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INTRODUCTION

The issues to be decided in this appeal affect the rights of all Illinois local governments to petition the Court for an appropriate remedy when they are wrongfully deprived of revenue by a retailer that has conspired with another local government to misrepresent the tax situs of its sales so that both might obtain an unjust windfall. Accordingly, the Regional Transportation Authority (“RTA”) respectfully offers this amicus brief in support of the Appellees.¹

This brief advises the Court of two points relevant to this appeal:

First, the RTA and all other Illinois local governments have a vital economic interest in obtaining the full measure of funding allocated to it by the General Assembly, and tax situs manipulation schemes such as the one at issue in this appeal pose a serious threat to that interest;

Second, on several occasions, the RTA has petitioned the circuit courts to remedy injuries it has sustained as a result of tax situs manipulation schemes that were materially identical to the scheme at issue in this appeal, and these courts have concluded that they have jurisdiction over the RTA’s claims. Indeed, in light of the important interest involved in such cases, substantial negative consequences for local government would follow if this Court nevertheless were to rule that Illinois courts lack jurisdiction over Appellees’ claims here.

¹ The RTA also has claims pending before the circuit court in the same action from which this appeal arises, but the ruling appealed here does not address the RTA’s pending claims, which are based on the RTA Retailers’ Occupation Tax, not the Illinois Use Tax. The circuit court separately ruled that it has jurisdiction over the RTA’s claims, and that decision is not the subject of this appeal. C. 4779; *see also* C. 7714; 34 Tr. 155.

As a unit of local government that obtains a significant part of its funding from Use Tax, and as a party to other lawsuits in which retailers have asserted unsuccessfully that the court lacked jurisdiction, the RTA has a significant stake in the outcome of this appeal, and it has a unique perspective on these issues, a perspective that may be helpful to the Court.

ARGUMENT

I. LOCAL GOVERNMENTS HAVE A VITAL INTEREST IN THE RIGHT TO BRING APPROPRIATE CLAIMS IN ILLINOIS COURTS AGAINST RETAILERS WHO ARE UNJUSTLY ENRICHED THROUGH TAX SITUS MANIPULATION SCHEMES.

The right to bring claims in Illinois courts relating to tax situs manipulation schemes when appropriate and necessary is of vital importance to the RTA. The RTA is the second largest public transportation system in the country by passenger miles traveled and the third largest by ridership, providing more than two million rides a day across a six-county region that currently has a population of approximately eight million people.² The RTA provides transportation services to ensure the region's economic well-being, maintain full employment, conserve resources, decrease air pollution, allow for more efficient land use and planning, and address special transportation problems of people with disabilities, the economically disadvantaged, and the elderly. 70 ILCS 3615/1.02(a)(ii, iv).

In light of the scope of the RTA's mission, however, the General Assembly found that revenues generated by the transportation system were "not adequate for such service and a public need exists to provide for, aid and assist public transportation in the northeastern area of the State, consisting of Cook, DuPage, Kane, Lake, McHenry and Will Counties." 70 ILCS 3615/1.02(a)(1). The General Assembly amended the RTA Act (the

² See RTA's 2017 "MOVE Brochure," available at <http://rtachicago.org/about-us/media/rta-informational-materials> (last visited April 30, 2018), at 3.

“Act”) in 1983 to, among other things, provide additional state financial assistance to the RTA in response to “[s]ubstantial, recurring deficits in the operations of public transportation services” within the RTA’s jurisdiction and in response to “periodic cash shortages” that could hamper the RTA’s ability to provide public transportation services. *Stroger v. Regional Transportation Authority*, 201 Ill. 2d 508, 513 (Ill. 2002) (citing 70 ILCS 3615/1.02(b)(i)). And in 2008, in further recognition of the RTA’s fiscal needs, the General Assembly again amended the Act to allow the RTA to collect additional tax revenue. Pub. Act 95-708 (eff. Jan. 18, 2008).

The RTA estimates that it has lost millions of dollars in tax revenue due to certain retailers who misreport the location of their selling activity in a taxing jurisdiction where no such activity actually occurs. When necessary, the RTA has filed actions seeking declaratory judgments and other appropriate relief against these retailers for unjustly enriching themselves at the RTA’s expense. In some circumstances, the proper jurisdiction is the RTA’s taxing jurisdiction, in which case the tax paid by the retailer was in fact Retailer’s Occupation Tax, a portion of which would be allocated to the RTA. In other circumstances, the proper jurisdiction is outside of Illinois, in which case the tax paid by the retailer was in fact the Illinois Use Tax, a portion of which would similarly be allocated to the RTA. In either circumstance, the retailer purported to pay another local jurisdiction’s sales tax, with an agreement that the benefitting municipality will return a substantial portion of the tax payment to the retailer in the form of a rebate.

These “rebates” have nothing to do with economic activity in the local jurisdiction (because there is none). Their effect is to return to the conspiring retailer large sums of money that would have been paid in the form of tax revenue to the RTA and other local

governments had the retailer not deliberately misreported its selling activities. These funds belong to the RTA, not the retailer, and the RTA is entitled to petition the Court when necessary for a constructive trust and for other appropriate relief under these circumstances.

This Court should not hold that Illinois courts are unavailable to units of local government that have been harmed by these tax situs manipulation schemes. Such a holding would deprive such local governments, including the RTA, of an important tool to ensure that they receive the funding necessary to perform their vital public services.

II. ILLINOIS COURTS CONSISTENTLY AND PROPERLY EXERCISE JURISDICTION OVER APPROPRIATE CLAIMS BY LOCAL GOVERNMENTS AGAINST RETAILERS WHO ARE UNJUSTLY ENRICHED THROUGH TAX SITUS MANIPULATION SCHEMES.

Appellants erroneously contend that the Court lacks jurisdiction to adjudicate any Use Tax-related claims brought by anyone other than the Illinois Department of Revenue (“IDOR”). Time and again, however, Illinois courts have rejected the argument that the circuit courts lack jurisdiction over claims relating to tax and other statutory rights. *See City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531; *Village of Itasca v. Village of Lisle*, 352 Ill. App. 3d 847, 852-53 (2004), *Employers Mut. Cos. v. Skilling*, 163 Ill. 2d 284, 287 (1994), *State ex rel. Beeler Schad and Diamond, P.C. v. Ritz Camera Centers, Inc.*, 377 Ill. App. 3d 990, 1006-07 (2007). Likewise, this Court should avoid any blanket determination that a circuit court lacks jurisdiction over claims relating to Illinois Use Tax.

Specifically in the context of other tax situs manipulation cases, several judges in Cook County have held that the RTA’s claims were properly before the court, rejecting the defendants’ jurisdictional challenges consistent with *City of Chicago*, *Village of Itasca*, *Skilling*, and *Ritz Camera*.³ In *The Regional Transportation Authority v. United Aviation*

³ This Court may take judicial notice of decisions that are part of the record of another court

Fuels Corporation, et al., Case No. 2013 CH 01023, for example, Judge Neil Cohen denied the defendants' motion to dismiss on jurisdictional grounds the RTA's declaratory judgment action and other claims seeking to enforce its rights under the RTA Retailers' Occupation Tax in the face of the defendants' tax situs manipulation scheme. *See* 5/24/13 Memorandum and Order at 3-5, attached to this brief as **Attachment 1** ("there is no language in the [RTA Retailers' Occupation Tax] supporting Defendants' assertion that [IDOR's] jurisdiction is exclusive").

