

No. 128252

**IN THE
SUPREME COURT OF ILLINOIS**

MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated May 9, 1980, known as Trust No. 1252; MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated July 1, 1982, known as Trust No. 1335; NEW WEST, an Illinois Limited Partnership, beneficial owner of Trust No. 1252; NEW BLUFF, an Illinois Limited Partnership, beneficial owner of Trust No. 1335; and BURNHAM MANAGEMENT COMPANY, an Illinois Corporation, as tax assessee,

Plaintiffs-Appellees,

v.

TIM BROPHY, Treasurer and ex-officio County Collector for Will County, Illinois,

Defendant-Appellant,

FOREST PRESERVE DISTRICT OF WILL COUNTY, a body corporate and politic, JOLIET PUBLIC SCHOOL DISTRICT 86; JOLIET HIGH SCHOOL DISTRICT 204; JOLIET JUNIOR COLLEGE, ILLINOIS COMMUNITY COLLEGE DISTRICT 525; CITY OF JOLIET, a municipal corporation; and JOLIET PARK DISTRICT,

Intervenor-Defendants-Appellants.

On Appeal from the
Appellate Court of Illinois, Third District, No. 3-20-0192
There Heard on Appeal from the Circuit Court of the
Twelfth Judicial Circuit, Will County, Illinois (No. 18 MR 2346)
The Honorable John C. Anderson, Judge Presiding

APPELLANT'S REPLY BRIEF AND RESPONSE BRIEF FOR CROSS-RELIEF

ORAL ARGUMENT REQUESTED

JAMES W. GLASGOW, Will County State's Attorney

Gary Scott Pyles, Assistant State's Attorney

Kevin Meyers, Assistant State's Attorney

57 N. Ottawa Street

Joliet, IL 60432

(815) 724-1318

spyles@willcountyillinois.com; kmeyers@willcountyillinois.com

Attorney for Defendant Tim Brophy,

Treasurer and ex-officio County

Collector for Will County

E-FILED

10/26/2022 3:09 PM

CYNTHIA A. GRANT

SUPREME COURT CLERK

POINTS AND AUTHORITIES

PLAINTIFFS’ INTERPRETATION OF “OVERPAYMENT” IS NOT WITHIN THE SCOPE OF SECTION 20-175	3
35 ILCS 200/20-175 (2018 as amended)	3, 4, 5
<i>U.S. v. Dalm</i> , 494 U.S. 596, 609 n.6 (1990)	5
<i>Gallagher v. Lenart</i> , 226 Ill.2d 208, 232, 314 Ill.Dec. 133, 874 N.E.2d 43 (2007)	3
<i>People v. Artis</i> , 232 Ill.2d 156, 902 N.E.2d 677 (2009)	3
<i>Alvarez v. Pappas</i> , 229 Ill. 2d 217, 890 N.E.2d 434 (2008)	4
<i>Sullivan v. Bd. of Comm’rs of Oak Lawn Park Dist.</i> , 318 Ill. App. 3d 1067 (1 st dist. 2001).....	4
<i>City of Joliet, Illinois v. New W., L.P.</i> , 825 F.3d 827 (7th Cir. 2016).....	4
<i>City of Joliet v. Mid-City Nat’l Bank of Chicago</i> , No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014).....	3

ARGUMENT

**PLAINTIFFS' INTERPRETATION OF "OVERPAYMENT" IS NOT
WITHIN THE SCOPE OF SECTION 20-175**

The plaintiffs argue that, among other issues, Section 20-175 should be interpreted to allow a refund even though the taxes were not overpaid but instead were paid by an alleged non-owing party. Given the text of Section 20-175, only an overpayment to the Collector gives an avenue for relief, not if a party that does not owe the taxes pays the correct amount.

Preliminarily, it is argued that the defendant waived this issue and other matters not raised in the appellate court. However, it is well settled that where the appellate court reverses the judgment of the trial court, and the appellee in that court brings the case to Illinois Supreme court as appellant, that party may raise any issues properly presented by the record to sustain the judgment of the trial court, even if the issues were not raised before the appellate court. *Gallagher v. Lenart*, 226 Ill.2d 208, 232 (2007); *People v. Artis*, 232 Ill.2d 156, 902 N.E.2d 677 (2009).

For the plaintiffs to have a refund of non-protested taxes there must be an "overpayment" (none of the other examples in 20-175 apply here). 35 ILCS 200/20-175 (2018 as amended). As there was not an overpayment to the Treasurer, the only dispute raised relates to who owed the taxes. If there was no overpayment to the Treasurer, Section 20-175 does not apply.

