Docket No. 122873

IN THE ILLINOIS SUPREME COURT

MARTIN CASSIDY,

Plaintiff-Appellee,

v.

CHINA VITAMINS, LLC,

Defendant-Appellant,

and

TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED and ZHEJIANG NHU COMPANY, LTD.,

Defendants.

On Appeal from the Illinois Appellate Court, First Judicial District, Docket No. 1-16-0933, there heard on appeal from the Circuit Court of Cook County, Law Division, Court No. 07 L 13276, the Honorable Kathy M. Flanagan, Judge Presiding

ADDITIONAL BRIEF OF PLAINTIFF-APPELLEE MARTIN CASSIDY

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiff-Appellee Martin Cassidy ("Cassidy") filed this products liability and negligence action after a flexible bulk container weighing over 2,000 pounds ruptured, spilling its contents and causing the remaining stacked containers to become unstable and fall on him. The falling containers caused multiple fractures to Cassidy's left hip, left leg, left ankle, right leg, right knee, right ankle, and left arm, requiring immediate surgical intervention and multiple subsequent surgeries to repair. Thereafter, Cassidy's treating physicians diagnosed him with chronic ankle pain and posttraumatic arthritis due to the severity of the injuries sustained. After certifying the Taihua Group[1], a manufacturer based in China, as the manufacturer of the container, the trial court dismissed China Vitamins, LLC ("China Vitamins") pursuant to 735 ILCS 5/2-621. Cassidy then obtained a default judgment against Taihua Group for $9,111,322.47. Finding no assets that the Taihua Group could use to satisfy the judgment against it, Cassidy then moved to reinstate China Vitamins pursuant to 735 ILCS 5/2-621(b)(3) and (b)(4). The trial court initially granted Cassidy's motion, but then denied reinstatement on China Vitamins' Motion to Reconsider. Cassidy then appealed that denial to the First District Appellate Court. There, the appellate panel found that the trial judge's denial of the Motion to Reinstate and dismissal of China Vitamins was in error, and remanded to the trial court to determine whether Cassidy had met the standard for reinstatement. The appellate panel also reinstated Cassidy's claim for negligent products

[1] As noted in China Vitamins' brief to this Court, this party has been referred to by multiple names throughout the litigation. For purposes of both simplicity and continuity, this brief will adopt the naming convention used by both the Appellate Court below and the Defendant-Appellant in the instant action. (*See* Additional Brief and Appendix of Defendant-Appellant "Def's Add'l Br." at 2).

liability, finding the trial court dismissed that count of Cassidy's complaint under a void version of the statute.[2]

No questions are raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the Appellate Court properly remanded the case to the trial court for further proceedings based on the plain language of the "unable to satisfy any judgment" standard found in 735 ILCS 5/2-621(b)(4).

STATEMENT OF FACTS

Plaintiff-Appellee Martin Cassidy, an employee of Ridley Feed Ingredients in Mendota, Illinois, filed a products liability and negligence action against China Vitamins, alleging that he sustained multiple severe injuries as a result of a defective flexible bulk materials container that ripped and leaked its contents, causing other containers that were stacked on it to become unstable and fall on him. R.V1, C3-15. China Vitamins filed its answer to the first two counts of Cassidy's complaint on April 10, 2008, along with a motion for dismissal of the third count. R.V1, C134-45. The trial court granted China Vitamins' motion to dismiss count III on April 22, 2008. R.V1, C171.

During discovery, China Vitamins identified the Taihua Group as the manufacturer of the material container that failed and injured Cassidy. R.V1, C177-86. Mr. Cassidy then filed an amended complaint, adding Taihua Group and Zhejiang Nhu Company Ltd, a secondary distributor, as additional defendants. R.V4, C806-37.

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[2] As noted in both its Petition for Leave to Appeal and Additional Brief to this Court, China Vitamins does not appeal the Appellate Court's reinstatement of this count. (*See* Def's Add'l Br. at 9).

Taihua Group entered its general appearance on July 22, 2009. R.V8, C1882-83. Taihua Group then filed its answer to Cassidy's amended complaint on August 24, 2009. R.V8, C1963-73. Counsel for Taihua Group then moved to withdraw on December 3, 2009. R.V9, C2039-43. The court granted the motion to withdraw on January 6, 2010, and ordered Taihua Group to enter a supplemental appearance by March 3, 2010. R.V9, C2049-52.

China Vitamins moved for summary judgment on August 29, 2011, alleging that it did not design, manufacture, or have knowledge of the defective product that injured Cassidy. R.V10, C2257-70. China Vitamins sought dismissal pursuant to Sec. 5/2-621, in part, stating that the manufacturer of the defective product had been identified, therefore China Vitamins was entitled to be dismissed. R.V10, C2257-70. The court granted China Vitamins' motion to dismiss, pursuant to Sec. 5/2-621, on January 9, 2012. R.V10, C2400-03.

After China Vitamins' dismissal, Cassidy moved for entry of an order of default against Taihua Group on December 22, 2011, stating that Taihua Group had failed to file its supplemental appearance as ordered. R.V10, C2371-75. The court granted the motion for default on January 9, 2012, and ordered a prove-up conducted. R.V10, C2399. Based on the prove-up, the court entered judgment against Taihua Group in the amount of $9,111,322.47 on June 14, 2012. R.V10, C2411-12.

After the entry of the judgment, Cassidy engaged in multiple attempts to discover assets of Taihua Group in an attempt to satisfy the judgment. R.V10, C2414-34; R.V10, C2480-99; R.V11, C2502-2749; R.V12, C2752-2912. Plaintiff retained counsel at Querrey & Harrow, Ltd. to assist in this process. R.V10, C2436.

Finding no assets that Taihua Group could use to satisfy the judgment against it, Cassidy moved to reinstate China Vitamins pursuant to Sec. 5/2-621 on July 24, 2015. R.V12, C2913-17. The trial court granted Plaintiff's motion to reinstate China Vitamins on September 21, 2015. R.V13, C3022.

China Vitamins then filed a motion for reconsideration of the court's order reinstating it as a defendant. R.V13, C3030-36. China Vitamins alleged that Plaintiff had not met any of Sec. 5/2-621's reinstatement criteria, therefore, China Vitamins should not have been reinstated. R.V13, C3030-36. The trial court granted China Vitamins' motion for reconsideration on December 14, 2015, vacating its previous reinstatement order. R.V13, C3190.

Following this ruling, Cassidy then moved the court to reconsider its December 14 order that granted dismissal to China Vitamins. R.V14, C3253-63. The trial court denied Plaintiff's motion to reinstate on March 14, 2016, leaving China Vitamins dismissed as a defendant. R.V14, C3324-34. The trial court also entered a finding that its order was final and appealable pursuant to Supreme Court Rule 304(a). R.V14, C3334.

After the denial of his Motion, Cassidy sought review with the First District Appellate Court. The Appellate Court issued its judgment and opinion on September 29, 2017. A1-A28. In that opinion, the panel unanimously agreed that the trial court had erred in dismissing Cassidy's negligent products liability claim against China Vitamins. ¶¶ 20-21.

Next, the appellate panel addressed the holding in *Chraca v. U.S. Battery Manufacturing Co.*, 2014 IL App (1st) 132325. The panel held that the *Chraca* holding was the result of a "flawed" analysis. ¶ 29. The panel noted that the *Chraca* court had

"misconstrued" the authority it cited to conclude that in a proceeding to reinstate under 5/2-621, a nonmanufacturing defendant could only be reinstated if the manufacturer is bankrupt or nonexistent. ¶ 30. The appellate panel noted that "[n]othing in section 2-621(b)(4) limits its application to only bankrupt or nonexistent manufacturers" and declined to follow both *Chraca*'s analysis and holding. ¶ 30. The panel further noted that the focus of the authority cited by the *Chraca* court was actually on "whether the manufacturer was judgment-proof and ensuring that the plaintiff's total recovery would not be prejudiced by the dismissal of a nonmanufacturer defendant." ¶¶ 29-30.

The Appellate Court next turned to interpreting the meaning of the "unable to satisfy any judgment" language found in section 5/2-621(b)(4). ¶¶ 31-33. The panel noted that the phrase was a term of art with a specific legal meaning, which is "synonymous with the terms 'judgment-proof' and 'execution-proof.'" ¶ 33. The court further found that the *Chraca* court had analyzed that section of the statute too narrowly, focusing only on the word "unable" in isolation. ¶ 33. Consequently, the trial court had focused only on the word "unable" when it declined to reinstate China Vitamins. ¶ 33.

The Appellate Court then held that "in order to reinstate a previously dismissed nonmanufacturer defendant, the plaintiff, in addition to showing that the manufacturer is insolvent or bankrupt, may also show that the manufacturer has no property or does not own enough property within the court's jurisdiction to satisfy the judgment." ¶ 34. According to the panel, it was this construction that was consistent with the "plain language" of the statute. ¶ 34.

The panel also noted that its interpretation of the phrase "unable to satisfy any judgment" to mean judgment-proof or execution-proof was "consistent with [Section

5/2-621(b)(4)'s] purpose to ensure that the burden of loss due to defective or dangerous products is not borne by the consumer but instead remains on the manufacturer, distributor and retail defendants who placed the product in the stream of commerce." ¶ 35. The panel found "no support" for the idea that a distributor who profited from the sale of a defective product could "sit and watch from the sidelines" while the injured consumer bore the burden of the loss. ¶ 35.

The panel then concluded that the trial court had erred in denying Cassidy's motion to reinstate China Vitamins, and had erred in dismissing the claim of negligent products liability. ¶ 41. Because of this, the Appellate Court remanded the matter to the trial court to determine whether Taihua Group was "unable to satisfy any judgment" within the meaning of the statute's plain language. ¶ 41.

After the Appellate Court issued its decision, China Vitamins petitioned for review in this Court, which was allowed on January 18, 2018. This appeal followed.

STANDARD OF REVIEW

This appeal presents a question of statutory interpretation. This Court is asked to decide whether the Appellate Court below properly applied the plain language of 735 ILCS 5/2-621(b)(4) in remanding the case to the trial court for further proceedings based on the "unable to satisfy any judgment" standard found in subsection (b)(4).

"The primary rule of statutory construction is to ascertain and give effect to legislative intent." *People v. Zaremba*, 158 Ill. 2d 36, 40 (1994). "Legislative intent is best determined by examining the statutory language, which must be given its plain and ordinary meaning." *Lucas v. Lakin*, 175 Ill. 2d 166, 171 (1997). Because statutory construction involves a question of law, this Court reviews the matter *de novo*. *Id.*

ARGUMENT

I. The Appellate Court Properly Applied The Plain Language Of 735 ILCS 5/2-621(b)(4) In Remanding This Case To The Trial Court For Further Proceedings

The First District Appellate Court properly applied the plain language of 735 ILCS 5/2-621(b)(4) in its decision to remand this action to the trial court in its opinion in *Cassidy v. China Vitamins, LLC*, 2017 IL App (1st) 160933. In that opinion, the Appellate Court specifically analyzed both the language and purpose of the statute in reaching its conclusion that the phrase "unable to satisfy any judgment" found in subsection (b)(4) of the statute is a legal term of art synonymous with judgment-proof or execution-proof. *Id.* at ¶ 33. The Appellate Court also correctly noted that nothing in the plain language of Section 5/2-621(b)(4) limits the scope of the statute to only manufacturers that are bankrupt or nonexistent—words which appear nowhere in the statute—and that to so limit the statute would improperly render parts of the statutory language superfluous. *Id.* at ¶ 30. Furthermore, China Vitamins' assertion that the Appellate Court's opinion enables reinstatement of a dismissed seller based on the plaintiff's inability to enforce the judgment—as opposed to the manufacturer's inability to satisfy the judgment—is belied by the language of the opinion itself. From this, it is abundantly clear that the Appellate Court properly applied the plain language of the statute as written, and for these reasons, this Court should affirm the decision of the Appellate Court below in its entirety.

A. The Appellate Court Correctly Interpreted "Unable To Satisfy Any Judgment" To Mean Judgment-Proof Or Execution-Proof

The Appellate Court below properly interpreted the language of 735 ILCS 5/2-621(b)(4), which permits reinstatement of a nonmanufacturing defendant when the

manufacturer is "unable to satisfy any judgment" to apply to judgment-proof or execution-proof manufacturers. Section 5/2-621, also known as the "Distributor Statute", provides that "[i]n any product liability action based in whole or in part on the doctrine of strict liability in tort[,]" a nonmanufacturer defendant may seek dismissal from the action by certifying the correct identity of the manufacturer of the defective product that allegedly caused the plaintiff's injury. 735 ILCS 5/2-621. Once the manufacturer has been brought into the action by having "answered or otherwise pleaded" (or is required to do so), "the court shall order the dismissal of a strict liability in tort claim against the certifying defendant or defendants[.]" 735 ILCS 5/2-621(b). This provision allows the seller of the defective product to shift its own liability to the manufacturer, who presumably created the defect. *Kellerman v. Crowe*, 119 Ill. 2d 111, 113 (1987); *Murphy v. Mancari's Chrysler Plymouth, Inc.*, 381 Ill. App. 3d 768, 775 (1st Dist. 2008).