Similarly, Judge Thomas Allen reached the same conclusion with respect to the RTA's claims relating to local Retailers' Occupation Tax and Use Tax in *The Regional Transportation Authority v. American Airlines, Inc., et al.*, Case No. 2014 CH 04240 (*see* 8/13/14 Order and Hrg. Tr. at 68:17 – 73:16, attached to this brief as **Attachment 2**) and with respect to local retailers' occupation tax in *The Regional Transportation Authority v. The City of Genoa, Boncosky Oil Co., and Petroliance, LLC*, Case No. 2014 CH 4789 (*see* 9/28/15 Order and Hrg. Tr. at 125:6 – 129:2, attached to this brief as **Attachment 3**).

Indeed, retailer-defendant American Airlines ("American") moved for Judge Allen to reconsider his order denying American's motion to dismiss, asserting, as do the defendants in this appeal, that this Court's decision in *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, makes clear that Illinois courts do not have jurisdiction to adjudicate claims brought to remedy tax situs manipulation schemes. Like the defendants in this appeal, American pointed to *J & J Ventures'* holding that the legislature can give an administrative agency exclusive jurisdiction over a class of disputes if "it enacts a

because "these decisions are readily verifiable facts that are capable of instant and unquestionable demonstration." *Aurora Loan Servs., LLC v. Kmiecik*, 2013 IL App (1st) 121700, ¶ 37 (internal quotations omitted).

comprehensive statutory scheme that creates rights and duties that have no counterpart in common law or equity” and the statutory scheme, “[c]onsidered in its entirety,” shows that the “legislature’s explicit intent” was to give the agency exclusive jurisdiction over disputes within the subject matter of the statute. *Id.* at ¶¶ 23, 32; *see* Brief for Appellants at 23-24.

Judge Allen, however, rejected American’s contention that *J & J Ventures* supported the dismissal of the RTA’s claims for lack of jurisdiction. The court first acknowledged that the Gaming Act (the “comprehensive statutory scheme” at issue in *J & J Ventures*) is “an unusual creature.” (5/31/17 Order and Hrg. Tr. at 12:13, attached to this brief as **Attachment 4**). The court then found that “it is clear from *J & J* that [the legislature] didn’t want the courts involved, and they created this body, the Gaming Board, to run it, and the buck stops there; and everything, as I said, from A to Z lands with the Gaming Board.” (*Id.* at 10:9-13.)

Next, the court recognized that the RTA Act was also comprehensive as to certain “administrative” matters. (*Id.* at 10:18-21 (“[i]t talks about the creation of the board, the governing of the board, the labor, the aspect of tax, meetings”).) But, like the Appellate Court in this appeal, Judge Allen also recognized that the plaintiff’s claims existed outside of that administrative scheme. (*Id.* at 10:14-12:20.) The court “[could not] fathom” that the legislature intended that questions of law, such as those raised by the plaintiffs in tax situs manipulation cases, would fall exclusively within the jurisdiction of IDOR, for IDOR alone to resolve. (*See id.*) While the claims at issue in *J & J Ventures* were clearly contemplated by the Gaming Act and accounted for within that statutory scheme, the same could not be said of the claims and statute at issue in the RTA’s case. Accordingly, *J & J*

Ventures notwithstanding, the court denied American's motion to reconsider its earlier order denying American's motion to dismiss for lack of subject matter jurisdiction.

In this appeal, the Appellate Court encountered the same question and independently reached a conclusion that closely mirrors Judge Allen's. The Appellate Court recognized that the legislature had enacted a comprehensive statutory scheme providing for IDOR's exclusive authority to "levy, collect, and distribute sales tax and use tax revenue under the Retailers' Occupation Tax Act and the Use Tax Act." *City of Chicago*, 2017 IL App (1st) 153351 at ¶ 30. Like Judge Allen, however, the Appellate Court also concluded that "Plaintiffs' equitable claims [were] not within the contemplation of the statutory scheme devised by the legislature and are, therefore, neither preempted by nor overlap with IDOR's exclusive authority to assess, collect, remit or distribute sales tax or use tax." *Id.* at ¶31.

The Appellate Court found that the plaintiffs, just like the RTA in its own tax situs manipulation cases, "[were] not attempting to usurp IDOR's authority regarding the assessment, collection, remittance, or distribution of the sales tax or use tax." *Id.* They also were not "claiming that the amount of tax collected and remitted by the retailers was incorrect or resulted in an underpayment of taxes due, which require IDOR to make adjustments to the defendant municipality's future tax liabilities." *Id.* Rather, the plaintiffs (and the RTA) were simply asserting that "the municipal defendants agreed with the retailers to falsely declare out-of-state retail sales as sales that occurred in the respective municipality," resulting in an "unjust windfall" that the defendants then shared. *Id.* This windfall was comprised of funds belonging to the plaintiffs, and the plaintiffs were seeking disgorgement of those funds to remedy the unjust enrichment. *Id.*

The defendants insist that the Appellate Court improperly put form before substance in reaching this conclusion, asserting that there is no substantive difference between an equitable claim for unjust enrichment on the one hand, and usurping IDOR's authority regarding the distribution of the sales tax or use tax on the other. (*See* Brief for Appellants at 23-24.) This is false. Tax situs manipulation cases involve defendants who have deliberately taken advantage of a statutory framework (whether related to the Retailers Occupation Tax, the RTA Act, or the Use Tax) for the purpose of absconding with funds that properly belong to the plaintiffs. A claim to disgorge the defendants of those ill-gotten funds is entirely distinct (both formally *and* substantively) from a claim that IDOR's processes were flawed in some way, or from an attempt to step into IDOR's shoes to undo and re-perform IDOR's "clerical" tasks related to the distribution of tax revenue. *See City of Chicago*, 2017 IL App (1st) 153531 at ¶ 31; *see also* Attachment 4 at 11:10-12. The defendants' contention to the contrary is without merit.

The statutory scheme that provides for IDOR's authority to levy, collect, and distribute taxes may well be "comprehensive," as far as that goes, but as recognized by the Appellate Court in the instant case, Judge Cohen in the RTA's case against United Aviation Fuels Corporation, and Judge Allen in the RTA's case against American, that scheme does not by any means provide for the plaintiffs' and the RTA's ability to vindicate their statutory right to the vital revenues that the defendants have taken. *See City of Chicago*, 2017 IL App (1st) 153531 at ¶ 31; *see also* Attachment 4 at 11:13-12:20. Indeed, it is the defendants who would have this Court put form before substance, asserting that a mere formality – the fact that the statutory right the plaintiffs seek to vindicate has to do with tax – should deprive Illinois courts of jurisdiction to engage in two of their most fundamental

and familiar tasks: interpreting and applying a statute, and awarding equitable relief where appropriate.

CONCLUSION

For all of the foregoing reasons, the RTA respectfully requests that the Court affirm the decision of the Appellate Court.

Dated: May 3, 2018

Respectfully submitted,

THE REGIONAL TRANSPORTATION AUTHORITY

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, and the Rule 341(c) certificate of compliance, is 9 pages.

/s/ Gino L. DiVito

ATTACHMENT 1

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In June 2001, Sycamore and United Fuels entered into an Economic Development Agreement ("EDA"). (Compl. ¶22 and Ex. B). United Fuels is a subsidiary of United and purchases jet fuel for United and its regional carriers. (*Id.* at ¶4, ¶22, ¶29). Under the EDA: (1) United Fuels agreed to establish a business location within Sycamore; and (2) United Fuels and Sycamore agreed to share Sycamore's portion of the Illinois Retailer's Occupation Tax and the Home rule Retailer's Occupation Tax under a contractual formula. (*Id.* at ¶22 and Ex. B). The Sycamore City Council authorized execution of the EDA by enacting an ordinance. (*Id.* at ¶24 and Ex. C). The EDA was amended on May 30, 2003 and the amendment approved by the Sycamore City Council. (*Id.* at ¶25 and Ex. D).