The plaintiffs made payments totaling approximately 6.3 million dollars in property taxes between 2005 and 2017 while they operated the Evergreen Terrace properties (C8-

16). See *City of Joliet v. Mid-City Nat'l Bank of Chicago*, No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014), *aff'd sub nom. City of Joliet, Illinois v. New W., L.P.*, 825 F.3d 827 (7th Cir. 2016). The trial court made a finding that plaintiffs did not protest the tax payments (C535). When tax payments are voluntarily paid, there can be no refund. *Sullivan v. Bd. of Comm'rs of Oak Lawn Park Dist.*, 318 Ill. App. 3d 1067, 743 N.E.2d 1057 (2001) However, the appellate court found that the plaintiffs were entitled to a refund of the property taxes in that there was an “overpayment” as defined in Section 20-175 of the Illinois Property tax code. 35 ILCS 200/20-175 (2018 as amended).

Section 20-175 has been interpreted as an exception to the Voluntary Payment Doctrine. Section 20–175 of the Code provides in pertinent part:

“If any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant. * * * (Emphasis added.) 35 ILCS 200/20–175 (2018 as amended).

The Voluntary Payment Doctrine holds that a taxpayer may not recover taxes that are voluntarily paid, even if the taxing body imposed or assessed the taxes illegally. *Alvarez v. Pappas*, 229 Ill. 2d 217, 890 N.E.2d 434 (2008). “Such taxes may be recovered only if the recovery is authorized by statute.” The plaintiffs claimed and the appellate court agreed that Section 20-175 applied to the payments made by plaintiffs and allowed for a refund of the property taxes paid. 35 ILCS 200/20-175 (2018 as amended).

However, the plain language of section 20–175 applies to only specific types of “erroneous assessments” or “overpayments,” namely, those involving property that has been twice assessed for the same year or assessed before it becomes taxable. It does not, as

the plaintiffs contend, apply to all types of erroneous assessment or overpayment. Although *Alvarez* interpreted “overpaid” taxes to not require an erroneous assessment, this was in the context of taxes paid twice, which section 20–175 was intended to address. To determine the meaning of an overpayment under the statute, in *Alvarez* this Court stated that “Webster's dictionary defines ‘overpayment’ as: ‘payment in excess of what is due.’” *Id.* at 225. This Court also cited the U.S. Supreme Court case of *U.S. v. Dalm*, 494 U.S. 596, 609 n.6 (1990), stating “the commonsense interpretation of ‘overpayment’ is that ‘a tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all.’” *Alvarez*, 229 Ill. 2d at 225. Under those definitions, there was no overpayment in this case.

The plaintiffs contend erroneously that because they were retroactively not the owners of the property in question, they are entitled to use Section 20-175 as an avenue to get a refund. 35 ILCS 200/20-175 (2018 as amended). The key question for the Court is whether overpayment in this context means a payment of the taxes by someone who does not owe the taxes but does not result in an overpayment to the County Collector.

The answer to that question is found in looking at the refund process included in Section 20-175 to see if it applies. Section 20-175 allows a refund in three limited circumstances. Two of the circumstances relate to errors in assessment by the Collector (presumably an overpayment is involved if there is a refund sought) and the third is when an overpayment occurs either by one claimant (making an extra payment) or by different claimants (presumably a payment made by both the property owner and mortgage lender when only one was required to pay). In each of those instances, the County Collector from

facts within his or her knowledge is tasked in determining if an overpayment within the meaning of the statute is made. The reason that this administrative step is in the statute is the fact that whether too much has been paid is within the knowledge of the Collector. However, this assessment by the Collector cannot be made when there is a dispute of “**who**” should pay the taxes because in this case, there is no dispute that the correct amount of taxes was paid. In essence, there was not an overpayment of the taxes, only a payment of the correct amount by a party who retroactively did not own the property. Furthermore, at the time the taxes were in fact paid, the plaintiffs did own the subject property.

The protection offered by Section 20-175 is triggered only when the proper amount of tax owed is overpaid. It does not apply in a situation when the proper amount of tax is paid but a dispute exists as to who should have paid it.

The plaintiffs dismiss the constitutional issues raised by defendant by arguing that they are irrelevant. The defendant believes that the fact that they would receive a windfall (presumably charging renters for a portion of the property tax expense which most landlords customarily do) as the now publicly owned property was used for a private and profit driven enterprise without the corresponding tax burden is without merit. Defendant Brophy adopts the arguments of the intervenors about the title/ownership issue.

RESPONSE TO PLAINTIFFS REQUEST FOR CROSS- RELIEF

In response to plaintiffs’ claims of cross-relief, defendant Brophy submits that both the trial court and appellate court correctly dismissed those claims. Defendant Brophy adopts the arguments raised in Intervenor’s reply/response brief regarding plaintiffs’ cross-relief as if stated herein.

CONCLUSION

As the appellate court erred in its interpretation of Section 20-175, Defendant-Appellant TIM BROPHY respectfully seeks reversal of the appellate court's decision in this case and an affirmance of the trial court order.