However, the statute also provides several mechanisms to reinstate a nonmanufacturer defendant who was previously dismissed in favor of action directly against the manufacturer of the product. One of those mechanisms provides for reinstatement if the plaintiff can show "[t]hat the manufacturer is unable to satisfy any judgment as determined by the court[.]" 735 ILCS 5/2-621(b)(4). This provision exists in order to ensure "that the burden of loss due to a defective or dangerous product remains on those who placed the product in the stream of commerce." *Thomas v. Unique Food Equipment, Inc.*, 182 Ill. App. 3d 278, 282 (1st Dist. 1989). By placing the burden on those entities in the distributive chain, this provision also ensures that the burden of loss "[. . .] is not borne by the consumer[.]" *Cassidy*, 2017 IL App (1st) at ¶ 35.

"The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 6 (2009) (citation omitted). "The best evidence of legislative intent is the language used in the statute itself and that language must be given its plain and ordinary meaning." *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 26 (2005) (citation omitted). "Under the guise of construction, a court may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute." *Id.*

Here, the Appellate Court below did exactly as this Court commanded in *Landis* and *King* when analyzing the language of Section 5/2-621(b)(4). Noting that "[t]erms of art abound in the law, [. . .]" the *Cassidy* court found that "unable to satisfy any judgment" is a term of art that is "synonymous with the terms 'judgment-proof' and 'execution-proof.'" *Cassidy*, 2017 IL App (1st) at ¶ 33. The *Cassidy* court also noted that "[n]othing in Section 2-621(b)(4) suggests that we should not give the phrase 'unable to satisfy any judgment' its ordinary meaning of judgment-proof." *Id.* at ¶ 34. Applying the plain language of the statute, as the Appellate Court did, properly applies the "[. . .] most fundamental rule of statutory construction[.]" *King*, 215 Ill. 2d at 26.

Furthermore, the Appellate Court also considered the competing interpretation of the statute found in *Chraca v. U.S. Battery Mfg. Co.*, 2014 IL App (1st) 132325, and found it to be unpersuasive. *Cassidy*, 2017 IL App (1st) at ¶ 29. As noted by the *Cassidy* court, the *Chraca* court focused only on the word "unable" in Section 5/2-621(b)(4) in arriving at its decision. *Id.* at ¶ 33. Doing so not only improperly limited application of

the statutory provision to only bankrupt and nonexistent manufacturers, but also rendered parts of the statutory language superfluous. *Id.* at ¶ 30. As the *Cassidy* court noted, "[t]he statute should be read as a whole and construed 'so that no term is rendered superfluous or meaningless.'" *Id.* at ¶ 26; *see, e.g., Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990) ("A statute should be construed so that no word or phrase is rendered superfluous or meaningless.") (citations omitted). Additionally, the *Chraca* court's reading of the word "unable" improperly focused on a single word in isolation without considering other parts of the statute. *Cassidy*, 2017 IL App (1st) at ¶ 26. As this Court has repeatedly stated when analyzing a statute, "[w]ords and phrases must not be viewed in isolation but must be considered in light of other relevant provisions of the statute." *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 320 (2003).

This Court should also note that the *Cassidy* court did not pull its interpretation of Section 5/2-621(b)(4) out of thin air. The great weight of authority indicates that "unable to satisfy any judgment" applies to judgment-proof manufacturers, not just those in bankruptcy or those who no longer exist. *Halperin v. Merck, Sharpe & Dohme Corp.*, 2012 U.S. Dist. LEXIS 50549, at *13 (N.D. Ill., Apr. 10, 2012) (noting that a plaintiff may reinstate a previously dismissed defendant under the statute when "the manufacturer is judgment proof"); *Whelchel v. Briggs & Stratton Corp.*, 850 F. Supp. 2d 926, 932 (N.D. Ill., Feb. 7, 2012) (noting that a plaintiff may move at any time to reinstate the distributor "if the manufacturer is judgment proof"); *Fisher v. Brilliant World Int'l*, 2011 U.S. Dist. LEXIS 87321, at *5 (footnote 2) (N.D. Ill., Aug. 4, 2011) (noting that dismissal not available to a distributor where the Chinese manufacturer had "defaulted and may be judgment proof"); *Rosenthal v. Werner Co.*, 2009 U.S. Dist. LEXIS 30918,

at *19, 2009 WL 995489 (N.D. Ill., April 13, 2009) (noting that "section 2-621(b)(4) applies if the manufacturer is judgment-proof"); *Gilmore v. Festo KG*, 1999 U.S. Dist. LEXIS 8323, at *10, 1999 WL 356295, at *3 (N.D. Ill., May 21, 1999) (denying reinstatement of a distributor where the plaintiff "has not established that [the manufacturer] is judgment-proof").

Furthermore, even the court cited by the *Chraca* court noted that in the case it cited, language in what it referred to as the "Seller's Exception", otherwise known as Section 5/2-621(b), "permits an injured party to proceed against a seller where the manufacturer appears to be judgment-proof." *Harleysville Lake States Ins. Co. v. Hilton Trading Corp.*, 2013 U.S. Dist. LEXIS 103189, at *10 (N.D. Ill., Jul. 23, 2013). The *Harleysville* court additionally noted that in the case it was considering, "there is no suggestion that Hilton is insolvent or otherwise *judgment-proof*." *Id.* (emphasis added). The clear import of all of this authority is that the *Cassidy* court below properly interpreted Section 5/2-621(b)(4) to include manufacturers who are judgment-proof, not just those who are bankrupt or nonexistent, in contrast to China Vitamins' position.

By weighing both its interpretation of the phrase against the *Chraca* court's interpretation, and considering the implications of both (as well as the intent of the legislature and the vast amounts of prior authority on the subject), the *Cassidy* court arrived at the correct interpretation of the statute. Because "unable to satisfy any judgment" is a legal term of art meaning judgment-proof or execution-proof, and because the *Chraca* court failed to consider other relevant provisions of the statute that would be rendered superfluous by its interpretation, this Court should affirm the *Cassidy* court's decision that the "unable to satisfy any judgment" provision in Section 5/2-

621(b)(4) applies to judgment-proof and execution-proof manufacturers, in accordance with the plain text of the statute.

B. The Plain Language Of 735 ILCS 5/2-621 Does Not Limit Its Application To Only Manufacturers Who Are "Bankrupt" Or "Nonexistent"

In its brief to this Court, China Vitamins urges that the Appellate Court's interpretation below be rejected so as to "enforce section 2-621(b)(4) as written." Def's Add'l Br. at 18. China Vitamins takes the position that Section 5/2-621(b)(4) only applies when a plaintiff can show that a manufacturer is bankrupt or nonexistent. *Id.* at 15. However, that position presents a conflict. The plain language of 735 ILCS 5/2-621 makes no reference to bankruptcy or nonexistence. Simply put, the words "bankrupt" and "nonexistent" do not appear in the statute. Additionally, the statute makes no mention of either of those scenarios being prerequisites to the reinstatement of a previously dismissed nonmanufacturer defendant. For this Court to adopt the position that China Vitamins takes would be contrary to enforcing the statute as written when "bankrupt" and "nonexistent" are not found in the statutory text, and when no mention is made of reinstatement being predicated on either of those two scenarios. For these reasons, this Court should reject China Vitamins' argument and decline to adopt a construction of the statute that imports words not found in the plain language of the statute as written.

"Where the language of a statute is clear and unambiguous, a court must give it effect as written, without 'reading into it exceptions, limitations or conditions that the legislature did not express.'" *Garza v. Navistar Int'l Transp. Corp.*, 172 Ill. 2d 373, 378 (1996) (quoting *Solich v. George & Anna Portes Cancer Prevention Ctr.*, 158 Ill. 2d 76,

83 (1994)). "Under the guise of construction, a court may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute." *Beyer v. Parkis*, 324 Ill. App. 3d 305, 309-10 (1st Dist. 2001); *see Mack Indus. v. Vill. of Dolton*, 2015 IL App (1st) 133620 at ¶ 37 (refusing to "insert exceptions for 'willful and wanton conduct' or for 'corrupt or malicious motives' into provisions of the Tort Immunity Act when such exceptions do not appear in the plain language of the statute.") (citing *Bloomingdale v. C.D.G. Enters.*, 196 Ill. 2d 484, 493-94 (2001) (same)).

Here, to adopt China Vitamins' interpretation of the statute limiting reinstatement to only situations in which a manufacturer is bankrupt or nonexistent would be to depart from the plain language of the statute by adding conditions not expressed by the Legislature. Had the Legislature meant Section 5/2-621(b)(4)'s reinstatement mechanism to apply only when the manufacturer was bankrupt or nonexistent, the Legislature would have said so. Certainly, the Legislature knows how to say "bankrupt" and "nonexistent" when that is its intended meaning. Additionally, there would be no need to use the broad language of "unable to satisfy any judgment" to mean *only* bankrupt or nonexistent. That the Legislature chose the broader phrase, and not the more narrow construction proffered by China Vitamins, is indicative of the fact that the Legislature contemplated and intended for the condition to apply not just to bankrupt and nonexistent manufacturers, but to those who are judgment-proof as well.

Additionally, China Vitamins' interpretation of the statute allowing reinstatement only when the manufacturer is shown to be bankrupt or nonexistent would create a

perverse incentive for manufacturers and distributors to agree that the manufacturer will remain insolvent, but not bankrupt or nonexistent, in order that no one in the distributive chain will face liability for injuries caused by their products. In this way, a plaintiff's recovery against *anyone* in the distributive chain could be thwarted, as the manufacturer is insolvent—but not bankrupt or nonexistent—and the distributors can simply certify their way out of the proceedings. In this scenario, the plaintiff would be unable to meet the standard required for distributors to be reinstated, and would come away empty-handed in proceedings against the insolvent manufacturer. This cannot be the purpose of Section 5/2-621(b)(4).

Furthermore, contrary to China Vitamins' assertion in its brief, for this Court to affirm the interpretation of the Appellate Court below is not "legislation by litigation." Def's Add'l Br. at 18. Cassidy is not asking this Court to legislate from the bench, nor is he asking this Court to add conditions to the statute that do not appear in its text. Rather, Cassidy asks that this Court clarify case law that has improperly narrowed the scope of the statute because the *Chraca* court misconstrued the language found in *Harleysville*, as the *Cassidy* court recognized. *Cassidy*, 2017 IL App (1st) at ¶ 30. Notably, it appears that no Illinois case prior to *Chraca* endorsed the idea of bankruptcy and nonexistence as the *only* two scenarios in which a plaintiff could seek reinstatement of a nonmanufacturer defendant. *See* Section I. A at 10, *supra* (collecting cases applying a judgment-proof standard).

If this Court is to not annex new provisions and is to enforce Section 5/2-621(b)(4) as written, the proper interpretation of the statute is that offered by the *Cassidy* court below. For this Court to limit Section 5/2-621(b)(4) to only manufacturers who are

bankrupt or nonexistent by using words which appear nowhere in the plain language of the statute is to do the opposite of what this Court's own dictates command. For this reason, this Court should reject the interpretations provided by the *Chraca* court and China Vitamins, and affirm the decision of the Appellate Court below.

C. China Vitamins' Assertion That The Appellate Court's Opinion Permits Reinstatement Based On A Plaintiff's Inability To Enforce The Judgment Is Belied By The Opinion Itself

China Vitamins' brief to this Court also repeatedly asserts that the Appellate Court's decision below allows a plaintiff to reinstate a nonmanufacturer defendant based on the plaintiff's inability to collect or enforce the judgment against the manufacturer. However, the language of the opinion itself belies this assertion. As noted by the Appellate Court, the proper focus is on the manufacturer's inability to satisfy the judgment against it, not the plaintiff's inability to enforce the judgment. To the extent that a plaintiff has difficulty in enforcing the judgment, particularly in the instant case, that difficulty is merely a reflection of the fact that Taihua Group has no available assets with which to satisfy the judgment against it. For these reasons, China Vitamins' assertions that a plaintiff can seek reinstatement when he has difficulty enforcing the judgment miss the mark entirely.