The RTA contends that locating United Fuels' sales office in Sycamore is an attempt to create a sham tax status for fuel sales in a lower taxing jurisdiction. (*Id.* at ¶33). The RTA asserts that all true sales activity occurs in Chicago with only periodic purchase orders being sent to the office in Sycamore. (*Id.* at ¶¶33, 35). The RTA contends that no true acceptance of a purchase order takes place in Sycamore, but that all the fuel transactions at issue are established and accepted in Chicago. (*Id.* at ¶36). The RTA alleges that due to United Fuels' improperly siting the fuel sales in Sycamore, the RTA has suffered, and continues to suffer, a loss of retail sales tax revenues. (*Id.* at ¶42).

Count I of the Complaint seeks a declaration that the site of the fuel transactions at issue is Chicago. Count II seeks a declaration that the fuel agreements entered into between United Fuels and United Airlines are invalid because they violate Illinois law. Count III, pled in the alternative to Count I, seeks a declaration that the EDA is invalid because it violates Illinois law. Count IV, pled in the alternative to Count II, seeks a declaration that any jet fuel sale to United Fuels meant to be a sale to United Airlines in Chicago is a sale made in Chicago.

II. Motion to Transfer Venue

Sycamore is moving to transfer venue to DeKalb County on the grounds that venue is not proper in Cook County. Section 2-103(a) of the Illinois Code of Civil Procedure provides that "[a]ctions must be brought against a public, municipal, governmental or quasi-municipal corporation in the county in which its principal office is located or in the county in which the transaction or some part thereof occurred out of which the cause of action arose." 735 ILCS 5/2-103(a). Sycamore contends that no part of the transaction out of which the RTA's claims arose occurred in Cook County.¹

As the party challenging the propriety of venue in Cook County, Sycamore bears the burden of proof. *Corrall v. Mervis Industries*, 217 Ill. 2d 144, 155 (2005). Sycamore has not presented any evidence in support of its motion to transfer venue relying solely on conclusions set forth in its briefs. On this basis alone, the motion is denied.

Moreover, even if this court were to accept Sycamore's unsupported statements that the negotiation, execution and performance of the EDA took place solely in Sycamore, transfer of venue would still not be appropriate. In deciding whether a "transaction or some part thereof"

¹ While the RTA devotes a portion of its Response to arguing that Sycamore has no absolute right to venue in DeKalb County, Sycamore does not argue that it possesses such an absolute right.

arose in a particular county, a trial court should consider: (1) the nature of the cause of action; and (2) the place where the cause of action springs into existence." Board of Ed. of Nippersink Sch. Dist. 2 v. Koch, 2012 IL App (2d) 120132, ¶13. "Transaction" has been defined to include every fact which is an integral part of a cause of action." Jackson v. Reid, 363 Ill. App. 3d 271, 276 (4th Dist. 2006). "However, it is not so narrowly interpreted as to include only those immediate facts from which the cause of action arose." Id.

The Complaint alleges facts supporting the conclusion that venue is proper in Cook County. The Complaint alleges that all the sales of the jet fuel at issue actually occurred in Cook County, that the attempt to create a "sham tax status" occurred in Cook County, and that tax receipts are being diverted from Cook County. As such, venue is proper in Cook County as "some part" of the transaction at issue took place in Cook County.

Sycamore's motion to transfer venue is denied.

III. United Fuels and United's Motion to Dismiss

United Fuels and United are moving to dismiss the Complaint pursuant to 735 ILCS 5/2-619 and 5/2-615.

A §2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." Cohen v. Compact Powers Sys., LLC, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under §2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." Id.

A §2-615 motion to dismiss "challenges the legal sufficiency of the complaint." Chicago City Day School v. Wade, 297 Ill. App. 3d 465, 469 (1st Dist. 1998). The relevant inquiry is whether sufficient facts are contained in the pleadings which, if proved, would entitle a plaintiff to relief. Id. "Such a motion does not raise affirmative factual defenses but alleges only defects on the face of the complaint." Id. "A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). A section 2-615 motion will not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." Baird & Warner Res. Sales, Inc. v. Mazzone, 384 Ill. App. 3d 586, 590 (1st Dist. 2008).

A. Counts I through 4 - Standing (§2-619)

Defendants first argue that Counts I through IV of the Complaint should be dismissed because the Illinois Department of Revenue ("the Department") is vested with the full power to enforce the Regional Transpiration Authority Retailers' Occupation Tax ("ROT"). Section 3615/4.03(e) of the RTA Act provides in relevant part that:

The Department shall have full power to administer and enforce this Section; to collect all taxes and penalties so collected in the manner hereinafter provided; and to determine all rights to credit memoranda arising on account of the erroneous payment of tax or penalty hereunder.

70 ILCS 3615/4.03(e). Defendants contend that this language grants exclusive jurisdiction to the Department over the enforcement of §3615/4.03(e).

Defendants rely primarily on Village of Niles v. K mart Corp., 158 Ill. App. 3d 521 (1st Dist. 1987). In Niles, Niles filed suit against K Mart seeking an accounting and the imposition of a fine for K Mart's erroneous reporting of certain sales of personal property to the Department. Id. at 522. The Municipal Retailer's Occupation Tax Act ("MROT Act") allows municipalities to impose a tax on sales of tangible personal property. (Id.). Niles contended that K mart had reported sales that occurred in Niles as occurring in other municipalities thereby depriving Niles of tax revenue. (Id. at 523).

The Niles court held that under both the MROT Act and the Retailer's Occupation Tax Act ("ROTA Act"), the Department was vested with the administration and enforcement of the collection of taxes. Id. at 523-24. Niles had no authority to directly enforce a tax against a retailer or to impose fines for violations of the MROT Act. Id. at 524.

The RTA relies primarily on Village of Itasca v. Village of Lisle, 352 Ill. App. 3d 847 (2d Dist. 2004). In Itasca, the Village of Lisle entered into an agreement with Environetx, LLC whereby Environetx agreed to move its sales operations from Itasca to Lisle and the Village of Lisle agreed to provide Environetx a sales tax rebate. Id. at 849-50. The Village of Itasca alleged that Environetx never moved its office out of Itasca and sought a declaration that the agreement between Lisle and Environetx was void. Id. at 850. The Village of Itasca also sought the imposition of a constructive trust on all sales tax revenue generated by Environetx and retained by Lisle. Id. In a proposed amended complaint, Itasca also sought a declaration that Environetx was falsely reporting the site of its sales. Id. at 851.

The defendants argued that the trial court did not have subject matter jurisdiction to rule that Environetx was misrepresenting the municipality in which its sales occurred. Id. at 852. Like the Defendants here, the defendants in Itasca relied on Niles. Id. The Itasca court rejected this reliance finding that Employers Mutual Companies v. Skilling, 163 Ill. 2d 284 (1994), requires that the legislature include explicit exclusionary language to confer exclusive jurisdiction to an agency. Id. at 853. Because no such exclusionary language existed, the Itasca court found that the circuit court and the agency had concurrent jurisdiction. Id. Because the issue involved, whether Environetx had been misrepresenting the site of its sales on its tax returns, did not require the expertise of the Department to decide, nothing prevented the circuit court from exercising jurisdiction. Id. at 855.

While Defendants characterize their position as challenging the RTA's standing, their briefs make it clear that their position is that the Department has sole subject matter jurisdiction over the issues raised by the Complaint. Section 3615/4.03 does grant the Department full authority to administer and enforce the section. However, there is no language in the section

supporting Defendants' assertion that the Department's jurisdiction is exclusive. Skilling is clear that jurisdiction is not exclusive unless explicit exclusionary language is included. To the extent that Niles holds otherwise, Skilling, an Illinois Supreme Court case, controls. See also, State ex rel. Beeler Schad and Diamond, P.C. v. Ritz Camera Centers, Inc., 377 Ill. App. 3d 990, 1006-07 (1st Dist. 2007)(rejecting the defendants' reliance on Niles and following Itasca).

