No. 124671

IN THE
SUPREME COURT OF ILLINOIS

CHANDRA JOINER and WILLIAM BLACKMOND, Individually and On Behalf of All Similarly Situated Persons,

Plaintiffs-Appellants,

v.

SVM MANAGEMENT, LLC,

Defendant-Appellee.

From the Appellate Court of Illinois, First Judicial District, No. 1-17-2336

From the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 2016 CH 16407

Hon. Pamela Meyerson
Judge Presiding

BRIEF OF DEFENDANT-APPELLEE

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POINTS AND AUTHORITIES

ARGUMENT.....1

I. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE ILLINOIS COURTS ARE NOT OBLIGATED TO FOLLOW FEDERAL CASE LAW IN THE IMMEDIATE MATTER, AND SOUND JUDICIAL POLICY DEMANDS THEY DON'T DO SO.....1

Hope Clinic for Women, Ltd. v. Flores, 2013 IL 112673 1

Hampton v. Metropolitan Water Reclamation Dist. of Greater Chicago, 2016 IL 119861.....1

a. The doctrine of *stare decisis* compels this court to reaffirm its decisions in *Barber* and *Ballard* as a matter of sound judicial policy. 1

Hoffman v. Lehnhausen, 48 Ill. 2d 323 (1971) 1

Zimmerman v. Village of Skokie, 183 Ill. 2d 30 (1998) 1

People v. Mitchell, 189 Ill. 2d 312 (2000) 1

Chicago Bar Assn. v. Illinois State Bd. of Elections, 161 Ill. 2d 502 (1994).....2

People v. Suarez, 224 Ill. 2d 37 (2007).....2

Ballard RN Center, Inc. v. Kohlls Pharmacy & Homecare, Inc., 2015 IL 118644.....2

II. EVEN UNDER A *CAMPBELL-EWALD* ANALYSIS, THE COURT SHOULD STILL AFFIRM THE APPELLATE COURT'S RULING BECAUSE RELIEF WAS ACTUALLY TENDERED RATHER THAN SIMPLY OFFERED. 3

a. *Campbell-Ewald* distinguishes between the discrete legal concepts of offers and tenders.....3

Campbell-Ewald Co. v. Gomez, 136 S. Ct. 663 (2016) 3

b. Barber concerned *tenders* and not merely *offers*. 5

Wheatley v. Board of Education of Township High School District 205, 99 Ill. 2d 481 5

Barber v. American Airlines, Inc., 241 Ill. 2d 450 (2011) 5

III. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE THE MOOTNESS DOCTRINE PROMOTES THE POLICY INTEREST OF JUDICIAL ECONOMY BY LIMITING THE JUSTICIABILITY OF RESOLVED ISSUES. 7

Waterhouse v. Robinson, 2017 IL App (4th) 160433 7

City of Chicago v. City of Kankakee, 2019 IL 122878 8

Arnold v. H. Frank Olds, Inc., 50 Ill. App. 3d 300 (1st Dist. 1977) 8

IV. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE DEFENDANT'S TENDER WAS AN UNCONDITIONAL DELIVERY MATCHING THE RELIEF SOUGHT IN THE COMPLAINT PRECISELY 8

Brown & Kerr, Inc. v. American Stores Properties, Inc., 306 Ill. App. 3d 1023 (1st Dist. 1999) 8

Gatreaux v. DKW Enterprises, LLC, 2011 IL App (1st) 103482 9

V. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY STAYING DISCOVERY PENDING THE RESOLUTION OF DEFENDANT'S MOTION TO DISMISS. 9

Payne v. Hall, 2013 Il App (1st) 113519 9

Sullivan v. Edward Hospital, 209 Ill. 2d 100 (2004) 10

People v. Hall, 195 Ill. 2d 1 (2000) 10

Evitts v. Daimler Chrysler Motors Corp., 359 Ill. App. 3d 504 (1st Dist. 2005) 10

Adkins Energy, LLC v. Delta-T Corp., 347 Ill. App. 3d 373 (2d Dist. 2003) 10

ARGUMENT

I. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE ILLINOIS COURTS ARE NOT OBLIGATED TO FOLLOW FEDERAL CASE LAW IN THE IMMEDIATE MATTER, AND SOUND JUDICIAL POLICY DEMANDS THEY DON'T DO SO.

