision on a motion challenging the sufficiency of the pleadings is de novo. City of Chicago ex rel Scachitti v. Prudential

Securities, Inc., 332 Ill.App.3d 353, 772 N.E.2d 306 (1st 2002); Zahl v. Krupa, 365 Ill.App.3d 653, 850 N.E.2d 304 (1st Dist. 2006)

I. THE APPELLATE COURT PROPERLY CONSIDERED THE STRONG PUBLIC POLICY IN FAVOR OF WORKERS RECEIVING THE PREVAILING WAGE ON PUBLIC WORKS PROJECTS.

The Illinois Prevailing Wage Act 820 ILCS 130/1 states:

> "Sec. 1. It is the policy the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works."

The Prevailing Wage Act is a public policy statute, and public bodies are required to adhere to its provisions. Fox River Valley Dist. Council v. Board of Education, 51 Ill. App. 3d. 345, 373 N.E. 2d. 60 (2nd Dist. 1978). The purpose of the Act is to ensure that workers receive a decent wage. People ex rel. Bernardo v. Illinois Community Hospital, 163 Ill. App. 3d. 987 516 N.E. 2d 132 (4th Dist. 1982). The general purpose of this Act is to require municipalities and other legal entities to ascertain and pay the prevailing wages on public projects. City of Monmouth v. Lorenz, 30 Ill. 2d., 195 N.E. 2d. 661 (1963). The intent of this Act is to ensure that on public works projects, no contractor or subcontractor can pay workers less than the going rate for the work to be done. Frye v. City of Iroquois, 140 Il. App. 3d. 749, 489 N.E.2d. 406 (3rd Dist. 1986).

If the contract contains a general prevailing wage provision and if the prevailing wage has been determined by either the public body, or the Department of Labor, the Contractor is bound to pay the contractor's relevant employees that specified wage. Contreras v. Central Resources Corp., 680 F. Supp. 289 (N.D. Ill. 1988).

820 ILCS 130/2 provides that the public body awarding any contract for public work, shall specify in the call for bids on the contract that the general prevailing rate of wages on a per hour basis be paid.

Section 130/4 further states that it is mandatory upon the contractor to whom the contract is awarded to pay the prevailing wage.

Section 130/4 also provides that the public body give notice to the contractor that not less than the prevailing wage be paid, but further states.

> "The failure by a public body or other public entity to provide written notice does not relieve the contractor of the duty to comply with the prevailing wage rate nor of the obligation to pay any back wage as determined under the Act."

Section 130/4 does not require that the specific amount of the prevailing wage be included in the public works contract. Instead, it merely calls on the Public body itself or the Department of the Labor to ascertain the amount, Contreras v. Central Resource Corp Supra.

The statute is ambiguous if it is capable of being understand by reasonably well-informed persons in two or more different ways. Krohe v. City of Bloomington 204 Ill 2d. 392 789 N.E. 2d. 1211 (2003).

"Further, if the statutory language is not clear, an examination of the reason and necessity for the law, the evils which the legislature sought to remedy and the purpose it intended to accomplish is particularly important. Harvel v. Johnson City, 146 Ill. 2d 277, 283, 586, N.E. 2d 1217, 166 Ill. Dec. 888 (1992). "Where is the letter of the statute conflicts with the spirit of it, the spirit will be controlling when construing the statute's provisions. "Gill v. Miller, 94 Ill. 2d 52, 56, 445 N.E.2d 330, (1983).

In construing a statute, the court may consider the reason for the law, the problem sought to be remedied, the purpose to be achieved, and the consequences of construing the statute one way or another. People v. Hunter, 986 N.E.2d 1185 (Ill. 2013) The public policy of the state must be sought in its constitution, legislative enactments, and judicial decisions. Roanoke Agency Inc. v. Edgar, 101 Ill.2d 315, 461 N.E.2d 1365 (1984) If there are ambiguous substantive portions of a statute, the statement of public policy is to be considered to resolve any ambiguity. In Re Estate of Scherr, 81 N.E. 3d 131 (2nd Dist. 2017).

In this case the public policy of the State of Illinois as set forth in 820 ILCS 131-1 is clear. The prevailing wage must be paid to all laborers and workers, such as plaintiffs engaged in public work. It is further provided in section 4 (820 ILCS 1304), that contracts awarded by public entities must require the contractor be paid the prevailing wage.

In this case it is uncontested that:

A. The contracts between Moore Landscapes and the Park District concern public works.

B. The 12 Plaintiffs were employed as tree planters by Moore Landscapes on this project.

C. The prevailing wage, as set forth by the Department of Labor, was $41.25 per hour for the work plaintiffs were doing.

D. The 12 Plaintiffs were only paid $18 per hour by Moore Landscapes instead of the $41.25 per hour they were entitled to.