Counts I through IV cannot be dismissed based on this argument.

B. Count III – Standing (§2-619)

Count III seeks a declaration that the EDA is invalid. Defendants contend that the RTA lacks standing to assert this claim.

In Itasca, the court held that Itasca lacked standing to nullify the rebate agreement between Lisle and Environetx. Itasca, 352 Ill. App. 3d at 851. Because nullifying the rebate agreement would not provide any relief to Itasca, but would only end the rebate benefits, the relief sought would not provide any redress to Itasca. Id.

The situation in this case is identical to the situation in Itasca. The nullification of the EDA would not provide any redress to the RTA and, therefore, the RTA lacks any standing to bring Count III. Count III is dismissed with prejudice.

C. Counts II and IV – Standing (§2-619)

Count II seeks a declaration that the fuel agreements between United and United Fuels are invalid. Count IV, pled in the alternative, asks for a declaration that any jet fuel sale to United Fuels by a vendor be considered a sale to United in Chicago. Neither the relief sought in Count II nor the relief sought in Count IV will redress the RTA's alleged injury. Both counts should be dismissed with prejudice.

D. Section 2-615

Defendants also argue that the Complaint should be dismissed pursuant to §2-615. However, all that is required to state a declaratory judgment action is that the plaintiff allege: (1) a legal tangible interest; (2) an opposing interest; and (3) an actual controversy between the parties concerning such interests.² Record-A-Hit v. National Fire Ins. Co., 377 Ill. App. 3d 642, 645 (1st Dist. 2007) quoting Behringer v. Page, 204 Ill. 2d 363, 372 (2003). Count I of the Complaint meets this standard.²

It should be noted that Defendants, in arguing for dismissal under §2-615, challenge the factual allegations of the Complaint and rely on material outside the Complaint. This is improper under §2-615.

² This court recognizes that Hartney Fuel Oil Co. v. Hamer, 2012 IL App (3d) 110144, app. granted, 2013 Ill. LEXIS 47 (Jan. 30, 2013), which held that retail occupation tax liability is based solely on where a sale is accepted, is pending before the Illinois Supreme Court. This fact, however, has no bearing on whether Count I alleges sufficient facts to state a claim for declaratory judgment.

IV. Conclusion

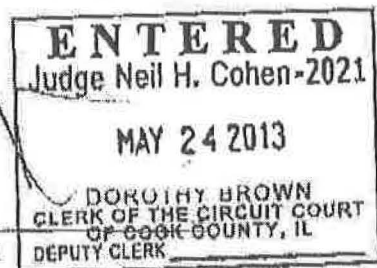
Sycamore's motion to transfer venue is denied.

United Fuels and United's motion to dismiss is granted pursuant to 735 ILCS 5/2-619 as to Counts II, III and IV with prejudice. The remainder of the motion to dismiss is denied.

The oral argument scheduled for May 29, 2013 at 9:30 a.m. is unnecessary. However, the date stands as a status on the case.

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Judge Neil H. Cohen



ATTACHMENT 2

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Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The Regional Transportation Authority

v.

No. 14 CH 4240American Airlines, Inc., et al.

ORDER

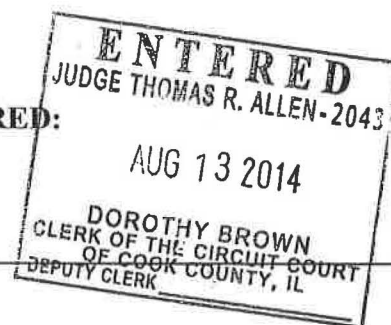
This matter coming to be heard on American Airlines, Inc. and American Aviation Supply, LLC's Combined 2-619 and 2-615 motion to dismiss the amended complaint, due notice having been given, the motion being fully briefed, and the Court having heard oral argument and being fully advised, IT IS HEREBY ORDERED THAT:

1. For the reasons stated on the record, the motion to dismiss is denied;
2. Defendants shall answer in 28-days, on or before September 10, 2014;
3. This matter is set for status on October 1, 2014 at 10:30 AM.

Atty. No.: 38234Name: TABET DIVITO & ROTHSTEINAtty. for: PLAINTIFFAddress: 209 S. LA SALLE ST 7th FloorCity/State/Zip: CHICAGO IL 60604Telephone: 312-762-9450

ENTERED:

Dated:



Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Proceedings
August 13, 2014

Page 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION - COUNTY DEPARTMENT

THE REGIONAL TRANSPORTATION
AUTHORITY,

Plaintiff,

vs.

AMERICAN AVIATION SUPPLY,
COMPANY, THE CITY OF
SYCAMORE, an Illinois home
rule municipality, and
AMERICAN AIRLINES GROUP,
INC.,

Defendants.

Case No.
2014-CH-04240

REPORT OF PROCEEDINGS had and
testimony taken at the hearing of the
above-entitled cause before the Honorable
Thomas R. Allen, Judge of said Court,
commencing on Wednesday, August 13, 2014,
at 2:00 p.m. CST, at the Richard J. Daley
Center, 50 West Washington Street, Courtroom
2302, Chicago, Illinois.

Reported by:
Deborah Habian, RMR
Certified Shorthand Reporter
CSR No. 084-002432

Job No. 374983

U.S. LEGAL SUPPORT, INC.
312-236-8352

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1 PRESENT:

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TABET DIVITO ROTHSTEIN, LLC, by
DANIEL I. KONIECZNY, ESQ.
209 South LaSalle Street, 7th Floor
Chicago, Illinois 60604
(312) 762-9456

on behalf of the Plaintiff;

SIDLEY AUSTIN, LLP, by
CHARLES K. SCHAFER, ESQ.
PATRICK E. CROKE, ESQ.
One South Dearborn Street
Chicago, Illinois 60603
(312) 853-7036

on behalf of the Defendant
American Airlines Group;

FOSTER & BUICK LAW GROUP, LLC, by
TAIT J. LUNDGREN, ESQ.
2040 Aberdeen Court
Sycamore, Illinois 60178
(815) 758-6616

on behalf of the Defendant
City of Sycamore.

ALSO PRESENT:

Mr. Jordan Matyas, RTA
Mr. Ross Humberg, American Airlines Group

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1 out there, from time-to-time they change,
2 as we all know, and in this instance, as
3 the Supreme Court said in the Haimer case
4 or Hartney recently -- this is not the
5 Supreme Court's words, but would be my
6 characterization -- one of the regulations
7 blew up on them. You know, that's how I
8 would describe it. And the Supreme Court
9 said -- in that case said, Your regulation
10 is not implementing the intent of the
11 Illinois General Assembly's legislation.
12 So, I mean, you can go in circles. And so
13 the Illinois Supreme Court struck down
14 that regulation, said it's invalid and
15 creates this major adjustment that has to
16 happen based on that ruling.

17 So the courts here in the
18 equitable Chancery Division where these
19 disputes come and the question is what the
20 RTA is doing they don't have standing to
21 do because the legislature has handed it
22 off to the Department of Revenue and --
23 who promulgates regulations that they did
24 and that the Supreme Court just slapped

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1 them down and said, That's not what the
2 legislature intended to be. So it's like
3 we're chasing our tail, so the court
4 should not be involved.

5 And I'll tell you, the
6 Skilling case, as much as we can
7 differentiate the Niles case, the Itasca
8 case and the word "full," you know, how
9 does -- how do I sit here and try to
10 decide what they meant by plugging in the
11 word "full power" into the -- versus the
12 other previous statute that did not have
13 the words "full power"? It just had the
14 word "power," you have the "power" to
15 administer. But now the one we're looking
16 at says you have the "full power" to
17 administer.