China Vitamins rests its argument to this Court on its own assertion that the Appellate Court's decision below permits "reinstatement of a strict product liability claim against a non-manufacturer based on the plaintiff's inability to enforce the judgment against the manufacturer in Illinois[.]" Def's Add'l Br. at *i*, 2, 10, 11. However, a simple reading of the court's opinion shows that this is not what the Appellate Court said:

> We do not hold that section 2-621(b)(4) applies when a plaintiff merely has trouble collecting a judgment; there can be a significant difference between situations involving a plaintiff experiencing some difficulty in collecting a judgment and a defendant being judgment-proof. The court's focus is not on plaintiff's mere inability to collect or enforce the judgment but, rather, whether plaintiff, based on the plain language of the statute, has met his burden to show that Taihua Group is judgment-proof.

Cassidy, 2017 IL App (1st) at ¶ 34.

The Appellate Court below could not have been clearer in making this distinction. The focus of reinstatement is always on whether or not, in the language of the statute, the manufacturer is "unable to satisfy any judgment as determined by the court." 735 ILCS 5/2-621(b)(4). Cassidy does not advocate the position that reinstatement should take place simply because he has faced difficulty in enforcing the judgment against Taihua Group. Rather, Cassidy seeks reinstatement of China Vitamins because Taihua Group is judgment-proof.

This Court should also note that Cassidy's unsuccessful efforts to enforce the judgment are merely a reflection of the fact that Taihua Group has no available assets with which to satisfy the judgment. In other words, Taihua Group is judgment-proof, and Cassidy will be left to bear the costs of his injury alone, absent reinstatement. In the words of the *Cassidy* court:

> We find no support in the Illinois common law or statutes concerning strict product liability for the notion that the legislature intended for injured consumers to bear unreasonable costs to chase after foreign manufacturers who do not own sufficient property within the court's jurisdiction to satisfy a judgment while reachable downstream liability distributor defendants, who profited from the sale of the defective product, could have contracted with the manufacturer for insurance coverage, and could seek indemnification from the manufacturer, simply sit and watch from the sidelines.

2017 IL App (1st) at ¶ 35.

Here, Cassidy seeks China Vitamins' reinstatement because Taihua Group has no assets that can be used to satisfy the default judgment entered against it by the trial court. Just as someone digging a well and coming up dry after multiple attempts would conclude that there is no water and thus nothing to be found where he is digging, Cassidy's efforts have shown that Taihua Group has no assets that can be used to satisfy the trial court's judgment against it. There is simply nothing to be found. The Appellate Court plainly recognized that the focus is on showing that Taihua Group possesses no assets with which to satisfy the judgment against it before China Vitamins can be reinstated. This is precisely the function of the trial court in a reinstatement scenario under Section 5/2-621(b)(4). ("We believe the determination of whether a plaintiff has expended sufficient effort to show that a manufacturer is judgment-proof may be best addressed first by the circuit court, which often will have direct knowledge of the plaintiff's efforts.") *Id.* at ¶ 38. This construction of the statute also avoids rendering superfluous the additional language of the statute "as determined by the court." 735 ILCS 5/2-621(b)(4). The showing that the Appellate Court indicated that Cassidy must make on remand is precisely what is to be "determined by the court." This construction is also the only way the entire subsection's language fits together harmoniously.

Simply reading the Appellate Court's opinion shows that it was not permitting reinstatement merely because a plaintiff has trouble enforcing a judgment against a manufacturer, as China Vitamins claims, but was rather looking at the entire statute and considering its language and practical implications. Because of this, this Court should affirm the decision of the Appellate Court below and allow the trial court, on remand, to

determine whether Cassidy can make the required showing regarding Taihua Group's inability to satisfy the judgment against it, as the statute permits him to do.

D. China Vitamins' Interpretation Of The Statute Is Too Narrow And Ignores The Purpose Of Both The Statute's Reinstatement Mechanism And Its Plain Language

China Vitamins also makes the assertion that "[t]he purpose of section 2-621 is to allow a defendant whose sole liability results from its role as a member in the chain of distribution [. . .] to obtain dismissal of a product liability action at an early stage in order to avoid expensive litigation and to defer liability upstream to the manufacturer, the ultimate wrongdoer." Def's Add'l Br. at 12. However, this statement is too narrow, much like China Vitamins' assertion that Section 5/2-621 only applies when a manufacturer is bankrupt or nonexistent. Rather, the purpose of Section 5/2-621 is two-fold—allowing a nonmanufacturer defendant to defer its own liability upstream, while also ensuring that the injured plaintiff does not bear the costs of his injury alone. This is precisely why the reinstatement mechanism exists, and precisely why the statute's language does not limit its application solely to bankrupt or nonexistent manufacturers.

China Vitamins is correct in stating that Section 5/2-621 permits a nonmanufacturing defendant to obtain dismissal at an early stage and defer liability to the manufacturer. *Kellerman*, 119 Ill. 2d at 113 (1987); *Cassidy*, 2017 IL App (1st) at ¶ 19. However, China Vitamins fails to note when describing the manufacturer as "the ultimate wrongdoer" that under Illinois law, "all persons in the distributive chain are liable for injuries resulting from a defective product, including suppliers, distributors, wholesalers and retailers." *Hammond v. North American Asbestos Corp.*, 97 Ill. 2d 195, 206 (1983). Thus, under the law, manufacturers, suppliers, and distributors are all equally liable when selling a defective product that causes injury to a consumer.

Additionally, the very existence of Section 5/2-621's reinstatement mechanism seeks to ensure that a plaintiff's recovery will be protected should the manufacturer be judgment-proof. When such a scenario exists, the injured plaintiff can seek reinstatement of the product's distributor, who can ensure the plaintiff is not forced to bear the costs of his injury alone. *Cassidy*, 2017 IL App (1st) at ¶ 35.

That this plaintiff-protection scheme exists within Section 5/2-621 can been seen simply by looking at subsection (b)(4)'s neighboring provisions allowing reinstatement: 735 ILCS 5/2-621(b)(3) and 735 ILCS 5/2-621(b)(5). Subsection (b)(3) provides that a plaintiff may seek reinstatement of a nonmanufacturer defendant when "the manufacturer no longer exists, cannot be subject to the courts of this State, or despite due diligence the manufacturer is not amenable to service of process[.]" 735 ILCS 5/2-621(b)(3). There exists no practical purpose for reinstating a previously dismissed nonmanufacturing defendant when the manufacturer is not subject to the jurisdiction of the court, other than ensuring that the injured plaintiff does not bear the costs of an injury occasioned by a defective product alone. *See Kellerman*, 119 Ill. 2d at 114 (noting that under Section 2-621(b), reinstatement of a previously dismissed defendant is available where action against the manufacturer would be "impossible or unavailing[.]").

Likewise, Section 5/2-621(b)(5) provides that a nonmanufacturer defendant can be reinstated when "the court determines that the manufacturer would be unable to satisfy a reasonable settlement or other agreement with plaintiff." 735 ILCS 5/2-621(b)(5). This provision also ensures that if a manufacturer possesses insufficient assets to reach a settlement that offsets the costs of a plaintiff's injury, the nonmanufacturer defendant can be reinstated in order to ensure plaintiff does not bear

the costs of his injury alone. In contrast to China Vitamins' argument that "the purpose of section 2-621" is to provide nonmanufacturer defendants a way to escape liability, the purpose of the section is actually two-pronged—allowing dismissal when recovery can be had from the manufacturer, and allowing reinstatement when it cannot. China Vitamins' narrow construction of the statute ignores this key fact.

Additionally, the Appellate Court's construction of the statute is the only one that serves to advance the goal of products liability recovery. That goal—not having injured plaintiffs bear the costs of their injuries alone—is protected by Section 5/2-621(b)(1-5)'s failsafe mechanisms permitting reinstatement when recovery cannot be had from the manufacturer. Just as China Vitamins argues (without citation) that the "General Assembly did not intend that non-manufacturing defendants be reinstated when the plaintiff does not satisfy the criteria for reinstatement of a strict liability in tort claim" (Def's Add'l Br. at 12), the General Assembly certainly did not intend for injured plaintiffs to bear the costs of their own injuries while nonmanufacturer defendants "sit and watch from the sidelines." *Cassidy*, 2017 IL App (1st) at ¶ 35.

Moreover, that neighboring states' case law in this area is focused on protecting the plaintiff's recovery serves to advance Cassidy's position, not weaken it, as claimed by China Vitamins. The Appellate Court below recognized this, and it contradicts China Vitamins' assertion that the lack of "unable to enforce" language in Illinois's statute portends a different outcome. *See Id.* at ¶ 30.

Furthermore, it is also highly unlikely that the General Assembly intended for nonmanufacturer defendants to turn Section 5/2-621 into a sword without the offsetting shield that the legislature provided. If this Court were to adopt China Vitamins' preferred interpretation of the statute, a nonmanufacturer defendant could simply certify

the name of the manufacturer, be dismissed, let the manufacturer answer (who can simply drop out of the proceedings thereafter, as it has no assets that can be reached, thereby preventing plaintiff from recovering anything), and the nonmanufacturer defendant is protected from reinstatement because the plaintiff cannot prove that the manufacturer is bankrupt or nonexistent. This scheme leaves the injured plaintiff out in the cold, bearing the costs of his injuries alone. Certainly the Legislature did not intend this result, but this is precisely the scenario that China Vitamins asks this Court to approve of.

China Vitamins' interpretation of both the statute as a whole, as well as subsection (b)(4) ignores the construction and intent of the law. Were this Court to adopt that interpretation, it would render invalid the purpose of the statute's reinstatement mechanism and force injured plaintiffs to bear the costs of their injuries alone, in contravention of the plain language of the statute. Because of this, this Court should reject China Vitamins' interpretation of the statute and affirm the Appellate Court's decision below.

II. Allowing China Vitamins' Dismissal From This Action Would Undermine Over Five Decades Of Illinois Products Liability Law By Forcing An Injured Plaintiff To Bear The Costs Of His Injury Alone

Even if this Court finds some ambiguity in the text of the statute, allowing China Vitamins' dismissal from this action in the manner in which the trial court did is wholly inconsistent with the purpose of the statute. Additionally, dismissal of China Vitamins in this scenario would undermine over five decades of products liability law in Illinois by forcing Cassidy to bear the costs of his injury—both physical and financial—alone. Such a result would fly in the face of the axiomatic proposition that all entities in the chain of

distribution of a defective product are liable for the harms caused by that product. For these reasons, this Court should affirm the judgment of the Appellate Court below.

Since this Court's decision in *Suvada v. White Motor Co.*, Illinois has recognized the doctrine of strict liability in tort for the sale of a defective product. 32 Ill. 2d 612, 619 (1965); *Crowe v. Public Bldg. Com.*, 74 Ill. 2d 10 (1978). Likewise, Illinois has also recognized that such liability extends to "[. . .] sellers (wholesalers and retailers), as well as [. . .] manufacturers[.]" *Crowe*, 74 Ill. 2d at 13. As this Court noted in *Crowe*, "[a] seller who does not create a defect, but who puts the defective product into circulation, is still responsible in strict liability to an injured user." *Id.* If the seller desires not to be held liable for injuries caused by a defective product, it is the seller who "is in a position to prevent a defective product from entering the stream of commerce." *Id.* at 13-14. "The seller may either adopt inspection procedures or influence the manufacturer to enhance the safety of a product." *Id.* Additionally, "the seller is generally better able to bear and distribute any loss resulting from injury caused by a defective product." *Id.* at 14. As noted by the Appellate Court below, a seller can also contract with a manufacturer for a policy of insurance, and can seek indemnity from the manufacturer for injuries caused by the sale of a defective product. *Cassidy*, 2017 IL App (1st) at ¶ 35. Were the rule to be otherwise, a seller who profited from the sale of a defective product would face no liability while the injured plaintiff is forced to bear the costs of his injury alone.

Furthermore, it is irrelevant at what stage of production the defect is introduced into the product. The seller remains liable for the harm caused by that product. "The strict-liability element in modern products liability law comes precisely from the fact that a seller subject to that law is liable for defects in his product even if those defects were introduced, without the slightest fault of his own for failing to discover them, at

some anterior stage of production." *Welge v. Planters Lifesavers Co.*, 17 F.3d 209, 212 (7th Cir. 1994) (citations omitted). "Liability results regardless of whether any of these parties actually knew of the defect, contributed to the defect, or failed to discover the defect." *Sims v. Teepak, Inc.*, 143 Ill. App. 3d 865, 868 (4th Dist. 1986). "[R]egardless of the nature of the commercial transaction, and even though it did not create the defect, a seller who puts a defective product into the stream of commerce runs the risk of being held strictly liable to an injured user." *Id.*

Additionally, as the Appellate Court below noted, the cases cited by the *Chraca* court, which China Vitamins attempts to use to justify its assertion that Section 5/2-621(b)(4) can only apply when the manufacturer is bankrupt or nonexistent, were actually focused on ensuring that the *plaintiff's* recovery would not be reduced. *Cassidy*, 2017 IL App (1st) at ¶¶ 29-30. ("Rather, the rationale of the cited cases focused on whether the manufacturer was judgment-proof and ensuring that the plaintiff's total recovery would not be prejudiced by the dismissal of a nonmanufacturer defendant.").