E. The contract provided that the contractor shall pay all persons employed "prevailing wages where applicable".

F. Based on these facts the Appellate Court held that the statute, section 11, was not ambiguous and provides plaintiffs with a private right of action.

However even if the statute with the term "stipulated rate for work done under the contract, "is ambiguous, the Court among other factors, will take into account the statement of public policy in construing the statute Scherr, Supra as shown by a review of the following cases:

In Vine Street Clinic vs. Healthline Inc. 222 Ill 2d 276 (2006), the Illinois Supreme Court had to consider whether flat fees paid by physicians under the 1987 Medical Practice Act, was either legal or against public policy.

The Court looked at the Act's purpose, which was to protect the public health and welfare from those not qualified to practice medicine. Then it held, that the flat fee was not against the public policies set forth in the statute, as it concerned administrative services rendered, and not referral fees.

In Southern Illinoisan vs. Illinois Department of Public Health, 218 Ill 2d. 390 (2006) the Court was faced with whether the Freedom of Information Act allowed the plaintiff to obtain a release of the defendant's Cancer Registry to the plaintiff. The Supreme Court took into account that the "public policy of the state which encourages a free flow and disclosure of information between government and people.

Guided by this public policy, it then held in favor of plaintiff.

In Ranquist v. Stacker,55 Ill App. 3d. 545 (1st Dist. 1977) the issue was the suspension of a real estate sales man's license alleged to have been practicing racial steering.

The salesman argued that the law involved was vague and ambiguous.

The Appellate Court looked at the Illinois Constitution, which had a strict prohibition against racial discrimination in the sale or rental of property. Taking into account the strong public policy asserted in the Constitution, it held that the standards of conduct for real estate salesman, must be read to incorporate relevant constitutional provisions, which prohibit practices amounting to discrimination in the sale or rental of property.

The Appellate Court affirmed the Saleman's suspension.

If the Court was to believe that the section 11 language text "stipulated rates of pay for work" done, is ambiguous, then any review of the public policy behind the Prevailing Wage statute should result in a ruling in the favor of plaintiff's right to sue, for the monies they were deprived of when they were not paid the prevailing wage.

Furthermore, again looking at the reason for the law allowing a private right of action, it is proper to examine other statutes regarding a worker's rights to sue for his wage.

705 ILCS 225/1 allows a worker deprived of wages to bring suit and collect wages plus attorney fees. However, 705 ILCS 225/1 also provides that the worker must first demand in writing and then sue for the liquidated sum of which he is actually owed.

However, the difference between section 11, of the Prevailing Wage Act and 705 ILCS 225-1 is that in the latter, any suit must be for the actual sum done.

However, the purpose behind section 11, so it would not duplicate the Wage Act (705 ILCS 225-1), was to allow the worker to sue if he was not being paid for the Prevailing Wage Act as in this case, without setting forth the amount actually due.

Where there is an alleged conflict between two statutes a Court has a duty to construe these statutes in a matter that avoids any inconsistency and give an effect to both statutes where such an interpretation is reasonably possible. McNamee v. Federated Equipment & Supply Company,181 Ill. 2d 415, 692 N.E.2d 1157 (1998).

In this case it was clearly the intention of the Legislature that there be a private right of action and that all that was needed was that the worker, pursuant to contract, was working on a public works project which required that he be paid the Prevailing Wage.

Section 11 would have been totally unnecessary if the Legislature intended that the contract involved that the worker was suing on had to specify the wages to be paid. If that was the case then it would simply duplicate 705 ILCS 225-1. Clearly this was not what the legislature intended as the Appellate Court found in its opinion.

Illinois Courts Have Uniformly Ruled In Favor Of The Workers Right To Sue And Receive The Prevailing Wage

One case which is directly on point, with the instant case, (although as a District Court opinion, while persuasive authority, it is not a precedent) is Contreras v. Central Resources Corporation, 680 F. Supp 289 (N.D. Ill 1988).

The plaintiff workers brought suit against their employer arguing they should be paid the prevailing wage, as they were engaged in a public works contract.

The defendant employer moved for Summary Judgment on the grounds that the contracts involved did not specify what the prevailing wages were for workers in the position plaintiff were in.

The District Court rejected this argument stating:

"The prevailing wage act only mandates does the contract specify that the "general prevailing rate of wages shall be paid"...Ill.Rev.Stat.ch. 38, par. 39s-4. The Act does not require that a specific amount of the prevailing wage should be included in the contract; instead, it merely calls on the public body itself or the Department of Labor to "ascertain" amount. Ibid. If a contract contains a general prevailing wage provision and the prevailing wage has been determined by either the public body or the department of labor, the contractor is bound to pay the relevant employees that specified wage."