18 And you can circle around,
19 you can look under all the rocks and read
20 every -- as much of the statute before,
21 during and after those words, and I'm not
22 so sure you're going to find the silver
23 bullet to help answer that question. But
24 I think the tone of the Skilling case,

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1 which is an Illinois Supreme Court case,
2 as we know, the tone to me is that the
3 courts shouldn't be shut out from
4 reviewing these matters, that -- and the
5 Skilling case goes on to say that if
6 the -- if the court's going to be -- and
7 these are my words "shut out" -- but if
8 the court's going to be barred from
9 exercising jurisdiction in these cases,
10 that the legislative intent better be
11 crystal clear. They don't use that word.
12 They use -- I'll read it.

13 "The courts of Illinois have
14 original jurisdiction over all justiciable
15 matters," citing the Illinois Constitution
16 1970, Article 6, Section 9. "The
17 legislature may vest exclusive original
18 jurisdiction in an administrative agency.
19 However, if the legislative enactment does
20 divest the circuit courts of their
21 original circumstance through a
22 comprehensive statutory administrative
23 scheme, it must do so explicitly." And
24 there they cite People vs. NL Industries,

1 a 1992 Illinois case.

2 And in the NL Industries
3 case, the court discusses that as follows:
4 "In NL Industries, the State brought an
5 action on behalf of the Illinois
6 Environmental Protection Agency against
7 the owners and operators of a
8 manufacturing facility. This Court
9 determined that the circuit court and the
10 Pollution Control Board had concurrent
11 jurisdiction to decide the issues
12 presented in that case."

13 And this is what I think is
14 important. They say that "...finding that
15 no language in the Environmental
16 Protection Act specifically excluded the
17 circuit courts from deciding such cases."

18 And toward the end of the
19 Skilling case the court states as follows:
20 "It is the particular province of the
21 courts to resolve questions of law such as
22 the one presented in the instant
23 declaratory judgment case. Administrative
24 agencies are given wide latitude in

1 resolving factual issues, but not in
2 resolving matters of law."

3 Well, what strikes me here is
4 this factual scenario is -- it's
5 impossible to describe it as any other way
6 except a question of law. You know, where
7 these -- where the actions of sale
8 occurred, the background, who called who,
9 what happened, who placed an order, who
10 went golfing, who took some potential
11 customers out, where they have their sales
12 meetings, all those things are issues that
13 we see here, you know, in the courts, and
14 I tell you, from the tone of Skilling --
15 and I read it numerous times -- it's like
16 the Supreme Court is saying, Unless we're
17 totally -- the courts are totally
18 unequivocally and explicitly told that
19 they have no jurisdiction or authority in
20 these matters and that the matters are
21 exclusively handed off to the
22 administrative agencies, I don't -- I
23 think that the Supreme Court is saying you
24 can't shut the courts out from deciding

1 the legal issue.

2 Now, I know what American is
3 saying here though is that they don't
4 have -- that RTA doesn't have the
5 authority even though the court may have
6 the authority. Well, how does it get
7 here? You know, then you become in a
8 Catch-22 situation.

9 In the totality of what I see
10 here, I think that there's standing. And
11 I'm relying in large part on the Skilling
12 case because there's an undertone in that
13 case that I just alluded to that I think
14 is important. So there is standing and
15 I'm going to -- so I'm going to deny the
16 motion as relates to standing.

17 And with respect to the
18 constructive trust, that is -- as Mr.
19 Konieczny points out is a 615 motion. I
20 have to give great latitude or wide
21 latitude to what's in the complaint except
22 -- what is in the complaint as true even
23 though I think it's a lot closer case just
24 as Mr. Schafer ably argues because there's

ATTACHMENT 3

E-FILED
5/14/2018 11:50 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

Order

(2/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

RTA

v.

The City of Kenosha, et al.

No.

2014 CH 4789

ORDER

This matter coming before the Court on Defendants' Motion to Reconsider the Court's Denial of Defendants' Motions for Substitution of Judge as of Right and Defendants' Motions to Dismiss, the Court being fully advised in the premises, IT IS HEREBY ORDERED:

- 1) Defendants' Motions to Reconsider are DENIED;
- 2) Defendants' Motions to Dismiss are DENIED;
- 3) Defendants' Petition for a writ of Habeas Corpus with reasons in Parts VI, VII, and IX in case b, Motion to Dismiss, without prejudice;
- 4) Defendants to Answer the Complaint on or before October 26, 2015; and
- 5) This matter is set for status on the Defendants' Answers and discovery on January 7, 2016 at 10:30 a.m.

Atty. No.: 47812

Name: MAURA YUSOF, HEK ROYSTER ENTERED:

Atty. for: RTA

Address: 33 N. Dearborn, 7th Floor

City/State/Zip: CHICAGO, IL 60602

Telephone: 312-853-8710

Dated:

Judge

ENTERED 2013
JUDGE THOMAS R. ALLEN-2043

SEP 28 2015

Judge's No.

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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1	STATE OF ILLINOIS)	1	APPEARANCES CONTINUED:
2) SS:	2	
3	COUNTY OF C O O K)	3	ZUKOWSKI ROGERS FLOOD MCARDLE, by
4	IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS	4	MR. BRADFORD STEWART,
5	COUNTY DEPARTMENT - CHANCERY DIVISION	5	50 Virginia Street,
6	REGIONAL TRANSPORTATION)	6	Crystal Lake, Illinois 60014
	AUTHORITY,)	7	(815) 459-2050
7	Plaintiff,) No. 14 CH 4789	8	Representing the Defendant,
	vs.)	9	City of Genoa.
8	CITY OF GENOA, BONCOSKY)	10	
	OIL COMPANY, and)	11	
9	PETROLIANCE, LLC,)	12	
	Defendants.)	13	
10		14	
11	REPORT OF PROCEEDINGS at the motion of	15	
12	the above-entitled cause before the Honorable	16	
13	THOMAS R. ALLEN, Judge of said Court, on the	17	
14	28th day of September, 2015, at the hour of	18	
15	11:02 a.m.	19	
16		20	
17		21	
18		22	
19		23	
20		24	
21			
22			
23	REPORTED BY: Jamye Giamarusti, CSR		
24	LICENSE NO.: 084-004183		
	1		3
1	APPEARANCES:	1	MR. STEWART: Brad Stewart on behalf of the
2	HEYL ROYSTER, by	2	City of Genoa.
3	MS. MAURA YUSOF,	3	MR. SCHUSTER: Mark Schuster on behalf of
4	33 North Dearborn Street, 7th Floor	4	defendants, Petroliance and Boncosky.
5	Chicago, Illinois 60602	5	MS. YUSOF: Maura Yusof on behalf of the RTA
6	(312)853-8700	6	for the arguments on the motion to reconsider
7	myusof@heyloyster.com	7	the denial of substitution of judge.
8	- and -	8	MR. HEIL: And I'm John Heil, H-E-I-L, on
9	HEYL ROYSTER, by	9	behalf of the RTA for the second pending motions
10	MR. JOHN HEIL,	10	today, the motions to dismiss.
11	300 Hamilton Boulevard	11	THE COURT: All right. Let's see what makes
12	Peoria, Illinois 61601	12	the most sense here. Maybe the SOJ thing first.
13	(309) 676-0400	13	Depending on what happens there, you could all
14	jheil@heyloyster.com	14	be gone.
15	Representing the Plaintiff, RTA;	15	MR. SCHUSTER: Your Honor, if I may, I filed
16		16	a motion to join that motion. I stayed silent.
17	BAZOS FREEMAN KRAMER SCHUSTER &	17	But I filed a motion to join. I haven't seen
18	BRAITHWAITE, LLC, by	18	the objection to that. I ask that motion be
19	MR. MARK SCHUSTER,	19	granted, then I be given a chance to speak
20	1250 Larkin Avenue, Suite 100	20	today.
21	Elgin, Illinois 60123	21	THE COURT: I'll allow you to join in the
22	(847) 742-8800	22	motion over their objection.
23	mschuster@sbflaw.com	23	MS. YUSOF: We actually didn't object.
	Representing the Defendants,	24	THE COURT: All right. Let's start with the
24	Petroliance and Boconsky;		
	2		4



1 have a story, and it may say something, but I've
2 got a roadblock here, an affirmative matter that
3 blocks your complaint whether it's a statute of
4 limitations or some res judicata or some other
5 matter that's listed in the Civil Procedure Act.