The Appellate Court in *Cassidy* clearly recognized that allowing the dismissal of a seller in the face of a judgment-proof and unreachable manufacturer was antithetical to the goal of imposition of strict liability in tort for all members of the distributive chain. Such an action forces the injured plaintiff to bear both the physical and financial costs of his injury alone, while the seller profits from the distribution of a defective product. The principles justifying the imposition of strict liability in tort on sellers as well as manufacturers are no less salient today than they were 53 years ago, when this Court issued its opinion in *Suvada*. To allow China Vitamins to be dismissed under these circumstances is to place the burden for the injuries caused by a defective product on the person who was injured by that product. This cannot be what the law commands. Rather,

this Court should recognize that the Appellate Court's decision properly focused on ensuring "that the burden of loss is not borne by the consumer but instead remains on the manufacturer, distributor and retail defendants who placed the product in the stream of commerce." *Cassidy*, 2017 IL App (1st) at ¶ 35. Justice, and 53 years of precedent, demand no less.

III. This Court Should Rule As A Matter Of Law That Cassidy Has Satisfied His Burden And Remand The Case With Instructions Granting Leave To Amend The Complaint And Reinstate China Vitamins

This Court should also resolve the ultimate issue in this case, as the record plainly demonstrates that Cassidy has satisfied his burden for reinstatement of China Vitamins based on the plain language of Section 5/2-621(b)(4). Cassidy's demonstration of Taihua Group's inability to satisfy a judgment against it also provides a template for the type of showing that a plaintiff should normally make when seeking reinstatement of a nonmanufacturer defendant. Because Cassidy has made this showing, and because neither Taihua Group nor China Vitamins have presented a single piece of evidence to the contrary, this Court should remand this case to the trial court with instructions allowing Cassidy to amend his complaint and reinstate China Vitamins.

"If the facts are uncontroverted and the issue is the trial court's application of the law to the facts, a court of review may determine the correctness of the ruling independently of the trial court's judgment." *Norskog v. Pfiel*, 197 Ill. 2d 60, 70-71 (2001) (citation omitted). As noted by the Appellate Court below, on June 14, 2012, after a prove-up hearing, the trial court entered a judgment against Taihua Group for $9,111,322.47. *Cassidy*, 2017 IL App (1st) at ¶ 13. Cassidy then issued citations to discover assets to Taihua Group, as well as multiple third parties with the assistance of

the law firm of Querrey and Harrow, Ltd. R.V10, C2414-34; R.V10, C2436; R.V10, C2480-99; R.V11, C2502-2749; R.V12, C2752-2912. For nearly two years, from August 2013 to May 2015, Cassidy attempted to identify assets belonging directly to Taihua Group, or assets that were owed to Taihua Group by third parties, which could be used to satisfy the judgment against it. *Cassidy*, 2017 IL App (1st) at ¶ 14. Not a single dollar was ever found, leading to the inescapable conclusion that Taihua Group possessed no assets with which to satisfy the judgment against it. Based on this information, Cassidy then sought reinstatement of China Vitamins based on Taihua Group's inability to satisfy a judgment. R.V12, C2913-17. The trial court granted Cassidy's Motion, finding that Cassidy had shown Taihua Group was unable to satisfy the judgment against it. R.V13, C3022. Taihua Group was, in other words, judgment-proof.

Cassidy's showing is exactly the type of showing contemplated by the statute and the Appellate Court in order to seek reinstatement of a nonmanufacturer defendant. Additionally, Cassidy's showing in the trial court below is uncontroverted. No one is in a better position than China Vitamins, save Taihua Group itself, to present evidence of Taihua Group's ability to satisfy the judgment against it. China Vitamins has not presented a single piece of evidence contesting Cassidy's showing that Taihua Group is unable to satisfy the judgment against it. Instead, China Vitamins relies on assertions that Taihua Group is an "ongoing business" that has a website and a LinkedIn page. Def's Add'l Br. at 15. Whether Taihua Group is an ongoing business with a website and a LinkedIn page says nothing about whether or not it is able to satisfy a judgment. Neither do these facts do anything to call into question the showing made by Cassidy in the trial court through the issuance of citations to discover assets aimed at Taihua Group, which turned up nothing.

China Vitamins also attempts to persuade this Court by claiming that Cassidy "acknowledged in the appellate court" that Taihua Group could voluntarily pay the damages against it. Def's Add'l Br. at 15. This misquoting of Cassidy's brief to the Appellate Court, as pointed out in Cassidy's Answer to China Vitamins' Petition to this Court, also does nothing to contradict the showing made by Cassidy in the trial court. *See* Supplemental Appendix at A32. Simply put, Cassidy has done more than enough to show that Taihua Group is unable to satisfy the judgment against it, and for that reason, this Court should remand this case to the trial court with instructions granting leave for Cassidy to amend his Complaint and reinstate China Vitamins as a defendant. The court should also take into account that the defendant is in a superior position to prove that defendant can satisfy a judgment. Plaintiff is in an inferior position to prove that defendant can satisfy a judgment, especially a defendant located in China.

However, should this Court decline to address the ultimate issue on its own, this Court should set forth the burden of proof that a plaintiff must meet in order to reinstate a nonmanufacturer defendant under Section 5/2-621(b)(4), as well as the burden of a nonmanufacturer defendant opposing reinstatement.

The showing that Cassidy made below should provide a template for plaintiffs who seek reinstatement of a nonmanufacturer defendant under Section 5/2-621. When uncontroverted evidence exists that the plaintiff has attempted to identify assets with which a defendant manufacturer can satisfy a judgment against it, and those efforts show no available assets to satisfy that judgment, the plaintiff can then move for reinstatement of the nonmanufacturer defendant. Should the nonmanufacturer defendant know of assets the manufacturer can use to satisfy the judgment, the nonmanufacturer should present that evidence to the court, and the plaintiff can collect from the

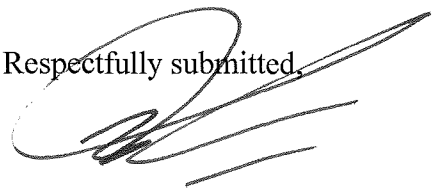
manufacturer. This is especially true where foreign manufacturers are involved, as frequently, litigation in state courts cannot reach the foreign manufacturer, and distributors doing business with that foreign manufacturer will know much more about the location and sufficiency of the manufacturer's assets than will an injured plaintiff.

However, where, as here, the nonmanufacturer defendant has presented no such evidence, and the plaintiff has presented his own uncontroverted evidence, reinstatement should be granted. This procedure ensures that the injured plaintiff does not bear the costs of his injury alone, and that the seller that profited from the sale of defective goods does not escape liability. This is precisely what the statute contemplates, the Legislature intended, and affords the only just result in such a scenario. This Court should recognize as much, and allow Cassidy to reinstate China Vitamins as a defendant in his strict products liability claim.

CONCLUSION

For all of the foregoing reasons, this Court should affirm the ruling of the Appellate Court below and allow Cassidy to reinstate China Vitamins as a defendant in his strict products liability action. Alternatively, this Court should affirm the ruling of the Appellate Court, specify the showing to be made in the trial court on remand, and remand this case to the trial court for proceedings consistent with the Appellate Court's opinion.

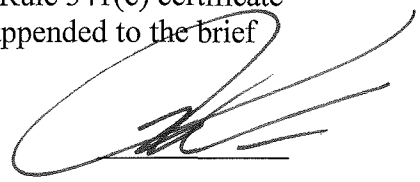
Respectfully submitted,



Matt Cannon
Michael D. Carter
Attorneys for Plaintiff-Appellee

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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 28 pages.



SUPPLEMENTAL APPENDIX

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Lanigan

2017 IL App (1st) 160933
No. 1-16-0933
Opinion filed September 29, 2017

Fifth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MARTIN CASSIDY, Plaintiff-Appellant, v. CHINA VITAMINS, LLC, TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED, and ZHEIJIANG NHU COMPANY LTD., Defendants (China Vitamins, LLC, Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County. No. 07 L 13276 Honorable Kathy M. Flanagan, Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court, with opinion.
Justice Hall concurred in the judgment and opinion.
Justice Rochford specially concurred in part and dissented in part, with opinion.

OPINION

¶ 1 Plaintiff Martin Cassidy filed this product liability action seeking damages for injuries he sustained when a flexible bulk container ripped and caused a stacked container to fall on him. The trial court dismissed the product liability action against defendant China Vitamins, LLC

(China Vitamins), pursuant to the statutory provision that allows a nonmanufacturing defendant that identifies the product manufacturer to be dismissed from a strict liability in tort claim.

¶ 2 Eventually, the trial court entered a default judgment against defendant Taihua Group Shanghai Taiwei Trading Company Limited (Taihua Group), the manufacturer of the bulk container. In 2015, plaintiff moved the trial court to reinstate China Vitamins as a defendant, and the trial court ultimately denied that motion. The trial court also found there was no just reason to delay enforcement or appeal of that ruling.

¶ 3 On appeal, plaintiff contends that the law allows reinstatement of a nonmanufacturer defendant when an action against the manufacturer appears to be unavailing or fruitless. Plaintiff argues this exception applies in the instant case because the default judgment is not enforceable in the People's Republic of China (PRC), which will not recognize judgments entered in American state courts, and Chinese law does not follow Illinois damages law with respect to the elements of damages.

¶ 4 For the reasons that follow, we reverse the judgment of the trial court, which denied plaintiff's motion to reinstate defendant China Vitamins and improperly dismissed plaintiff's negligent product liability claim against China Vitamins. We remand this cause for further proceedings.

¶ 5 I. BACKGROUND

¶ 6 In 2007, plaintiff filed a three count complaint against China Vitamins, alleging it was liable under theories of strict product liability, negligent product liability, and *res ipsa loquitur*. Plaintiff alleged he sustained injuries at work on October 26, 2006, when a flexible bulk

container ripped and leaked its contents, thereby becoming unstable among the other stacked containers and causing one of the stacked containers to fall on him and injure him.

¶ 7 In its April 2008 answer to the product liability counts, China Vitamins admitted that it distributed and sold a certain product stored inside the flexible bulk container but denied that it manufactured either the product or the container. China Vitamins also moved to dismiss the *res ipsa loquitur* count of the complaint for failure to state a cause of action because plaintiff did not allege that China Vitamins had exclusive control over the instrumentality that allegedly caused his injuries. Furthermore, China Vitamins filed a third-party negligence complaint against plaintiff's employer, seeking contribution as an alleged joint tortfeasor. The trial court granted China Vitamins' motion to dismiss and struck the *res ipsa loquitur* count of the complaint without prejudice pursuant to section 2-615(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(a) (West 2006)) and granted China Vitamins leave to file its third-party complaint. During discovery, China Vitamins identified Taihua Group as the manufacturer of the flexible bulk container.

¶ 8 Plaintiff was granted leave to file his October 2008 nine-count first amended complaint against defendants China Vitamins, Taihua Group, and Zheijiang Nhu Company Ltd. (Nhu) (the alleged manufacturer of the vitamins), alleging they were liable under theories of strict product liability, negligent product liability, and *res ipsa loquitur*. Plaintiff alleged that the bulk container was in an unreasonably dangerous condition when it left defendants' control; defendants' duty to exercise reasonable care for plaintiff's safety included a duty to exercise reasonable care in the design, manufacture, distribution, or sale of the bulk container; and the subject incident would

not have occurred if defendants had used reasonable and proper care while the bulk container was under their control.

¶ 9 Defendant Nhu initially filed in August 2009 a special and limited appearance and motion challenging the court's personal jurisdiction. However, Nhu withdrew that motion in May 2010 and submitted to the jurisdiction of the court. In July 2010, the trial court entered an order of default against Nhu for failure to comply with orders regarding representation. The court struck Nhu's answer and deemed the allegations of the complaint admitted.

¶ 10 Meanwhile, defendant Taihua Group filed a general appearance in July 2009 and answer in August 2009, thereby waiving the service of process requirement and submitting itself to the court's jurisdiction. In its answer, Taihua Group admitted that it designed, manufactured, distributed, supplied and/or sold the flexible bulk container but denied any liability. On January 6, 2010, the trial court granted counsel for Taihua Group leave to withdraw as counsel and ordered Taihua Group to file a supplemental appearance by March 3, 2010. However, no supplemental appearance was filed.