The seminal issue Plaintiffs present can be distilled into a singular question: whether this Court should abandon its precedent in favor of that of another court. For the reasons contained herein, Defendant respectfully prays that this Honorable Court answer that question in the negative and uphold its well-settled precedent.

As an initial matter, federal law is not mandatory authority in this case. Section 2-801 of the Code of Civil Procedure is at issue, and it is a fundamental principle of law that this Court is the final arbiter of Illinois state law. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 79. Further, on issues of state law, the United States Supreme Court has no authority to overrule a state court's declaration of the meaning of state law. *Hampton v. Metropolitan Water Reclamation Dist. of Greater Chicago*, 2016 IL 119861, ¶ 9.

a. The doctrine of *stare decisis* compels this court to reaffirm its decisions in *Barber* and *Ballard* as a matter of sound judicial policy.

The doctrine of *stare decisis* is a basic tenant of our legal system. *Hoffman v. Lehnhausen*, 48 Ill. 2d 323, 329 (1971). Simply stated, *stare decisis* reflects the policy of the courts "to stand by precedents and not to disturb settled points." *Zimmerman v. Village of Skokie,* 183 Ill. 2d 30, 47 (1998). The purpose behind the doctrine is to ensure that the law will not change erratically but instead will develop in a principled, intelligible fashion. *People v. Mitchell*, 189 Ill. 2d 312, 338 (2000).

While *stare decisis* is not an inexorable command, a court will detour from the straight path of *stare decisis* only for articulable reasons, and only when the court must bring its decisions into agreement with experience and newly ascertained facts. *Chicago Bar Assn. v. Illinois State Bd. of Elections*, 161 Ill. 2d 502, 510 (1994). Any departure from *stare decisis* must be "specially justified." *People v. Suarez,* 224 Ill. 2d 37, 50 (2007). Thus, prior decisions should not be overruled absent "good cause" or "compelling reasons." *Id*. In general, no good cause exists to disturb settled law where that law does not contravene a statute or constitutional principle. *Id*. Good cause does, however, exist if following the law is likely to result in serious detriment prejudicial to public interests. *Id*. Good cause to depart from *stare decisis* also exists when governing decisions are unworkable or badly reasoned. *Id*.

Here, Plaintiffs do not present any good cause or compelling reason why this Court should abandon its precedent. Instead, Plaintiffs unjustifiably believe this Court has a duty to conform its interpretation of Illinois' class action statute to Federal Rule of Civil Procedure 23. While our courts have applied federal case law when interpreting Illinois' class action statute, this by itself is no reason to throw out the well-settled precedent of *Barber* and *Wheatley* simply because five justices of the United States Supreme Court interpreted the Federal Rules of Civil Procedure in a manner different than the other four did.

As this Court has noted, our courts *may* consider federal case law "for guidance on class action issues because the Illinois class action statute is patterned on Rule 23 of the Federal Rules of Civil Procedure." *Ballard RN Center, Inc. v. Kohlls Pharmacy & Homecare, Inc*., 2015 IL 118644, ¶40. While this is so, it's not a command or requirement

that this Court interpret Illinois' class action statute in lockstep with Rule 23. This Court's precedent in *Barber* and *Wheatley* is sound, and, accordingly, the Court should affirm the Appellate Court's ruling in this matter.

II. EVEN UNDER A *CAMPBELL-EWALD* ANALYSIS, THE COURT SHOULD STILL AFFIRM THE APPELLATE COURT'S RULING BECAUSE RELIEF WAS ACTUALLY TENDERED RATHER THAN SIMPLY OFFERED.

a. *Campbell-Ewald* distinguishes between the discrete legal concepts of offers and tenders.

The United States Supreme Court in *Campbell-Ewald* was careful to limit its decision to the facts of that case. *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663 (2016). In *Campbell-Ewald*, the appellant, a marketing consultant, was hired by the United States Navy to assist with a recruiting campaign. *Id.* at 667. As part of that campaign, the appellant developed a campaign involving text messages targeting young adults, encouraging them to learn more about the Navy. *Id*. The Navy acquiesced to the project on the condition that the messages only be sent to individuals who "opted-in" to receive the messages. *Id.*

The appellee (Gomez) was a recipient of these recruiting messaged. *Id*. He sued the appellant under the federal Telephone Consumer Protection Act claiming that he never consented to receiving those messages. *Id*. Gomez filed a class action suit on behalf of a nationwide class of individuals who had received, but had not consented to the receipt of, these text messages. *Id*. As part of that complaint, Gomez sought treble statutory damages, costs, and attorney's fees, as well as an injunction against the appellant's use of unsolicited messaging. *Id*.