6 So the motion to dismiss, I think, the
7 affirmative matter is standing that the parties
8 are asserting. So on the 615 -- let me say
9 this, on the 615, I'm going to deny the motion
10 to dismiss on the 615.

11 I mean, they can tell their story;
12 they've told their story. Now go dig up the
13 facts. I mean, I maintain that if there's
14 enough there. And, of course, I'm probably
15 going backwards because I should address the
16 standing. But I think the Skilling case takes
17 care of the standing issue.

18 Here's the deal. Would we have parties
19 or governmental entities not have a place to go?
20 Should they go to the people's court? They've
21 come here on a dec action basically in at least
22 Count II.

23 The RTA wants the Court to declare the
24 activities conducted by the retailers in Genoa

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1 did not constitute the business of selling; they
2 want the Court to declare the retailers are
3 engaged in the business of selling. There's a
4 long -- it's a declaratory judgment action.

5 There's a dispute here. The Department
6 of Revenue collects the money. Does the court
7 have original jurisdiction on a declaratory
8 judgment action? Where are they going to go?

9 And I remember from another case -- of
10 course, I don't want to be like Judge Flynn now
11 talking about another case, but the Employers
12 Mutual Companies versus Skilling, I read this
13 many times, and it's a Supreme Court case, I
14 thought this case kind of tends to say that,
15 look, the court had the place to decide issues
16 of law, which this pretty much is.

17 I think Mr. Heil already read this, but
18 one of the comments from the Supreme Court in
19 Skilling when talking about jurisdiction says
20 the Courts of Illinois have original
21 jurisdiction overall justifiable matters, citing
22 the Constitution.

23 The legislature may vest exclusive
24 original jurisdiction in an administrative

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1 agency. However, if the legislative enactment
2 does divest the circuit courts of their original
3 jurisdiction through a comprehensive statutory
4 administrative scheme, it must do so explicitly.

5 In other words, according to the
6 Constitution, the courts are created by the
7 people, for the people, and all that good stuff,
8 to hear lawsuits.

9 And if the legislature changes that in
10 some way, the Supreme Court and other cases have
11 held that it has to be specific and explicit;
12 otherwise, we don't need the courtroom
13 buildings. We might as well just have
14 administrative agencies doing everything,
15 whether it's the Department of Revenue, in this
16 instance, or other things.

17 So, I mean, the three branches of
18 government, I would say, we don't want to dilute
19 the three branches of government, at least the
20 judicial branch by handing it off to
21 administrative agencies that are created by the
22 legislature; unless, as the court recognized in
23 Skilling, if they're explicit about it.

24 And as my memory served me dealing with

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1 one of the other cases here, that language is
2 not explicit. And in Skilling, the Court went
3 on to talk about, it is the particular
4 providence of the courts to resolve questions of
5 law, such as the one presented on the instant
6 case; administrative agencies are given wide
7 latitude in resolving factual issues, but not in
8 resolving matters of law.

9 And in the end, the court said,
10 therefore, although we concluded the commission
11 had concurrent jurisdiction to hear the disputed
12 insurance case presented, in this case, when the
13 question of law was presented to the circuit
14 court in a declaratory judgment suit, the
15 jurisdiction of the circuit court became
16 paramount.

17 And you're talking standing; he's
18 talking jurisdiction. And as Mr. Heil noted,
19 we're talking really the same thing, whether
20 this court is the proper place and whether they
21 have standing still revolves around whether this
22 Court has jurisdiction because we're talking
23 about the Skilling analysis that the Court has
24 jurisdiction. You start with that premise; and

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<p>1 if you're going to peel that away, that it 2 better be explicit. And I don't think it is. 3 And Laches, as a general rule, the 4 cases say it doesn't apply to, again, general 5 rule. They frown upon putting the Laches 6 Doctrine on the backs of government. It doesn't 7 mean it can't happen, but I don't think it 8 applies in this situation. 9 Again, nobody's won today; nobody's 10 lost. All you did is have a complaint that 11 still goes forward. So I'm denying everybody's 12 motion to dismiss and get on with your 13 discovery, or whatever. Okay. 14 MR. STEWART: Your Honor, just two remaining 15 issues. 16 THE COURT: All right. 17 MR. STEWART: You had addressed standing, but 18 not in regards to Count I. I don't know if you 19 were going to elaborate on that. 20 But, regardless, we also raised the 21 statute of limitations which would be an 22 affirmative bar regardless of any other movement 23 on the motion to dismiss for four years prior to 24 the filing of the litigation on both counts.</p>	<p>1 complaint. 2 MR. SCHUSTER: October 26th. I'll answer 3 within 28 days. 4 THE COURT: So what do we need? You don't 5 need to come back and see me for anything. Just 6 go do your discovery. Get something going, you 7 know. 8 MR. HEIL: Right. 9 THE COURT: Take a deposition. 10 MR. SCHUSTER: So set a status date? 11 THE COURT: Yeah. What do you think? 12 90 days or so? 13 MS. YUSOF: Yes. 14 THE COURT: If there's something that gets in 15 the way earlier, if you have a problem, come in 16 and see me. That's fine. Let's see. How about 17 early January? 18 MR. HEIL: Very well. 19 MR. SCHUSTER: I would appreciate that, 20 Judge. 21 THE COURT: How about, like, the 6th? Would 22 that be okay? That's a Wednesday. 23 MR. SCHUSTER: I couldn't do that. I could 24 do the 7th.</p>
129	131
<p>1 THE COURT: All right. That's an argument. 2 Do you have a question? 3 MR. STEWART: I didn't know if you were 4 ruling on those. 5 THE COURT: I ruled. The motion to dismiss 6 is denied. You got a complaint. Go dig in and 7 find out what the heck the three guys in Genoa 8 are doing or who's doing things at O'Hare and 9 just find out. Go do some discovery. Get some 10 trial action going. 11 All right. What's our schedule, 12 gentlemen? 13 MR. STEWART: We're a long way from trial 14 still. We got a lot of discovery, I think. 15 THE COURT: We are a long way from trial. 16 MS. YUSOF: I believe at this point we would 17 be getting answers from the defendants. 18 THE COURT: Yeah. Answer the complaint. 19 That's right. Answer the complaint. 20 What do you want? How much time do you 21 want to answer the complaint? 22 MR. SCHUSTER: 28 days, Judge. 23 MR. STEWART: 28 days. 24 THE COURT: All right. 28 days to answer the</p>	<p>1 THE COURT: The 7th. Okay. 2 MR. STEWART: I can't imagine I have an issue 3 on January 7th. 4 MR. SCHUSTER: I just have a standing 5 Wednesday morning problem. 6 THE COURT: All right. January 7th at 10:30, 7 status call. 8 MR. STEWART: I don't know if you do earlier 9 ones. 10 THE COURT: 10:30. That's my status call. 11 MS. YUSOF: Status on the answers and then 12 discovery. 13 THE COURT: Yeah. See what you're doing. 14 You don't need me. You know how to try a 15 lawsuit. Go try it. 16 (WHEREUPON, the proceedings 17 were concluded at 1:38 p.m.) 18 (WHEREUPON, which were all 19 proceedings had in 20 above-entitled cause on said 21 date and time.) 22 23 24</p>
130	132