¶ 11 Meanwhile, defendant China Vitamins' October 2008 answer denied any liability concerning the strict product liability and negligent product liability counts. China Vitamins moved the court to dismiss the *res ipsa loquitur* count pursuant to sections 2-615(a) and 2-619(a)(9) of the Code (735 ILCS 5/2-615(a), 2-619(a)(9) (West 2006)), arguing that plaintiff failed to state a cause of action and China Vitamins did not have exclusive control over the instrumentality that allegedly caused the injury. On November 20, 2008, the trial court granted the motion and dismissed and struck only the *res ipsa loquitur* count against China Vitamins.

¶ 12 In 2011, China Vitamins moved for summary judgment and requested dismissal of the strict product liability and negligent product liability counts, on grounds that it was only a distributor of bulk vitamins manufactured by Nhu; was not involved in the construction, design, or manufacture of the flexible bulk container at issue; never had possession or control of the flexible bulk container; had no actual knowledge of the defect; and did not create the defect. China Vitamins, which is headquartered in Bedminster, New Jersey, imported the vitamins into the United States for sale to customers. When an order for vitamins was placed, the vitamins were loaded into containers in China, shipped to the west coast of the United States, and then sent by rail direct to the customer. A container load usually consisted of "totes," which each weighed 1000 kilos or approximately one metric ton. China Vitamins argued it was entitled to dismissal of both the strict and negligent product liability counts pursuant to section 2-621 of the Code (735 ILCS 5/2-621 (West Supp. 1995), amended by Pub. Act 89-7 (eff. Mar. 9, 1995)), as a nonmanufacturer defendant sued in a "product liability action based on any theory or doctrine."[1]

¶ 13 On January 9, 2012, the trial court denied China Vitamins' motion for summary judgment and instead dismissed both the strict and negligent product liability counts against

[1]However, the "any theory or doctrine" language cited by China Vitamins was added to section 2-621 in 1995 by Public Act 89-7, which was held unconstitutional in its entirety and not severable by our supreme court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). Accordingly, the version of section 2-621 that was in effect prior to the 1995 amendment is applicable to this case. *South Side Trust & Savings Bank of Peoria v. Mitsubishi Heavy Industries, Ltd.*, 401 Ill. App. 3d 424, 427 n.2 (2010). This issue is discussed *infra* ¶¶ 20-22.

China Vitamins without prejudice pursuant to section 2-621(b) of the Code. Also on January 9, 2012, the trial court granted plaintiff's motion for a default against Taihua Group based on its failure to retain counsel to file a supplemental appearance. After a prove-up hearing, the trial court entered on June 14, 2012, a default judgment against Taihua Group for $9,111,322.47. There was no adjudication of any cause of action against defendant Nhu.

¶ 14 Plaintiff issued citations to discover assets against Taihua Group but those citations were quashed on May 23, 2013 for lack of proper service against a foreign resident and foreign business entity. Between August 2013 and May 2015, plaintiff issued third-party citations to discover assets in pursuit of collection of the default judgment in Illinois, but those citations were dismissed because the third-parties were not holding assets that belonged to or were due and owing to Taihua Group.

¶ 15 On July 24, 2015, plaintiff moved to reinstate China Vitamins pursuant to section 2-621(b)(3) and (4) of the Code, arguing that Taihua Group was outside the personal jurisdiction of Illinois courts and not subject to or obligated to respond in a state court action under international law. The trial court initially granted the motion to reinstate China Vitamins but thereafter vacated that order when it granted China Vitamins' motion to reconsider. The trial court found that plaintiff failed to meet the conditions for reinstatement under section 2-621(b) of the Code and ruled that the order was final and appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Thereafter, the trial court denied plaintiff's motion to reconsider and again made Rule 304(a) findings.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff argues China Vitamins should be reinstated as a defendant based on section 2-621(b)(4) of the Code because Taihua Group, the manufacturer defendant, "is unable to satisfy any judgment as determined by the court." 735 ILCS 5/2-621(b)(4) (West 1994). Plaintiff asserts that Taihua Group has not paid the default judgment entered against it, an Illinois state court judgment is not enforceable in the PRC, and Taihua Group, which submitted to the jurisdiction of the Illinois state court, refuses to respond to this action, thus limiting plaintiff's ability to recover. Plaintiff asserts that he has met the legal requirements to establish that "it appears" an action against Taihua Group is "unavailable" or will be "fruitless" because sufficient evidence showed that the PRC does not recognize judgments entered in American state courts and Chinese law does not follow Illinois damages law with respect to the elements of damages. Plaintiff argues that the provision allowing a nonmanufacturing defendant to be reinstated pursuant to section 2-621(b)(4) should include foreign manufacturers beyond the reach of Illinois courts.

¶ 18 Because a dismissal of a defendant under section 2-621 contemplates the possibility of further action, the dismissal does not dispose of the rights of the parties and thus is not final or appealable until the trial court rules on the plaintiff's motion to vacate the dismissal of his claims against the previously dismissed defendant and to reinstate those claims. *Kellerman v. Crowe*, 119 Ill. 2d 111, 115-16 (1987); *South Side Trust & Savings Bank of Peoria*, 401 Ill. App. 3d at 431. Here, the trial court denied plaintiff's motion to vacate the dismissal of his claims against China Vitamins and to reinstate those claims. The trial court also found that there was no just reason for delaying either enforcement or appeal of this judgment. Accordingly, this court has

jurisdiction to review the trial court's January 2012 order, dismissing plaintiff's strict and negligent product liability claims against China Vitamins, and the 2015 orders denying plaintiff's motion to reinstate China Vitamins and motion for reconsideration.

¶ 19 The elements of a strict liability claim based on a product defect are (1) a condition of the product as a result of manufacturing or design, (2) that made the product unreasonably dangerous, (3) that existed at the time the product left the defendant's control, and (4) an injury to the plaintiff, (5) that was proximately caused by the condition. *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 543 (2008). Under Illinois law, all entities in the chain of distribution for an allegedly defective product are subject to strict liability in tort, and the imposition of liability on them is justified based on their position in the marketing process, which enables them to exert pressure on the manufacturer to enhance the safety of the product. *Hammond v. North American Asbestos Corp.*, 97 Ill. 2d 195, 206 (1983). However, Illinois law recognizes a "seller's exception" to product liability actions that are based on strict liability. This exception in section 2-621(b) of the Code provides that nonmanufacturer defendants may be dismissed from a strict product liability action under certain circumstances. 735 ILCS 5/2-621(b) (West 1994). The purpose of this exception is to allow defendants, whose sole basis of liability is their role as a member of the distributive chain of an allegedly defective product, to extract themselves from a strict product liability action at an early stage, before they incur the expense of fully litigating the dispute, and to defer liability upstream to the ultimate wrongdoer, the manufacturer. *Kellerman*, 119 Ill. 2d at 113; *Murphy v. Mancari's Chrysler Plymouth, Inc.*, 381 Ill. App. 3d 768, 775 (2008). The seller's exception, however, is subject to section 2-621(b)'s reinstatement mechanism, whereby a plaintiff may be allowed to reinstate a previously dismissed

nonmanufacturer defendant if the plaintiff's action cannot reach the manufacturer or the manufacturer would not be able to satisfy a judgment or settlement. 735 ILCS 5/2-621(b) (West 1994); *Kellerman*, 119 Ill. 2d at 114. "Section 2-621 thus ensures that the burden of loss due to a defective or dangerous product remains on those who placed the product in the stream of commerce." *Thomas v. Unique Food Equipment, Inc.*, 182 Ill. App. 3d 278, 282 (1989).

¶ 20 Prior to 1995, this exception applied only to actions in strict product liability; if a plaintiff proceeded against a nonmanufacturer defendant under a negligence theory, that defendant was not entitled to dismissal under section 2-621. See *Link v. Venture Stores, Inc.*, 286 Ill. App. 3d 977, 978 (1997) (plaintiff had a vested right in her negligence cause of action against the defendant store for selling an alleged defectively designed car seat where the cause of action accrued and was filed before the statute was amended to provide for the dismissal of such nonmanufacturer defendants). Specifically, the pre-1995 version of section 2-621 provided for dismissal of claims against nonmanufacturing defendants in "any product liability action based in whole or in part on the doctrine of strict liability in tort." 735 ILCS 5/2-621(a) (West 1994).

¶ 21 In 1995, the legislature enacted Public Act 89-7, the so-called Tort Reform Act, which, *inter alia*, amended section 2-621 to provide that nonmanufacturer defendants in product liability actions who were sued under "any theory or doctrine" could be dismissed if they fulfilled certain requisite criteria. 735 ILCS 5/2-621 (West Supp. 1995) (amended by Pub. Act 89-7 (eff. March 9, 1995)). However, in 1997, our supreme court in *Best*, 179 Ill. 2d at 467, held that Public Act 89-7 was void in its entirety because certain core provisions of the act were contrary to the Illinois constitution and were not severable from the remaining provisions of the act. If an act is unconstitutional in its entirety, the state of the law is as if the act had never been enacted, and the

law in force is the law as it was before the adoption of the unconstitutional amendment. *In re G.O.*, 191 Ill. 2d 37, 43 (2000); *People v. Gersch*, 135 Ill. 2d 384, 390 (1990). Our legislature has not reenacted the amendment to section 2-621 in the two decades since *Best* was decided. Accordingly, the pre-1995 version of section 2-621 is applicable to this case. *South Side Trust & Savings Bank of Peoria*, 401 Ill. App. 3d at 427 n.2.

¶ 22 The pre-1995 version of section 2-621 provides that a nonmanufacturer defendant, usually a distributor or retailer, in a strict product liability action may be dismissed from the action if it certifies the correct identity of the manufacturer of the product that allegedly caused the injury. 735 ILCS 5/2-621 (West 1994). As soon as the plaintiff has filed against the product manufacturer and the manufacturer has answered or otherwise pleaded, the court must dismiss the strict liability claim against the certifying defendant, unless the plaintiff shows the defendant (1) exercised some significant control over the design and manufacture of the product or instructed or warned the manufacturer relative to the alleged defect in the product, (2) had actual knowledge of the defect in the product, or (3) created the defect. 735 ILCS 5/2-621(b), (c) (West 1994); *South Side Trust & Savings Bank of Peoria*, 401 Ill. App. 3d at 431.

¶ 23 At any time subsequent to the dismissal, the plaintiff may move to vacate the order of dismissal and reinstate the certifying defendant, provided the plaintiff can show one or more of the following: (1) the applicable period of the statute of limitations or statute of repose bars the assertion of a strict liability in tort cause of action against the manufacturer; (2) the identity of the manufacturer given to the plaintiff by the certifying defendant was incorrect; (3) the manufacturer no longer exists, cannot be subject to the jurisdiction of the Illinois courts, or, despite due diligence, is not amenable to service of process; (4) "the manufacturer is unable to

satisfy any judgment as determined by the court;" or (5) "the court determines that the manufacturer would be unable to satisfy a reasonable settlement or other agreement with the plaintiff." 735 ILCS 5/2-621(b)(1) to (b)(5) (West 1994).

¶ 24 On appeal, plaintiff argues that China Vitamins should be reinstated pursuant to section 2-621(b)(4) because he has sufficiently shown that the manufacturer Taihua Group "is unable to satisfy any judgment as determined by the court." 735 ILCS 5/2-621(b)(4) (West 1994). According to plaintiff, our supreme court in *Kellerman* adopted for section 2-621(b)(4) an "appears unavailing or fruitless standard" to assess whether the manufacturer is unable to satisfy any judgment. Plaintiff contends he has met this standard because his documented unsuccessful efforts to enforce his over $9 million default judgment against Taihua Group establishes that he has no reasonable expectation that Taihua Group will ever remit the ordered damages and Taihua Group is insulated from his collection efforts because the Chinese government is unwilling to recognize or enforce American state court judgments against Chinese entities.

¶ 25 Plaintiff raises an issue of statutory interpretation, which this court reviews *de novo*. *JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010). We disagree with plaintiff's assertion that *Kellerman*, 119 Ill. 2d at 116-17, construed section 2-621(b)(4) to require a plaintiff to show that it "appears" an action against the manufacturer would be "unavailing," "unavailable," or "fruitless." The *Kellerman* court did not construe the language of section 2-621. Rather, *Kellerman* addressed only whether a section 2-621 dismissal was a final and appealable order. The language in *Kellerman* quoted by plaintiff here was merely part of the *Kellerman* court's passing reference to, and summary of, all of the five subsections of section 2-621(b). See *Chraca v. U.S. Battery Manufacturing Co.*, 2014 IL App (1st) 132325, ¶ 22.