Prior to the agreed deadline for Gomez to file his motion for class certification, Campbell proposed to settle Gomez's individual claim and filed an offer of judgment pursuant to Federal Rule of Civil Procedure 68. *Id*. Gomez didn't accept the settlement offer. *Id*. at 668. Campbell then moved to dismiss the case for lack of subject matter jurisdiction. *Id*. Campbell argued that no case or controversy remained between the parties because its offer mooted Gomez's individual claim by providing him with complete relief. *Id*. The District court denied Campbell's motion, and the Ninth Circuit Court of Appeals affirmed. The United States Supreme Court thereafter granted *certiorari* to resolve the disagreement among the federal courts of appeal over whether an unaccepted offer of judgment can moot a plaintiff's claim. *Id*. at 669.

In its decision, the Supreme Court affirmed the lower court's rulings, holding that an offer of settlement from a defendant, when unaccepted by the named plaintiffs, does not moot the plaintiff's claims in a class action. To arrive at this conclusion, the Supreme Court relied substantially on the law of contracts. The court then applied these principles to the case before them. A rejected offer of settlement, like a rejected offer to form a contract, holds no legal significance, nor does it affect the justiciability of a plaintiff's claim. *Id.* at 672.

The majority opinion in *Campbell-Ewald* qualified this decision, however, with an interesting nuance. In its conclusion, the Court noted that "[w]e need not, and do not, now decide whether the result would be different if a defendant deposits the full amount of the plaintiff's individual claim in an account payable to the plaintiff, and the court then enters judgment for the plaintiff in that amount. That question is appropriately reserved for a case

in which it is not hypothetical." *Id*. Clearly, the Court thought it important to distinguish the legal effect of an offer of settlement, with that of an actual *tender*.

Here, as discussed below, there was an actual tender of a sum certain that mirrored the relief requested in the complaint precisely. *Campbell-Ewald*'s distinction between an offer of judgment and a tender is exactly why the Court should reject application of that case here: Illinois law permits a tender; an offer of judgment pursuant to Rule 68 of the Federal Rules of Civil Procedure is simply irrelevant.

b. *Barber* concerned *tenders* and not merely *offers*.

Unlike the United States Supreme Court, who reserved the issue, it is well-settled in this Court that, if a defendant tenders the requested relief to a named plaintiff before the plaintiff moves for class certification and that tender is accepted, then the underlying cause of action is moot because an actual controversy no longer exists between the parties. *Wheatley v. Board of Education of Township High School District 205*, 99 Ill. 2d 481, 483-85. This Court reaffirmed, refined, and extended the Wheatley holding in *Barber v. American Airlines, Inc.,* 241 Ill. 2d 450 (2011).

In *Barber*, this Court held that relief tendered to a named plaintiff in a class action prior to the filing of a motion for class certification moots the claim. In *Barber*, the plaintiff checked two suitcases for a flight and was charged a baggage fee. *Id*. at 452. The flight was subsequently cancelled, and Plaintiff elected not to take another flight. *Id.* at 453. Defendant refunded the price of the airline ticket, but refused to refund the baggage fee. *Id*. at 452.

The *Barber* plaintiff thereafter filed a class action complaint against the defendant. *Id.* at 453. Subsequently, the defendant determined that the plaintiff was entitled to a refund

of the baggage fee. *Id.* The defendant then contacted the plaintiff's attorney and offered to tender a full refund. In that conversation, the defendant also stated that it would consider paying court costs that the plaintiff had incurred. *Id*. The plaintiff's attorney declined the offer. The defendant then refunded the baggage fee *directly* to the credit card that the plaintiff used to originally paid the fee. *Id*.

The defendant in *Barber* then moved to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure on the grounds that the plaintiff's complaint was moot based on the return of the baggage fee. *Id*. The circuit court eventually granted the defendant's motion and dismissed the complaint on mootness grounds. *Id*. at 454. This Court then held that where a tender is made before the plaintiff files a motion to certify a class, the case may be properly dismissed as moot based on the defendant's tender. This Court reasoned that where a tender is made before the plaintiff files a motion for class certification, the named plaintiff cannot protect the interests of the other class members, whose interests are not sufficiently before the court. *Id*. at 457. Where the plaintiff is given the relief he requested in their complaint, "he is no longer a member of the class because his interests are not consistent with the interests of the other class members." *Wheatley*, 99 Ill. 2d at 486-87.