ATTACHMENT 4

E-FILED
5/14/2018 11:50 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 COUNTY DEPARTMENT - CHANCERY DIVISION

3

4 THE REGIONAL TRANSPORTATION)

5 AUTHORITY, an Illinois special)

6 unit of government and)

7 municipal corporation,)

8 Plaintiff,)

9 vs.) No. 14 CH 4240

10 AMERICAN AIRLINES, INC.,)

11 AMERICAN AVIATION SUPPLY, LLC,)

12 and THE CITY OF SYCAMORE, an)

13 Illinois home rule)

14 municipality,)

15 Defendants.)

16

17

18 TRANSCRIPT OF PROCEEDINGS had in the

19 above-entitled cause on the 31st day of May, A.D.

20 2017, at approximately 1:15 p.m.

21

22 BEFORE: HONORABLE THOMAS R. ALLEN

23

24

1 PRESENT:

2 TABET, DIVITO & ROTHSTEIN, LLC,
3 (209 South LaSalle Street, 7th Floor
4 Chicago, Illinois 60604
5 (312) 762-9456), by:
6 MR. DANIEL I. KONIECZNY,
7 dkonieczny@tdrlawfirm.com,
8 appeared on behalf of the Plaintiff;

9 SIDLEY AUSTIN, LLP,
10 (One South Dearborn Street,
11 Chicago, Illinois 60603
12 (312) 853-7000), by:
13 MR. CHARLES K. SCHAFER,
14 cschafer@sidley.com,
15 appeared on behalf of the Defendants.

16
17 REPORTED BY: KAREN M. SALGADO, CSR
18 CSR No. 084-004456.
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1 THE COURT: RTA versus American Airlines.

2 Well, I had taken some additional time to
3 review the cases that we discussed during our oral
4 argument a month or so ago, whenever it was, and
5 this is on the American Airlines and American
6 Aviation Supply's motion to reconsider the prior
7 ruling based on the Supreme Court case, J&J
8 Ventures, 2016 IL 119870, so here are my thoughts
9 and comments and ruling.

10 So the issue here again is whether the
11 Court has jurisdiction based on the RTA, Regional
12 Transportation Authority, statute and, more
13 specifically, 70 ILCS 3615/4.03, paragraph E;
14 namely, the Department of Revenue's role in
15 collecting the tax that was legislated in the
16 six-county area, which is a sales tax, and it varied
17 depending on the location, so that's the issue.

18 The last time around, this Court ruled
19 that the chancery court has jurisdiction and that
20 jurisdiction was not limited solely and exclusively
21 with the Department of Revenue. So, in light of the
22 J&J case, which was a gaming case -- the opinion was
23 handed down September of 2016 -- the parties,
24 American Airlines and the defendants, brought this

1 back for this motion to reconsider, and I totally
2 understand the reason why.

3 So let me start off by talking a little
4 bit about the J&J Venture case and some of the
5 language of the Supreme Court's ruling and the facts
6 there versus the facts us and the statute there;
7 namely, the Gaming Act versus the RTA, Regional
8 Transportation Authority, Act, and I'm going to
9 start out with some of the basic legal principles.
10 And actually, a lot of this is what I stated a
11 couple years ago in the first motion, but I think
12 there's some language in the new case, the J&J case,
13 that is important.

14 So in terms of jurisdiction, the court in
15 J&J talks generally about that; namely, that the
16 Illinois Constitution vests the circuit courts with
17 original jurisdiction over all justiciable matters
18 except in certain circumstances where this court,
19 the Supreme Court, has exclusive and original
20 jurisdiction; and, however, the legislature may
21 explicitly vest original jurisdiction in an
22 administrative agency when it enacts a comprehensive
23 statutory scheme that creates rights and duties that
24 have no counterpart in common law or equity.

1 Reading further, We note that in support
2 of the -- their argument that the circuit courts
3 have subject-matter jurisdiction relies on Skilling,
4 which stated, quote, If the legislature enactment
5 does divest the circuit courts of their original
6 jurisdiction through a comprehensive statutory
7 administrative scheme, it must do so explicitly.

8 And then the court in J&J goes on to talk
9 about Skilling, and I'll read that language where
10 they call -- they address the Skilling decision to
11 analyze NL Industries: Yet, Skilling's description
12 of the analysis in NL Industries is truncated and
13 does not represent the full measure of this court's
14 jurisprudence in ascertaining legislative intent to
15 vest exclusive jurisdiction in an administrative
16 agency.

17 In fact, NL Industries considered the
18 relevant statute as a whole, and the court
19 referenced not only the lack of exclusionary
20 language, but also other statutory provisions that
21 specifically referred to the circuit courts' ability
22 to adjudicate the questions at issue. Therefore,
23 NL Industries implicitly recognized that legislative
24 intent to divest circuit courts of jurisdiction may

1 be discerned by considering the statute as a whole.

2 And reading further from J&J, By
3 legalizing the use of video gaming terminals for
4 commercial gambling purposes, the legislature
5 enacted a comprehensive statutory scheme, creating
6 rights and duties that have no counterpart in common
7 law or equity. Considered in its entirety, this
8 statutory scheme demonstrates the legislature's
9 explicit intent that the Gaming Board have exclusive
10 jurisdiction over the video gaming industry and the
11 use agreements that are a necessary prerequisite of
12 engaging in the industry. The Act, therefore,
13 confers authority on the Gaming Board to determine
14 the validity and enforceability of contracts that
15 purport to control the location and operation of
16 video gaming terminals within licensed
17 establishments.

18 And at the end of their ruling, this
19 language is as follows: Quote, In sum, the general
20 assembly has enacted a comprehensive statutory
21 scheme that vests jurisdiction over video gaming
22 operators -- operations with the Illinois Gaming
23 Board. The agreements at issue in these cases
24 purport to control placement and operation of video

1 gaming terminals, and the Illinois Gaming Board has
2 exclusive, original jurisdiction to determine their
3 validity and enforcement. So that's the gaming
4 case.

5 Skilling, we've beaten to death the last
6 time, or at least I did, and I just wanted to
7 note -- or add to the court's comments -- well, add
8 Skilling's comments to this mix; and at the end, I
9 will tell you how I come out.

10 This was an insurance case, as we knew,
11 and the court went on to say that applying these
12 foregoing principles to the present case, we
13 conclude that the circuit court should not have
14 declined resolution of this insurance coverage
15 dispute in deference to the commission. It is the
16 particular province of the courts to resolve
17 questions of law such as the one presented in the
18 instant declaratory judgment case. Administrative
19 agencies are given wide latitude in resolving
20 factual issues but not in resolving matters of law.

21 And lastly, from Zahn, Z-a-h-n, also a
22 Supreme Court case, December 2016, 2016 IL 120526,
23 and there, they're citing the case, McCormick, for
24 this proposition: Accordingly, so long as a matter

1 brought before a circuit court is justiciable and
2 does not fall within the original and exclusive
3 jurisdiction of our court, the circuit court has
4 subject-matter jurisdiction to consider it. That
5 was already, I guess, stated in the J&J case.

6 All right. So the Gaming Act is, I would
7 state -- and I don't think I have to even take
8 judicial notice of it. I think we could take common
9 sense notice of it. The Gaming Act created -- made
10 something legal that was illegal heretofore, and
11 that is video gaming machines that are the subject
12 of the J&J case anyhow.