¶ 26 Our primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *MidAmerica Bank, FSB v. Charter One Bank, FSB*, 232 Ill. 2d 560, 565 (2009). The plain language of a statute is the most reliable indication of legislative intent. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "[W]hen the language of the statute is clear, it must be applied as written without resort to aids or tools of interpretation." *Id.* The statute should be read as a whole and construed "so that no term is rendered superfluous or meaningless." *In re Marriage of Kates*, 198 Ill. 2d 156, 163 (2001). "Words and phrases should not be viewed in isolation but should be considered in light of other relevant provisions of the statute." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13. We do not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with the legislative intent. *Harrisonville Telephone Co. v. Illinois Commerce Comm'n*, 212 Ill. 2d 237, 251 (2004). When the meaning of an "enactment is unclear from the statutory language itself, the court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy." *Bettis*, 2014 IL 117050, ¶ 13.

¶ 27 This court previously addressed the meaning of section 2-621(b)(4) in *Chraca*, 2014 IL App (1st) 132325, where the consumer plaintiff, who had obtained a default judgment against a manufacturer-defendant located in China, moved to reinstate his product liability claim against the previously dismissed distributor defendant after the plaintiff was unable to collect on the default judgment. Specifically, the plaintiff argued that the Chinese manufacturer was "thumbing its nose at this Illinois court" by "ignoring this action." (Internal quotation marks omitted.) *Id.* ¶ 10. Plaintiff's counsel had engaged in collection proceedings and submitted affidavits averring that there was no reasonable expectation of ever collecting the default judgment against the

Chinese manufacturer because, even though the manufacturer had been served in accordance with The Hague Convention, it was not possible to register a United States judgment in China, since there was no arrangement for the reciprocal enforcement of judgments between the United States and China. *Id.* Also, counsel averred that the plaintiff would have to start a new tort action in China and any amount of damages that might be awarded would be significantly less than that in the United States. *Id.*

¶ 28 This court in *Chraca* concluded that the plaintiff had not met his burden under section 2-621(b)(4) to show that the manufacturer defendant was unable to satisfy any judgment because "[a]uthority indicates that in a section 2-621 proceeding, a company is deemed 'unable to satisfy any judgment' when it is bankrupt or nonexistent." *Id.* ¶ 24. Specifically, *Chraca* found that the plaintiff failed to present any information about the financial viability of the manufacturer, which seemed to be an ongoing business because the plaintiff's Chinese translator purported to have reached the manufacturer's owner on a mobile telephone. *Id.* ¶ 25.

¶ 29 We find that the *Chraca* court's analysis was flawed and its conclusion is not persuasive. The three cases *Chraca* cited to support its conclusion were not limited to the issue of a manufacturer's bankruptcy or nonexistence. Rather, the rationale of the cited cases focused on whether the manufacturer was judgment-proof and ensuring that the plaintiff's total recovery would not be prejudiced by the dismissal of a nonmanufacturer defendant. See *Harleysville Lake States Insurance Co. v. Hilton Trading Corp.*, No. 12 C 8135, 2013 WL 3864244, at *3 (N.D. Ill. July 23, 2013) (because there was no suggestion that the manufacturer was either insolvent under section 2-621(b)(3) or otherwise judgment-proof under section 2-621(b)(4), the retailer was entitled to be dismissed under the seller's exception); *Finke v. Hunter's View, Ltd.*, 596 F. Supp.

2d 1254, 1271 (D. Minn. 2009) (the retailer of the defective product was not entitled to dismissal under the seller's exception statute because the manufacturer had filed for Chapter 7 bankruptcy and the retailer failed to support its claim that the manufacturer's liability insurance policy would satisfy a judgment against the manufacturer); *Malone v. Schapun, Inc.*, 965 S.W.2d 177, 182 (Mo. Ct. App. 1997) (after the plaintiffs had settled with the manufacturer and distributor for a *partial* payment of the plaintiffs' claims, the mere seller was not entitled to dismissal because the statute required that there had to be another defendant properly before the court from whom *total* recovery may be had).

¶ 30 *Chraca* misconstrued the import of the holdings of *Harleysville*, *Finke*, and *Malone* to support *Chraca*'s finding that "unable to satisfy any judgment" must mean bankrupt or nonexistent. To the contrary, *Harleysville*, *Finke*, and *Malone* actually considered the effect a manufacturer's judgment-proof status would have on the plaintiff's total recovery. Nothing in section 2-621(b)(4) limits its application to only bankrupt or nonexistent manufacturers. Moreover, assigning *Chraca*'s narrow meaning of bankrupt and nonexistent to section 2-621(b)(4) renders some of the language of section 2-621(b)(3), *i.e.*, "no longer exists," superfluous.735 ILCS 5/2-621(b)(3) (West 1994). Accordingly, we do not follow *Chraca*'s analysis or holding concerning section 2-621(b)(4).

¶ 31 When determining the plain and ordinary meaning of words, a court may look to the dictionary if, as here, a word or phrase is undefined in the statute. *Murphy*, 381 Ill. App. 3d at 774. The adjective "able" is defined as "having sufficient power, skill, or resources to accomplish an object," and "susceptible to action or treatment." Merriam-Webster's Collegiate Dictionary 3 (10th ed. 1998). "Unable" is defined as "not able," "incapable," such as (a)

"unqualified, incompetent"; (b) "impotent, helpless." https://www.merriam-webster.com. (last visited Aug. 17, 2017).

¶ 32 "Satisfy" is defined as "1 a : to carry out the terms of (as a contract) : DISCHARGE b : to meet a financial obligation to 2 : to make reparation to (an injured party) : INDEMNIFY 3 a : to make happy : PLEASE b : to gratify to the full : APPEASE." Merriam-Webster's Collegiate Dictionary 1038 (10th ed. 1998). The noun "satisfaction" is defined as the "fulfillment of an obligation; esp., the payment in full of a debt." Black's Law Dictionary 1343 (7th ed. 1999). The phrase "satisfaction of judgment" means "1. The complete discharge of obligations under a judgment. 2. The document filed and entered on the record indicating that a judgment has been paid." *Id.*

¶ 33 Also, we note that the phrase "unable to satisfy a judgment" is synonymous with the terms "judgment-proof" and "execution-proof." See *id.* at 849 (defining "judgment-proof" as "unable to satisfy a judgment for money damages because the person has no property, does not own enough property within the court's jurisdiction to satisfy the judgment, or claims the benefit of statutorily exempt property. — Also termed *execution-proof*."). Terms of art abound in the law, and the entire phrase "unable to satisfy any judgment" is a term of art that means judgment-proof, execution-proof. Rather than construing that entire phrase, it seems that *Chraca*'s analysis focused on the word "unable." Similarly, here, the trial court and defendant China Vitamins focused on the word "unable" to conclude that reinstatement of China Vitamins was not warranted because Taihua Group seemed unwilling rather than unable to pay the judgment.

¶ 34 Nothing in section 2-621(b)(4) suggests that we should not give the phrase "unable to satisfy any judgment" its ordinary meaning of judgment-proof. See also, *Ungaro v. Rosalco,*

Inc., 948 F. Supp. 783, 785 (N.D. Ill. 1996) (refusing to apply the section 2-621(b)(4) or (5) "exception pertaining to judgment-proof manufacturers" because the plaintiff failed to show that the manufacturer "is unable to satisfy any judgment imposed by this court").[2] Thus, in order to reinstate a previously dismissed nonmanufacturer defendant, the plaintiff, in addition to showing that the manufacturer is insolvent or bankrupt, may also show that the manufacturer has no property or does not own enough property within the court's jurisdiction to satisfy the judgment. We do not hold that section 2-621(b)(4) applies when a plaintiff merely has trouble collecting a judgment; there can be a significant difference between situations involving a plaintiff experiencing some difficulty in collecting a judgment and a defendant being judgment-proof. The court's focus is not on plaintiff's mere inability to collect or enforce the judgment but, rather, whether plaintiff, based on the plain language of the statute, has met his burden to show that Taihua Group is judgment-proof.

¶ 35 Even if section 2-621(b)(4) was deemed ambiguous, our construction of the statute is consistent with its purpose to ensure that the burden of loss due to defective or dangerous products is not borne by the consumer but instead remains on the manufacturer, distributor and retail defendants who placed the product in the stream of commerce. See *Hammond*, 97 Ill. 2d at 206; *Thomas*, 182 Ill. App. 3d at 282. We find no support in the Illinois common law or statutes concerning strict product liability for the notion that the legislature intended for injured consumers to bear unreasonable costs to chase after foreign manufacturers who do not own

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[2] *Ungaro* was issued one year before *Best*, 179 Ill. 2d 367, and thus *Ungaro*'s holding that the seller's exception of section 2-621 applies to negligence product liability claims has been superseded. See *supra* ¶ 12n.1, ¶¶ 20-22.

sufficient property within the court's jurisdiction to satisfy a judgment while reachable downstream liability distributor defendants, who profited from the sale of the defective product, could have contracted with the manufacturer for insurance coverage, and could seek indemnification from the manufacturer, simply sit and watch from the sidelines.

¶ 36 According to the plainly-worded statute, plaintiff has the burden to show that Taihua Group is unable to satisfy the over $9 million default judgment because Taihua Group either lacks the power, skill, or resources to do so; has no property; or does not own enough property within the court's jurisdiction to satisfy the judgment. A plaintiff must put on competent evidence to show under section 2-621 that the previously dismissed nonmanufacturer defendant should be reinstated in the case. See *Logan v. West Coast Cycle Supply Co.*, 197 Ill. App. 3d 185, 191 (1990). Where, as here, a trial court rules on the plaintiff's motion to reinstate the nonmanufacturer defendant without hearing any testimony and based solely on documentary evidence, a *de novo* standard of review is appropriate. *Rosenthal-Collins Group, L.P. v. Reiff*, 321 Ill. App. 3d 683, 687 (2001).

¶ 37 Because section 2-621(b)(4) includes judgment-proof manufacturers, the issues about whether Taihua Group is a viable enterprise in China and that country's alleged policy to disregard judgments rendered in American state courts are not dispositive of the issue of China Vitamin's reinstatement. According to the record, Taihua Group submitted to the jurisdiction of the trial court but then dropped out of the proceedings and has not paid the judgment rendered against it. The record also contains evidence of plaintiff's efforts to discover assets to satisfy any portion of the default judgment against Taihua Group. Specifically, the record before the trial court documented plaintiff's retention of Querrey & Harrow, Ltd. after the entry of the default

judgment to identify assets to collect the default judgment against Taihua Group, the entry of citations to discover assets against Taihua Group and multiple third parties, the various motions to quash presented by the third parties, and a conditional judgment entered against a third party that was subsequently vacated by the trial court. See *May Department Stores Co. v. Teamsters Union Local No. 743*, 64 Ill. 2d 153, 159 (1976) (a court may take judicial notice of court filings and other matters of public record when the accuracy of those documents reasonably cannot be questioned). Furthermore, plaintiff summarized in his motion to reinstate China Vitamins the history of his unsuccessful attempts to collect the default judgment.

¶ 38 Nothing in the plain language of section 2-621(b)(4) requires a plaintiff to exhaust all possible means of collection of a judgment before a previously dismissed nonmanufacturer defendant may be reinstated. Rather, the plain language of the statute provides for reinstatement if "the manufacturer is unable to satisfy any judgment *as determined by the court*." (Emphasis added.) 735 ILCS 5/2-621(b)(4) (West 1994). Civil judgments are not self-executing, and tort claimants often must undertake postjudgment litigation to collect their judgments. We believe the determination of whether a plaintiff has expended sufficient effort to show that a manufacturer is judgment-proof may be best addressed first by the circuit court, which often will have direct knowledge of the plaintiff's efforts. Here, the parties and the trial court analyzed the section 2-621(b)(4) reinstatement issue within the confines of *Chraca*'s holding that a plaintiff must show that the manufacturer defendant was either bankrupt or nonexistent. Because we reject that holding by *Chraca*, and because the trial court denied plaintiff's motion to reinstate China Vitamins based on the lack of any evidence that Taihua Group was bankrupt or no longer

existed, we reverse the trial court's denial of plaintiff's motion and remand the cause to the trial court for further proceedings consistent with this opinion.

¶ 39 Finally, we also reverse the trial court's order that dismissed plaintiff's negligent product liability claim against China Vitamins. As discussed above, the version of section 2-621 that is presently in *effect permits a seller's* exception dismissal only for a claim of strict product liability. Negligent product liability claims are not strict liability claims and therefore are not subject to dismissal under section 2-621. *Link*, 286 Ill. App. 3d at 978.