In *Barber*, the defendant satisfied the claim by directly depositing the amount sought for baggage fees into the credit account that the plaintiff used to pay for the tickets. It was more than just a mere offer of relief, it was actual satisfaction of the claim. In *Barber*, this was done before the named plaintiffs moved for class certification.

Similarly, in the immediate case, after receiving the complaint, SVM's attorneys prepared and sent Plaintiff's counsel a "cashier's check in the amount of $1,290.00

representing [Plaintiffs'] maximum individual recovery under 765 ILCS 715/2 as prayed for in Count I of the complaint" along with "all court costs and reasonable attorney's fees as allowed by the court that Plaintiff incurred pursuing Count I of the Complaint." (C 93-97). As in *Barber*, this was more than just an offer of payment—Defendant here actually delivered certified funds, on a condition-free basis, for the maximum amount recoverable under that count of the complaint before Plaintiff filed a motion for class certification. There was no further justiciable controversy, the action was moot, the trial court properly dismissed the action, and the Appellate Court properly affirmed. Accordingly, this Court should apply its precedent in *Barber* and affirm the Appellate Court's ruling.

III. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE THE MOOTNESS DOCTRINE PROMOTES THE POLICY INTEREST OF JUDICIAL ECONOMY BY LIMITING THE JUSTICIABILITY OF RESOLVED ISSUES.

Plaintiffs urge this Court to abandon its precedent in favor of *Campbell-Ewald* because, among other reasons, the current approach is "inefficient." Brief, p. 12. Essentially, Plaintiffs argue that under the current system, imprudent defendants are allowed to "pick off" Plaintiffs by satisfying their claim before they can get a motion for class certification on file. Plaintiff's counsel then finds a new plaintiff and the cycle continues. While this system may be "inefficient" for plaintiff's attorneys, who need to search for new clients, it seems hyper-efficient for the plaintiffs themselves, who have their claims fully satisfied without going through extensive litigation.

In the interest of judicial economy, Article 6, Section 9, of the Illinois Constitution limits the jurisdiction of our circuit courts to justiciable matters alone. IL CONST Art. 6 § 9. Absent a justiciable matter, the circuit court has no authority to proceed with the case. *Waterhouse v. Robinson,* 2017 IL App (4th) 160433, ¶ 12. Beyond the limits of the Illinois

Constitution, the legislature may define a justiciable matter in such a way as to further preclude or limit the circuit court's jurisdiction. *City of Chicago v. City of Kankakee*, 2019 IL 122878, ¶ 22. Indeed, our legislature further limited the justiciability of potential class actions by constructing rules regarding the prerequisites for the maintenance of class actions. 735 ILCS 5/2-801.

Where a plaintiff makes a demand, and the defendant complies in full, there is no purpose for the courts involvement at that point. The policy interest of promoting judicial economy is a major reason the mechanism of class action lawsuits exist in the first place. *Arnold v. H. Frank Olds, Inc.,* 50 Ill. App. 3d 300, 305 (1st Dist. 1977). Where full relief is willingly and unconditionally given, there is nothing left for our courts to do. Our courts are already overworked and flooded with endless litigation. This Court should not make it easier for plaintiffs—or, rather, their lawyers—to occupy scarce judicial time when there is no longer an actual, justiciable controversy between the parties. Accordingly, the Court should affirm the Appellate Court's ruling.

IV. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE DEFENDANT'S TENDER WAS AN UNCONDITIONAL DELIVERY MATCHING THE RELIEF SOUGHT IN THE COMPLAINT PRECISELY.

A tender is an "unconditional offer of payment consisting of the actual production of a sum not less than the amount due on a particular obligation." *Brown & Kerr, Inc. v. American Stores Properties, Inc.*, 306 Ill. App. 3d 1023, 1032 (1st Dist. 1999). In Count I of their complaint, Plaintiffs asked for an amount equal to their security deposit, along with costs and attorney's fees. Defendant, in turn, provided a cashier's check to Plaintiffs for the amount of the security deposit, as well as a letter providing for the imminent payment of all court costs and attorney's fees. The Appellate court correctly found that "because

defendant's offer mirrored plaintiff's requested relief as stated in their complaint as well as provided for by the statute, defendant offered the payment of an actual production of a sum not less than the amount due on the obligation." *Joiner v. SVM*, 2019 IL App (1st) 172336-U, ¶ 23.