13 And the legislature created the -- or
14 drafted and created the Gaming Act very, very
15 carefully, very cautiously, very aware of the fact
16 that it was legalizing gambling. And also, the
17 legislature, being political creatures, had to know
18 and had to recognize the controversial nature of
19 that and the high level of scrutiny that would have
20 to be implemented in the Act if the public was going
21 to be able to tolerate legal gambling in bars and
22 restaurants and gas stations all across the state.

23 So that statute is a -- I wouldn't call
24 it a standalone, but I would say in the time I've

1 been here looking at administrative agencies -- and
2 there's hundreds of them that are created by law --
3 maybe not hundreds, but it seems like there are.
4 There's boards for everything. But I don't think --
5 I think that this statute goes far and wide to
6 create a board that is above reproach, at least from
7 purposes of the public's view, that nobody can
8 touch, that it is aboveboard that is exclusively
9 charged with dealing with this nebulous world of
10 gambling and what is naturally attracted to that
11 industry just because of history, human nature and
12 money.

13 And the board -- the Gaming Board is
14 given complete carte blanche in everything from A to
15 Z in implementing this Act. And the fact that the
16 J&J case ruled that the courts have no jurisdiction
17 in the gaming as it relates to the Gaming Act to me
18 is not a surprise. I'd be surprised if they ruled
19 the other way. That is thoroughly vetted in the
20 Act, carefully and with great trepidation probably,
21 and everything funnels through the Gaming Board.
22 It's all on them. The courts aren't involved.

23 And they -- their expertise, their
24 experience and their various appointments from

1 different walks of life is what the legislators
2 wanted. They didn't want to dump it on the court
3 for whatever reason, but I think that -- so I
4 understand J&J and the Supreme Court.

5 So as I read these cases over and over,
6 the words, "comprehensive statutory administrative
7 scheme," are sprinkled throughout the court
8 decisions, and that is how you glean the legislative
9 intent. And here, it is clear from J&J that they
10 didn't want the courts involved, and they created
11 this body, the Gaming Board, to run it, and the buck
12 stops there; and everything, as I said, from A to Z
13 lands with the Gaming Board.

14 Now, let's look at the RTA Act, and let's
15 compare that to the Gaming Act. Now, I will say
16 this, that the Regional Transportation Authority Act
17 is a -- I would say is a comprehensive statutory
18 administrative scheme. It's very thorough. It's
19 very comprehensive. It talks about the creation of
20 the board, the governing of the board, the labor,
21 the aspect of tax, meetings, and then -- but what we
22 get to here on this little nugget in the statute is
23 the Department of Revenue shall have full power to
24 administer and enforce this section, that section

1 being the tax collecting section -- tax collection
2 section.

3 So as I glean through the tran -- you
4 know, the RTA Act -- and it's 30, 40, 50 pages,
5 whatever it is -- the Department of Revenue just
6 pops up here for its little kind of delegated task
7 to collect the tax. The Department of Revenue
8 doesn't have anything generally to do with the
9 Regional Transportation Authority and the board and
10 the operation and everything else. They're
11 basically a collector, almost performing a clerical
12 act.

13 So then the question is when a question
14 of law arises on -- as we have here, does that mean
15 the Department of Revenue is going to figure that
16 out? I don't think that's the legislative intent.
17 I don't think that the question of taxation and
18 where the taxable event occurs and the collection
19 and whether a certain process of doing business or a
20 certain manner of doing business is under the law,
21 that which is contemplated by the statute or -- it's
22 a question of law, so I can't -- I can't fathom that
23 the Department of Revenue, as an administrative
24 body, if it is such, then has jurisdiction, and I

1 don't think that's the case.

2 This is strictly a question of law. You
3 know, the -- and these cases -- and J&J, I don't
4 think, overrules Skilling. I think Skilling still
5 applies and that this court, or the chancery court,
6 has jurisdiction, and that's even looking at the
7 entire comprehensive statute. I think, like I said,
8 the Department of Revenue just jumps out to collect
9 the tax. That's it. And the rest of the statute,
10 they're not a player.

11 So I think that I've concluded that J&J
12 does not overrule Skilling. Skilling still applies.
13 The Gaming Act is an unusual creature. It's very
14 thorough. It's very detailed, and the Gaming Board
15 owns it.

16 But as far as the -- as our case here
17 goes, I think my ruling is going to stand. The
18 court still -- I still think has jurisdiction in
19 this matter, and so I'm going to deny your motion
20 for reconsideration.

21 Okay. So where are --

22 MR. SCHAFER: Judge, just for completion, I
23 assume the ruling is the same, but based on your
24 review and some -- you know, I'll just mention there

1 was also the Village of North Riverside which talked
2 about the collective bargaining act and found that
3 J&J, you know, affected that. There's also the ROT
4 Act, which obviously is entirely about the
5 department.

6 But in considering all of those, is your
7 ruling also to deny our renewed motion to certify
8 the question, that you don't think --

9 THE COURT: Yes.

10 MR. SCHAFER: -- there's substantial ground --

11 THE COURT: Yes.

12 MR. SCHAFER: -- for difference of opinion on
13 that?

14 THE COURT: Yes, yes. I forgot about that.
15 I'm sorry. Yes, I'm going to deny that motion too,
16 so we're back to where we were two years ago.

17 What's on the menu, gentlemen? What's
18 next? Are we doing anything with this case? Are we
19 going to have a trial? What are we doing?

20 MR. KONIECZNY: Your Honor, Daniel Konieczny on
21 behalf of RTA. We think the next step here is that
22 discovery is substantially complete other than maybe
23 some loose ends. What we recommend is that we set a
24 very short status date to confer with the defendants

1 in the case, see if we can agree on a schedule to
2 raise motions for summary judgment or address any
3 other issues that are out there.

4 THE COURT: Okay. Does that sound reasonable,
5 gentlemen?

6 MR. SCHAFER: Yes, your Honor.

7 THE COURT: How short, 30 days?

8 MR. KONIECZNY: I think we can do it in less.

9 THE COURT: 14?

10 MR. KONIECZNY: You know --

11 THE COURT: You tell me, whatever the parties
12 want. I'm here.

13 MR. KONIECZNY: Maybe 14 days, is that --

14 MR. SCHAFER: To come back and talk about where
15 we are?

16 MR. KONIECZNY: Yeah.

17 THE COURT: Okay. How about June 15? That's
18 actually 15 days, but it looks open on my calendar.
19 June 15 at 10:30, is that okay? If it doesn't work
20 for you, I can -- any other day will work. I'm
21 just --

22 MR. KONIECZNY: That's fine for us, your Honor.

23 THE COURT: Okay. June 15, 10:30?

24 MR. SCHAFER: Yes, your Honor.

1 THE COURT: Okay. See you then.

2 MR. KONIECZNY: Thank you, your Honor.

3 (WHICH WERE ALL THE PROCEEDINGS HAD
4 IN SAID CAUSE ON THIS DATE.)

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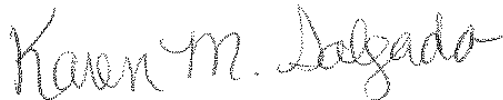
1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, KAREN M. SALGADO, a Certified
5 Shorthand Reporter of the State of Illinois, do
6 hereby certify that I reported in shorthand the
7 proceedings had at the hearing aforesaid, and that
8 the foregoing is a true, complete and correct
9 transcript of the proceedings of said hearing as
10 appears from my stenographic notes so taken and
11 transcribed under my personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 5th day of June
14 2017.

15
16 

17 Certified Shorthand Reporter

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19 C.S.R. Certificate No. 84-004456.

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