¶ 40 III. CONCLUSION

¶ 41 For the foregoing reasons, we conclude that the trial court erroneously denied plaintiff's motion to reinstate the action against China Vitamins based on the lack of any evidence showing that Taihua Group was bankrupt or no longer existed. We remand this cause to the trial court for further proceedings to determine whether Taihua Group is unable to satisfy any judgment within the meaning of section 2-621(b)(4). Also, we conclude that the trial court erroneously dismissed plaintiff's negligent product liability claim against China Vitamins under a void version of the statute. Accordingly, we reverse the judgment of the trial court and remand this cause for further proceedings.

¶ 42 Reversed and remanded.

¶ 43 JUSTICE ROCHFORD, concurring in part and dissenting in part.

¶ 44 I concur in the majority's decision to vacate the dismissal of plaintiff's negligence-based product liability claim against China Vitamins, for the reasons discussed *supra* ¶ 21-39. I also concur with the majority's conclusion that the decision in *Kellerman v. Crowe*, 119 Ill. 2d 111, 115-16 (1987), does not provide the relevant standard applicable to this matter, for the reasons

discussed *supra* ¶¶ 24-25. However, for the reasons that follow, I respectfully dissent from the majority's decision to remand this matter for further proceedings on plaintiff's motion to reinstate China Vitamins as a defendant with respect to plaintiff's strict product liability claim.

¶ 45 On appeal, plaintiff argues that his strict product liability action against China Vitamins should be reinstated pursuant to section 2-621(b)(4) of the Code of Civil Procedure, which allows for such reinstatement where "the manufacturer is unable to satisfy any judgment as determined by the court." 735 ILCS 5/2-621(b)(4) (West 2014). A plaintiff bears the burden of establishing that a statutory basis exists for the reinstatement of a dismissed defendant. *Cherry v. Siemans Medical Systems, Inc.*, 206 Ill. App. 3d 1055, 1064 (1990).

¶ 46 In seeking reinstatement under section 2-621(b)(4), plaintiff specifically argued that he "made exhaustive attempts to collect the [default] judgment [against Taihua Group]," that he has been unable to do so, and that such efforts "will continue to be unavailing." Thus, plaintiff sought reinstatement under this section primarily on the basis of his difficulty in enforcing the judgment.

¶ 47 In finding that this matter should be remanded to allow plaintiff to satisfy his burden of establishing that a statutory basis exists for the reinstatement of China Vitamins, the majority first interprets section 2-621(b)(4) to allow for reinstatement where a manufacturer is "judgment-proof." *Supra* ¶ 34. However, the majority provides three different, partially overlapping definitions of what that means. See *supra* ¶ 33 (noting that judgment-proof is defined as "unable to satisfy a judgment for money damages because the person has no property, does not own enough property within the court's jurisdiction to satisfy the judgment, or claims the benefit of statutorily exempt property."); *supra* ¶ 34 (to establish that a manufacturer is judgment-proof,

"the plaintiff, in addition to showing that the manufacturer is insolvent or bankrupt, may also show that the manufacturer has no property or does not own enough property within the court's jurisdiction to satisfy the judgment."); *supra* ¶ 36 (finding that a plaintiff has the burden to show that manufacturer "lacks the power, skill, or resources to [satisfy a judgment against it], has no property; or does not own enough property within the court's jurisdiction to satisfy the judgment."). Then, stating that its "focus is not on plaintiff's mere inability to collect or enforce the judgment," the majority nevertheless suggests that—on remand—plaintiff may establish that Taihua Group was "judgment-proof" by presenting competent evidence concerning his unsuccessful efforts to collect any portion of the default judgment against Taihua Group. *Supra* ¶¶ 34-37.

¶ 48 However, in light of the plain statutory language, it is my belief that it is improper to focus on *plaintiff's inability to enforce* the default judgment rather than *Taihua Group's inability to satisfy* that judgment.

¶ 49 As the majority correctly notes, plaintiff's arguments require this court to interpret the language of section 2-614(b)(4) *de novo*, to give effect to the legislative intent evidenced by the plain language of that section and, in doing so, not depart from the plain language by reading into it exceptions, limitations, or conditions that conflict with the clearly expressed legislative intent. *Supra* ¶¶ 25-26. The plain language of section 2-621(b)(4) provides that the dismissal of a nonmanufacturing defendant may be vacated, and the strict liability action against it reinstated only where the court determines "the manufacturer is unable to satisfy the judgment." 735 ILCS 5/2-621(b)(4) (West 2014). "When a court is called upon to determine whether a statutory term has a plain and ordinary meaning, it is appropriate to consult a dictionary." *Board of Education*

of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343, ¶ 41. As the definitions provided by the majority itself indicate (supra ¶¶ 31-32), dictionary definitions of the words contained in the phrase "the manufacturer is unable to satisfy the judgment" indicate that it has the following plain and ordinary meaning: the manufacturer is not able or is incapable of completely discharging its financial obligations under the judgment.

¶ 50 What is also evident from that plain language is that the proper focus should be on the manufacturer's *inability* to *satisfy* a judgment. There is no language in section 2-621(b)(4) stating that a dismissal may be vacated where the court determines a plaintiff cannot *enforce* a judgment, and no language that reinstatement may occur merely when the court determines that the manufacturer has insufficient or no assets within the court's specific jurisdiction—while possessing assets elsewhere. As such, there is nothing in the plain language of the statute to support the contention that plaintiff's difficulties in *enforcing* the default judgment in China or elsewhere rendered Taihua Group *unable to satisfy* that judgment. And, without reading conditions into the statutory text, there is no language indicating that section 2-621(b)(4) is concerned with manufacturers that are "judgment-proof," as defined in three separate ways by the majority.

¶ 51 This court's decision in *Chraca v. U.S. Battery Manufacturing Co.*, 2014 IL App (1st) 132325, supports this reading of section 2-621(b)(4).

¶ 52 In *Chraca*, the plaintiff was injured while unpacking a shipment of golf cart batteries sent by the defendant U.S. Battery Manufacturing Company (U.S. Battery) to the plaintiff's employer. *Id.* ¶ 2. The plaintiff suffered injuries as he was carrying individual batteries with a strap that broke. *Id.* The plaintiff brought a strict liability action against the manufacturer of the

strap and U.S. Battery. *Id.* U.S. Battery was dismissed as a defendant under section 2-621(b) after showing it did not participate in the manufacture and design of the strap and had no knowledge of, nor responsibility for, any defect in the strap. *Id.* ¶ 8. U.S. Battery identified the manufacturer, Yuhuan County Litian Metal Products Co. Ltd., an entity located in China. *Id.* The plaintiff filed an amended complaint which added the manufacturer as a defendant and served the manufacturer pursuant to the Hague Convention. *Id.* ¶ 9. The plaintiff obtained a default judgment against the manufacturer-defendant. *Id.* ¶ 1. Subsequently, the plaintiff moved to reinstate his product liability claim against U.S. Battery arguing that it was unable to collect the default judgment. *Id.* ¶ 12. In support of the motion, the plaintiff submitted affidavits from lawyers in China averring that there was no reasonable expectation of ever collecting the default judgment in that a United States judgment could not be registered and the plaintiff would have to bring a new tort action in China where the potential award of damages would be significantly less than that in the United States. *Id.* ¶ 13.

¶ 53 In construing section 2-621(b)(4) in *Chraca*, this court noted that "[a]uthority indicates that in a section 2–621 proceeding, a company is deemed 'unable to satisfy any judgment' when it is bankrupt or nonexistent." *Id.* ¶24 (collecting cases). We then concluded that plaintiff's inability to enforce a judgment was not a basis for reinstatement, stating:

> "Chraca's attorney misconstrued the statutory language when he asked [another attorney] how Chraca could demonstrate to the Illinois trial court that there is 'no reasonable expectation of ever collecting a judgment against the Chinese [manufacturing] company.' [The] response and the joint affidavit of the two Chinese attorneys about their local court's unwillingness to 'recognize or enforce a judgment obtained in an American state

court' do not indicate that Yuhuan was declared bankrupt or is no longer operating and thus is 'unable to satisfy any judgment' as that phrase is used in the statute at issue." *Id.* ¶ 25 (citing 735 ILCS 5/2-621(b)(4) (West 2010)).

¶ 54 Thus, in interpreting the phrase "unable to satisfy any judgment," the *Chraca* court properly distinguished between a defendant manufacturer's inability to satisfy a judgment and a plaintiff's inability to enforce a judgement. I see no reason to depart from the *Chraca* court's interpretation, as it reflects the plain language of the statute.

¶ 55 Nevertheless, both plaintiff and the majority take issue with *Chraca's* limitation of the application of section 2-621(b)(4) to only those situations where a manufacturing defendant is bankrupt or nonexistent, in part because the authority cited by the *Chraca* court did not focus simply on insolvency or nonexistence, but rather on the fact that defendant manufacturers were "judgment-proof." *Supra* ¶¶ 29-30. While those two situations may not represent the only circumstances where a manufacturer is unable to satisfy a judgment, I find that—at the very least—our prior decision correctly interpreted the plain statutory language to focus on the defendant's inability to satisfy a judgment rather than a plaintiff's inability to enforce a judgement.

¶ 56 Moreover, while the majority contends that the phrase "unable to satisfy any judgment" contained in section 2-621(b)(4) represents a legal "term of art" meaning "judgment-proof," I note that our supreme court has only recognized that "if a term has a settled legal meaning, the courts will normally infer that the legislature intended to incorporate the established meaning." *People v. Smith*, 236 Ill. 2d 162, 167 (2010). However, the majority cannot say the terms of that statute have the settled legal meaning of "judgment-proof" after it both rejects the interpretation

of section 2-621(b)(4) previously offered by the *Chraca* court and after its own analysis provides three separate definitions of the language of the statute, which the majority arrived at by combining and extrapolating from several dictionary definitions.

¶ 57 That said, there may be valid policy reasons for allowing the reinstatement of a dismissed defendant in the chain of distribution when a plaintiff has failed to overcome significant burdens in the collection of a judgment. However, this court is not free to read exceptions, limitations, or conditions into a statute, even for laudable reasons. *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13. Indeed, this court has previously declined to place glosses upon or provide exceptions to the plain language of section 2-621(b). See *Logan v. West Coast Cycle Supply Co.*, 197 Ill. App. 3d 185, 193 (1990); *Cherry*, 206 Ill. App. 3d at 1064. In contrast, here the majority improperly grafts its own definition of "judgement-proof" onto the plain language of section 2-621(b)(4).

¶ 58 Moreover, if the legislature had in fact desired to include a plaintiff's inability to enforce a judgment as a statutory basis for reinstatement, it could easily have done so. The provisions of section 2-621 are one example of legislation enacted in many states "that, to some extent, immunizes nonmanufacturing sellers or distributors from strict liability." Restatement (Third) of Torts: Products Liability § 1 cmt. e (1998). These statutes "are loosely patterned after the Model Uniform Product Liability Act" (Model Act). *Malone v. Schapun, Inc.*, 965 S.W.2d 177, 181 (Mo. Ct. App. 1997) (citing Frank J. Cavico, Jr., *The Strict Tort Liability of Retailers, Wholesalers, and Distributors of Defective Products*, 12 Nova. L. Rev. 213, 240-41 (1987)).

¶ 59 Notably, the Model Act includes provisions that a product seller will be held liable to the same extent as a manufacturer in a strict product liability action *both* where: (1) the manufacturer is insolvent such that it is "unable to pay its debts, and (2) "[t]he court determines that it is highly

probable that a claimant would be unable to enforce a judgment." 44 Fed. Reg. 62714, at 62726 (1979). Our legislature chose not to include an "unable to enforce" provision in section 2-621(b)(4), thus exhibiting an intent that the inability to enforce a judgment was not a consideration in the mechanisms of section 2-621(b)(4). Legislatures in other states have similarly expressed their legislative intent, electing to provide a "seller's exception" under different circumstances than those included in the Model Act. See Wash. Rev. Code Ann. § 7.72.040(2)(b) (incorporating the Model Act's "highly probable" language); Minn. Stat. Ann. § 544.41 (2)(4) (utilizing language identical to section 2-621(b)(4)).[3]

¶ 60 Further, and contrary to the majority's interpretation, section 2-621(b)(4) does not specifically include language providing for reinstatement where a manufacturer has either no assets or insufficient assets within the court's jurisdiction to satisfy a judgment. Perhaps this is because Illinois is one of many states that recognize foreign judgments and provide a mechanism for enforcement of such foreign judgments. See 735 ILCS 5/12-650 *et seq.* (West 2014) (Uniform Enforcement of Foreign Judgments Act); 735 ILCS 5/12-661 *et seq.* (West 2014) (Uniform Foreign-Country Money Judgments Recognition Act). As such, a defendant is generally not considered judgment-proof simply because assets are located outside the jurisdiction of the court. I therefore have concerns about making an overbroad generalization that

[3] Notably, the Minnesota language—identical to our own—appears to have only been applied where the manufacturer is insolvent. See *Tabish v. Target Corp.*, Civ. No. 07-2303 RHK/JSM, 2007 WL 1862095, at *2 (D. Minn. June 26, 2007); *Marcon v. Kmart Corp.*, 573 N.W.2d 728, 731 (Minn. Ct. App. 1998).

a defendant is unable to satisfy a judgment simply because it has either no assets or insufficient assets within the court's specific jurisdiction.