In Brandt Construction Co., v. Ludwig, 376 Ill App. 3d. 94 (3rd Dist. 2007), the facts were as follows:

a) Brandt had contracts involving work on public projects which require that it's employees be paid the prevailing wage.

b) Brandt was not given notice that there had been an increase in the prevailing wage while the contracts were pending. Hence it failed to pay its workers what was now required.

c) Brandt was then assessed penalties and ordered to pay wages by the Department of Labor.

d) Brandt filed for a Declaratory Judgment claiming the failure of the Department of Labor to give notice of the increase, meant Brandt did not have to pay the back wages and penalties.

On Appeal the Appellate Court agreed with Brandt that the Department of Labor in failing to give notice of the increase, prohibited the Department from assessing in penalties.

However as to back pay to the employees, the Court cited Section 1 of Prevailing Wage Act which states it was the policy of the State that workers be paid the prevailing wage on public works contracts. It further cited section 4 which makes it mandatory that in all contracts for public works projects, that the prevailing wage be paid to workers.

The Court then held that the failure of Brandt to receive notice, did not relieve Brandt of its obligation to pay the back wages to it's employees, pursuant to the public policy of the State of Illinois is set forth above.

In People ex rel. Dir v. Sackville Construction Inc. 402 Ill App. 3d 195 (3rd Dist. 2010) the subcontractor was brought into work on a project, but wasn't aware at the time that it was a public works contract and that the subcontractor was required to pay the prevailing wage.

After the Department of Labor assessed penalties against it for failing to pay the prevailing wage, Sackville filed suit against the Department of Labor and won in the Circuit Court, with the trial court concluding, it was unfair to require payment of prevailing wage is when Sacksville had no reason to believe the project was covered by the Prevailing Wage Act.

On Appeal the Appellate Court reversed, citing Section 4 that contractors and subcontractors are to pay the Prevailing Wage on Public Works contracts. Regardless of whether Sackville was given notice, it was required to pay the back wages to the employees plus penalties.

Citing 820 ILCS 130-1 which sets forth that the purpose of the act is to provide workers on a public project decent wages the Court held, despite Sackville's lack of notice, it was not relieved of the obligation to pay its workers the prevailing wage.

The caselaw cited above make it clear that the public policy of the State of Illinois is that all workers on public workers contracts be paid the Prevailing Wage.

Moore Landscapes knew of this when it signed the contracts with the Park District. As set forth in Brandt, supra and Sackville, supra, whether the contractors were given notice of this requirement is irrelevant. Contractors are obligated to know the law which has always required that the prevailing wage be paid.

PURSUANT TO THE PUBLIC POLICY OF THIS STATE ALONG WITH THE JUDICIAL DECISIONS IN FAVOR OF WORKERS RECEIVING THE PREVAILING WAGE, THE COURT SHOULD CONSTRUE SECTION 11 LIBERALLY IN FAVOR OF PLAINTIFFS RIGHT TO SUE

As set forth above, there is no question that the Prevailing Wage statute is to be construed in favor of workers receiving the prevailing wages on public works projects.

In other cases regarding a private right of action arising from a statute that does not explicitly provide one, Courts apply the following test.

"The law is clear regarding a private cause of action arising from the statute that does not explicitly provide one. A statute implies a private cause of action if: (1) the plaintiff is a member of the class for his benefit the statute was enacted; (2) plaintiffs injuries are those the statute was designed to prevent; (3) private course of action is co9nsistent with the underlying purpose of the statue; and (4) implying a private cause of action (***6) it's necessary to provide an accurate remedy for violations of the statute. Fisher v. Lexington Health Care Inc., 188 Ill. 2d 455, 460, 722 N.E. 1115, 1117 (1999)."

Even if the statute, section 11 did not expressly provide for a private right of action, plaintiffs would clearly need this test.

Plaintiffs are members of a class, workers on public works projects the Prevailing Wage Act was assigned to benefit. Plaintiff not receiving the prevailing wage are the

injuries the statute was designed to prevent, a private right of action in consistent with the purpose of the prevailing wage statute. Most important, it is necessary in this case, that workers have the remedy of suing to collect the Prevailing Wage they are entitled to.

Furthermore, caselaw in other situations involving private rights of action, whether implied, or expressed as in this case, have repeatedly held that when the statute is designed to benefit the class to which plaintiffs belong, they clearly have the right to the private right of action.

In First Capital Mortgage Corporation v. Union Federal Bank, 374 Ill. App.3d 739 (1st Dist. 2007), the Appellate Court held where a Federal Statute, the Telephone Consumer Protection Act of 1991, allowed a private right of action against someone sending unsolicited faxes, a plaintiff could sue in State Court, unless a neutral role of judicial administration bars the cause.