Respectfully submitted,

By: 

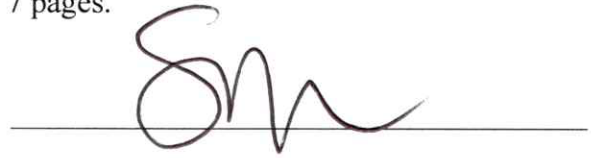
Gary Scott Pyles
Assistant State's Attorney

JAMES W. GLASGOW

Will County State's Attorney
Gary Scott Pyles, Assistant State's Attorney
Kevin Meyers, Assistant State's Attorney
57 N. Ottawa Street
Joliet, IL 60432
(815) 724-1318
spyles@willcountyillinois.com
kmeyers@willcountyillinois.com

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 7 pages.



No. 128252

**IN THE
SUPREME COURT OF ILLINOIS**

MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated May 9, 1980, known as Trust No. 1252; MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated July 1, 1982, known as Trust No. 1335; NEW WEST, an Illinois Limited Partnership, beneficial owner of Trust No. 1252; NEW BLUFF, an Illinois Limited Partnership, beneficial owner of Trust No. 1335; and BURNHAM MANAGEMENT COMPANY, an Illinois Corporation, as tax assessee,

Plaintiffs-Appellees,

v.

TIM BROPHY, Treasurer and ex-officio County Collector for Will County, Illinois,

Defendant-Appellant,

FOREST PRESERVE DISTRICT OF WILL COUNTY, a body corporate and politic, JOLIET PUBLIC SCHOOL DISTRICT 86; JOLIET HIGH SCHOOL DISTRICT 204; JOLIET JUNIOR COLLEGE, ILLINOIS COMMUNITY COLLEGE DISTRICT 525; CITY OF JOLIET, a municipal corporation; and JOLIET PARK DISTRICT,

Intervenor-Defendants-Appellants.

On Appeal from the
Appellate Court of Illinois, Third District, No. 3-20-0192
There Heard on Appeal from the Circuit Court of the
Twelfth Judicial Circuit, Will County, Illinois (No. 18 MR 2346)
The Honorable John C. Anderson, Judge Presiding

NOTICE OF FILING

TO: *See Attached Service List*

PLEASE TAKE NOTICE that we have caused to be electronically filed with the Clerk of the Supreme Court of Illinois this 26th day of October, 2022, the following document(s), a copy of which is attached hereto:

APPELLANT'S REPLY BRIEF AND RESPONSE BRIEF FOR CROSS-RELIEF

Respectfully submitted,

By: 

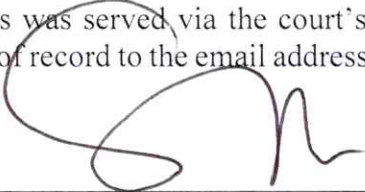
Gary Scott Pyles
Assistant State's Attorney

JAMES W. GLASGOW

Will County State's Attorney
Gary Scott Pyles, Assistant State's Attorney
Kevin Meyers, Assistant State's Attorney
57 N. Ottawa Street
Joliet, IL 60432
(815) 724-1318
spyles@willcountyillinois.com
kmeyers@willcountyillinois.com

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that a copy of the foregoing with attachments was served via the court's electronic filing service through Odyssey eFile IL upon the attorneys of record to the email addresses as listed in the pleadings on the 26th day of October, 2022.



SERVICE LIST

Kathy M. Sons - ksons@kggllc.com

KGG, LLC, 111 N. Ottawa Street, Joliet, IL 60432

Theodore R. Tetzlaff - ttetzlaff@tetzlafflegal.com

Tetzlaff Law Offices, 227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Joshua Redman - jredman@tetzlafflegal.com

Tetzlaff Law Offices, 227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Tetzlaff Law Offices - info@tetzlafflegal.com

227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Carl Buck – cbuck@rcklawfirm.com

Rathbun Cserenyak & Kozol, LLC, 3260 Executive Drive, Joliet, IL 60431

John M. Izzo – jizzo@petrarcagleason.com

Petrarca Gleason Boyle & Izzo, LLC, 19730 Governors Highway, Suite 10, Flossmoor, IL 60422

Graeme J. Quinn – gquinn@petrarcagleason.com

Petrarca Gleason Boyle & Izzo, LLC, 19730 Governors Highway, Suite 10, Flossmoor, IL 60422

Steven B. Adams – sadams@robbins-schwartz.com

Robbins Schwartz, 55 W. Monroe Street, Suite 800, Chicago, IL 60603

Jacqueline McLerran – jmclerran@robbins-schwartz.com

Robbins Schwartz, 55 W. Monroe Street, Suite 800, Chicago, IL 60603