¶ 61 Furthermore, I note that in response to the plaintiff's effort to reinstate, China Vitamins provided evidence that Taihua Group was an ongoing commercial concern operating thorough various subsidiaries in China and many other countries. This included sales and warehouse facilities in Germany. Of note, and despite any difficulties plaintiff may have collecting its judgment in China, German law contains specific provisions for the enforcement of foreign judgments. See Zivilprozessordnung (ZPO) (German Code of Civil Procedure) §§ 328, 722, 723. While the majority contends that plaintiff should not be forced to "chase after foreign manufacturers" before reinstating a nonmanufacturer defendant (*supra* ¶ 35), the process of enforcing judgments in other jurisdictions is not outside the norm. Rather, as the above discussed mechanisms reflect, it is a normal part the litigation process. Indeed, even the majority itself recognizes: "Civil judgments are not self-executing, and tort claimants often must undertake postjudgment litigation to collect their judgments." *Supra* ¶ 38.

¶ 62 Finally, I note that even if the statutory definition and policy considerations proffered by the majority are to be accepted, it would not necessarily follow that the dismissal of plaintiff's strict product liability claim against China Vitamins should be vacated. To the extent that we look to Taihua Group's power, skill and resources to pay the default judgement, I note that plaintiff himself acknowledges on appeal that Taihua Group "could voluntarily pay the damages assessed against it." And, to the extent that the majority seeks to ensure that section 2-621 succeeds in its objective to place the burden of loss on those who placed the product in the stream of commerce (*supra* ¶ 19), plaintiff has taken no efforts to finalize the default entered

against defendant Nhu, another defendant involved in the supply chain at issue here, or to attempt to collect damages from that remaining defendant.

¶ 63 For all the above the reasons, I respectfully dissent from the majority's decision to remand for further proceedings on plaintiff's motion to reinstate China Vitamins as a defendant with respect to the strict product liability claim. Plaintiff's motion failed to demonstrate that Taihua Group was unable to satisfy the judgment against it, when that phrase is given its plain and ordinary meaning. That said, nothing in the statute would prevent plaintiff from bringing another, similar motion below should it have additional, relevant evidence regarding Taihua Group's inability to satisfy the judgment. See 735 ILCS 5/2-621(b) (West 2014) ("The plaintiff may *at any time* subsequent to the dismissal move to vacate the order of dismissal and reinstate the certifying defendant or defendants." (Emphasis added.)).

Docket No. 122873

IN THE ILLINOIS SUPREME COURT

MARTIN CASSIDY,

Plaintiff-Respondent,

v.

CHINA VITAMINS, LLC.,

Defendant-Petitioner,

and

TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED and ZHEJIANG NHU COMPANY, LTD.,

Defendants.

On Petition for Leave to Appeal from the Illinois Appellate Court, First Judicial District, Docket No. 1-16-0933, there heard on appeal from the Circuit Court of Cook County, Law Division, Court No. 07 L 13276, Honorable Kathy M. Flanagan, Judge Presiding

ANSWER TO PETITION FOR LEAVE TO APPEAL OF PLAINTIFF-RESPONDENT MARTIN CASSIDY

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POINTS AND AUTHORITIES

ARGUMENT

I. Defendant-Petitioner's Petition to this Court Misstates the Appellate Court's Holding, the language of Plaintiff-Respondent's Brief to that Court, and the Import of the Appellate Court's Opinion

Defendant-Petitioner China Vitamins, LLC ("China Vitamins"), has asked this Court to review the holding of the First District of the Illinois Appellate Court in *Cassidy v. China Vitamins*, 2017 IL App (1st) 160933. However, China Vitamins has petitioned this Court to do so based on an erroneous reading of the Appellate Court's holding. Additionally, China Vitamins misconstrues language in both Cassidy's Appellate Brief and the language of the opinion as a whole in an attempt to gain a foothold for the granting of its Petition. A proper reading of the Appellate Court's opinion demonstrates that review of this matter is unwarranted, and therefore, this Court should deny China Vitamins' Petition.

On the very first page of its Petition, China Vitamins states that the Appellate Court "held that the plaintiff met the 'unable to satisfy any judgment' language [. . .] by showing his unsuccessful efforts to collect the money judgment[.]" Petition for Leave to Appeal ("PLA") at 1.

The Appellate Court made no such holding. Instead, the Appellate Court's actual holding is found on page 19 of its opinion, which states in full: "We remand this cause to the trial court for further proceedings *to determine whether* Taihua Group is unable to satisfy any judgment within the meaning of 2-621(b)(4)." *Cassidy*, 2017 IL App (1st) at P41 (emphasis added).

This is not a distinction without a difference. The Appellate Court did not hold that Cassidy had *met* any standard, much less the standard that China Vitamins claims. Instead, the Appellate Court remanded the matter back to the trial court "to determine whether" that standard had been met. Had the Appellate Court determined that Cassidy met the standard that China

Vitamins claims, there would be no need to remand the case to the trial court to make a determination that the Appellate Court already made.

Additionally, China Vitamins claims that Cassidy admitted that the manufacturer could voluntarily pay the judgment, which would appear to undercut Cassidy's own argument that the manufacturer could *not* satisfy the judgment. PLA at 2 ("and the plaintiff himself admitted that the manufacturer could voluntarily pay the judgment."). However, this statement is also based upon China Vitamins' erroneous reading of the case file. China Vitamins also includes (in a footnote) a more contextually accurate quote from Cassidy's brief, which states "[w]hile it *may be true* that Shanghai Taiwei could voluntarily pay the damages against it, there is no realistic expectation of it ever doing so." PLA at 12, fn 3 (citation omitted) (emphasis added).

Cassidy did not admit that Shanghai Taiwei (also referred to in the proceedings below as Taihua Group, the manufacturer) could voluntarily pay anything. Cassidy simply stated that it *may* be true that Shanghai Taiwei could voluntarily pay the default judgment entered against it. However, what *may* be true may also *not* be true. Indeed, it is Cassidy's position, and the basis of his attempts to reinstate China Vitamins, that the Taihua Group is unable to satisfy any judgment entered against it, and for that reason, the matter should be remanded to the trial court for further proceedings to allow the court to make such a determination. The Appellate Court quite clearly recognized this and rendered its judgment accordingly. China Vitamins' misreading of that opinion and Cassidy's misconstrued statement do not form a sufficient basis for this Court to grant China Vitamins' Petition, and therefore, that Petition should be denied.

II. This Court Should Deny Defendant-Petitioner's Petition for Leave to Appeal as Review is not Warranted

In its Petition, China Vitamins also argues that its PLA should be granted because "the appellate opinion in this case conflicts with a prior decision from another appellate panel[.]" PLA at 3. However, this should not be a sufficient basis for this Court to grant China Vitamins' PLA. As such, review is not warranted in this case, and China Vitamins' Petition should be denied.

"[T]he doctrine of *stare decisis* requires courts to follow the decisions of higher courts, but does not bind courts to follow decisions of equal or inferior courts." *Schiffner v. Motorola, Inc.*, 297 Ill. App. 3d 1099, 1102 (1st Dist. 1998) (citation omitted); *Northbrook v. Cannon*, 61 Ill. App. 3d 315, 322 (1st Dist. 1978) ("[C]ourts are not bound to follow decisions of equal or inferior courts under that doctrine, but only the decisions of higher courts.") (citation omitted).

Additionally, and directly undercutting China Vitamins' claim that review is warranted in this case because the Appellate Court found the reasoning in *Chraca v. U.S. Battery Mg. Co.*, 2014 IL App (1st) 132325 flawed and declined to follow it, "principles of *stare decisis* do not require us to follow precedent established by another division of the First District[.]"*People v. Primm*, 319 Ill. App. 3d 411, 428 (1st Dist. 2000) (citation omitted).

Furthermore, while Illinois Supreme Court Rule 315 notes that this Court retains discretion to grant leave to appeal when there are conflicting decisions within an Appellate Court, such discretion does not weigh in favor of granting China Vitamins' Petition. The Appellate Court's opinion in the instant case goes into great detail as to why the *Chraca* court's reasoning was flawed and why it should not be followed. Indeed, to follow that reasoning, as China Vitamins asks this Court to do, would compound the injustice faced by Cassidy using rationale that has already been found to be inapplicable to the instant case.

Additionally, Rule 315 presents a non-exhaustive, multifactorial list to determine whether or not a petition should be granted. Here, few if any of those factors are even present, let alone weighing in favor of granting the Petition. Because of this, the Appellate Court's decision in this case should stand and this Court should deny China Vitamins' Petition for Leave to Appeal.

CONCLUSION

Because China Vitamins' Petition for Leave to Appeal is based on an incorrect interpretation of the Appellate Court's holding, and because review by the Illinois Supreme Court is not warranted in this case, China Vitamins' Petition for Leave to Appeal should be denied.

Respectfully submitted,

Matt Cannon
Michael D. Carter
Attorneys for Plaintiff-Respondent

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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 4 pages.

Docket No. 122873
IN THE ILLINOIS SUPREME COURT

MARTIN CASSIDY, Plaintiff-Respondent, v. CHINA VITAMINS, LLC., Defendant-Petitioner, and TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED, and ZHEJIANG NHU COMPANY, LTD., Defendants.	)	On Petition for Leave to Appeal from the Illinois Appellate Court, First Judicial District, 1-16-0933 There heard on Appeal from the Circuit Court of Cook County, Law Division, No. 07 L 13276 The Honorable Kathy M. Flanagan, Presiding

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NOTICE OF FILING

TO: See attached service list

PLEASE TAKE NOTICE that on November 22, 2017, Plaintiff-Respondent Martin Cassidy filed in the Supreme Court of Illinois the ANSWER TO PETITION FOR LEAVE TO APPEAL OF PLAINTIFF-RESPONDENT MARTIN CASSIDY in the above-captioned matter, a copy of which is herewith served upon you.

Respectfully submitted,

Michael D. Carter
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Docket No. 122873
IN THE ILLINOIS SUPREME COURT

MARTIN CASSIDY, Plaintiff-Appellee, v. CHINA VITAMINS, LLC, Defendant-Appellant, and TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED, and ZHEJIANG NHU COMPANY, LTD., Defendants.	)	On Petition for Leave to Appeal from the Illinois Appellate Court, First Judicial District, 1-16-0933 There heard on Appeal from the Circuit Court of Cook County, Law Division, No. 07 L 13276 The Honorable Kathy M. Flanagan, Presiding

NOTICE OF FILING

To: Michael Resis, Esq.
Smith Amundsen, L.L.C.
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PLEASE TAKE NOTICE that on March 28, 2018, Plaintiff-Appellee MARTIN CASSIDY filed in the Supreme Court of Illinois, using the court electronic filing service, the BRIEF AND ARGUMENT OF PLAINTIFF-APPELLEE in the above-captioned matter, a copy of which is herewith served upon you.

Respectfully submitted,

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Docket No. 122873
IN THE ILLINOIS SUPREME COURT

MARTIN CASSIDY, Plaintiff-Appellee, v. CHINA VITAMINS, LLC, Defendant-Appellant, and TAIHUA GROUP SHANGHAI TAIWEI TRADING COMPANY LIMITED, and ZHEJIANG NHU COMPANY, LTD., Defendants.	On Petition for Leave to Appeal from the Illinois Appellate Court, First Judicial District, 1-16-0933 There heard on Appeal from the Circuit Court of Cook County, Law Division, No. 07 L 13276 The Honorable Kathy M. Flanagan, Presiding

CERTIFICATE OF SERVICE

To: Michael Resis, Esq.
Smith Amundsen, L.L.C.
Attorney for China Vitamins, LLC
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Chicago, IL, 60601
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Under the penalties as provided by law pursuant to 735 ILCS § 5/1-109 of the Code of Civil Procedure, the undersigned certifies it to be true and correct that he served the above and foregoing Notice of Filing and one electronic copy of the BRIEF AND ARGUMENT OF PLAINTIFF-APPELLEE by emailing a copy to each party provided on the attached service list on March 28, 2018.