In Rozsavolgyi v. City of Aurora, 2016 Ill App. (2d) 150493, the Appellate Court found that the Human Rights Act, 775 ILCS 5/1-101 was to be liberally construed, and held an employee could maintain a cause of action for hostile-work environment disability harassment and failure to provide reasonable accommodation against the defendant City.

(The Supreme Court on another issue involved in that case, tort immunity, vacated the Appellate Court ruling on that matter).

In Warren v. LeMay, 142 Ill. App.3d 550 (5th Dist. 1986) an exterminator failed to disclose insect problems and it was sued under the Consumer Fraud Act. The statute provided a private right of action for damages. As the statute expressly provided it was to

be liberally construed to affect its purpose, the exterminator could be found liable for nondisclosure, said the Court.

In People v. Urban Outfitters LLC, 2017 Ill. App. (1st)160844 The Appellate Court held that plaintiff had a private right of action, as this was implied under the Restroom Access Act, 410 ILCS 39/10.

In Cowper v. Nyberg, 2014 Ill App. (5th Dist.) 120415 the Appellate Court held an inmate had an implied right of action against a County clerk and Sheriff for not transmitting sentence credit date in violation of 730 I LCS 5/5-4-1-e.

In this case we have an express private right of action, a strong public policy in favor of the worker receiving the prevailing wage, yet the defendant is trying to desperately curtail the plaintiff's right to sue under the statute, to a very limited situation, where the contract must list the wage what each worker wants to receive.

This is not what the Legislature intended, this is contrary to the case law on this issue, this is contrary to the contract Moore Landscapes entered into with the Park District, and this is contrary to the express language of the statute.

Plaintiffs' position is that section 11 is unambiguous and provides plaintiffs with the right to sue and to receive the prevailing wage they were entitled to.

It was the Appellate Court's opinion that the statute, section 11, is unambiguous and gives the plaintiffs the right to sue. However, if the statute is ambiguous, in that reasonable minds could disagree on what was meant, then all the factors the Court uses in construing an ambiguous statute, starting with public policy, are in favor of the plaintiffs.

Therefore, the Appellate Court should be affirmed, and the 12 plaintiffs who brought this action be allowed to continue this lawsuit to collect the Prevailing Wage which they are entitled to.

THE "STIPULATED RATE OF PAY WAS THE PREVAILING WAGE WHERE APPLICABLE" AS SET FORTH IN THE CONTRACT

The statute fails to define, or even attempt to explain what is meant by the term "stipulated rate of pay".

Under Illinois law where a statute fails to define a term, it is entirely appropriate to look to the dictionary to ascertain the meaning of the term. Carmichael v. Laborers Retirement Board, 2018 Ill. 122793 the term "stipulated rate" is used frequently in bank loans, as the lowest rate of interest (the Law Insider Dictionary). However, it's use outside of bank loans is unheard of.

The Merriam Webster Dictionary defines "stipulate as to make an agreement, or consent to do or for being something, or to demand an express term in an agreement, or to specify as a condition or requirement".

In this case, as we are dealing with a contract which by law, it's required to state the workers were to be paid the "prevailing wage where applicable." The prevailing wage applicable is the stipulated rate of pay for the work done.

At this point it should be noted that the case comes before the Supreme Court on a 2-619 motion. The court must accept as true and all well pleaded facts in the complaint, and construe the pleadings and supporting documents in the light most favorable to the plaintiffs, the non-moving party. Vitro v. Mihelic, 209 Ill. 2d. 76, (2004).

The Verified complaint and the affidavits nine of the plaintiff filed in opposition to the Motion to Dismiss, state that for the work they did in planting new trees etc. they

were to be paid the prevailing wage of $41.25 per hour, pursuant to the Department of Labor guidelines.

This evidence, set forth in verified pleadings and affidavits is uncontested, and for purposes of this motion must be accepted as true.

Therefore, in line with both the contracts and statute, for the "stipulated rate of pay for the work done" is the prevailing wage, in this case $41.25 per hour.

CONCLUSION

Plaintiffs pray that the Supreme Court affirmed the ruling of the Appellate Court, and remand the case to the circuit court for trial or other proceedings.

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CERTIFICATE OF COMPLIANCE

I, Attorney Robert Habib, conforms to the Requirements of Rule 341 (a) and (b). The length of the Brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(l) table of contents, and statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters appended to the Brief under Rule 342(a), is 5,527 words.

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CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that on December 23, 2020. I've filed in the above captioned action of the appellees brief, with the clerk of the Supreme Court of Illinois by electronic means. On that same day, I also cost copies of the aforementioned documents to be served by electronic mail up on the following persons:

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

/s/ Robert Habib
ROBERT HABIB
December 23, 2020