Plaintiffs first argue that because the check was made out to Plaintiffs' attorneys, rather than Plaintiffs themselves, it was an invalid tender. Plaintiffs provide no authority, nor good reason, why Defendant could not rely on Plaintiffs' counsel to forward the money to Plaintiffs. Plaintiffs also argue there was no valid tender because Defendant did not produce money for costs and fees. The Appellate Court correctly rejected this argument pointing to *Gatreaux v. DKW Enterprises, LLC,* where the Appellate Court found that defendant made a valid tender despite it including and offer for "the payment of all costs and reasonable attorney's fees incurred by the plaintiff in litigating this lawsuit." Gatreaux *v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 30. Additionally, the letter of tender provided no conditions on Plaintiffs' acceptance, it was cash in hand.

Defendant's tender perfectly conformed with Illinois law in that it was an actual, unconditional payment that matched the relief sought exactly. For these reasons, the Court should affirm the Appellate Court's ruling in this matter.

V. THE COURT SHOULD AFFIRM THE APPELLATE COURT'S RULING BECAUSE THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY STAYING DISCOVERY PENDING THE RESOLUTION OF DEFENDANT'S MOTION TO DISMISS.

Trial courts are afforded white latitude in ruling on discovery matters. *Payne v. Hall*, 2013 Il App (1st) 113519, ¶10. The scope of the trial court's power over its dockets and discovery is so broad that a reviewing court will not disturb a trial court's ruling on discovery matters unless there is a manifest abuse of discretion. *Sullivan v. Edward*

Hospital, 209 Ill. 2d 100, 110 (2004). "A trial court will be deemed to have abused its discretion only where its ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill2d 1, 20 (2000).

Additionally, it's also well-settled that a trial court may stay discovery or quash discovery requests if a motion to dismiss is pending. *Evitts v. Daimler Chrysler Motors Corp.*, 359 Ill. App. 3d 504, 514 (1st Dist. 2005). While courts "should not refuse a discovery response if it is apparent that discovery may assist the nonmoving party" it is not a manifest abuse of discretion to stay discovery until a dispositive motion is heard "because if a cause of action had not been stated, discovery would be unnecessary." *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 381 (2d Dist. 2003); *Evitts*, 359 Ill. App. 3d at 380-81.

In this case, Plaintiffs tried to expedite all discovery before the parties were even at issue. (R 25 ¶ 12-22). In fact, on the day Defendant was set to present its motion to dismiss pursuant to the holding in *Barber*, Plaintiffs served interrogatories, requests for production of documents, requests to admit, and four notices of deposition. *Id*. Shortly thereafter, Defendant filed a motion to quash a subpoena sent to the Village of Hazel Crest for being overbroad and to stay all other discovery pending the resolution of the pending motion to dismiss. (C 77-80, 101-06).

The motion to quash and stay discovery posited that the cost of discovery would be "overly burdensome financially and wasteful for Defendant" given that Defendant's motion to dismiss would resolve all issues between the parties. *Id*. The motion to stay only sought to stay discovery for the brief time while the § 2-619.1 motion was pending.

Id. After reviewing the motion and Plaintiffs' response, the trial court provided a measured ruling and stated "it is up to the discretion of the court to manage the litigation and to decide… but the judge has broad discretion to say we are going to put this on hold for a while…I am going to stay discovery for [one week]" pending the resolution of the motion to dismiss. (R 26-29). Discovery related to class certification was also stayed for one week pending the resolution of the *Barber* issue in the motion to dismiss. *Id*.

The limited stay on discovery was reasonable in scope and duration and did not prejudice Plaintiffs or erect any unnecessary burdens or hurdles. The trial court stayed discovery in a thoughtful and judicious way to manage the court's docket and protect the parties' time and expenses. As such, the orders should be affirmed because the trial court did not abuse its discretion.

CONCLUSION

For the foregoing reasons, the Court should affirm the Appellate Court's ruling.

Respectfully submitted,
SVM Management, LLC

By: /s/ John P.M. Peskind
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ILLINOIS SUPREME COURT RULE 341(c)
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 containing 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 11 pages.

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Please take notice that on September 17, 2019, we e-filed with the Illinois Supreme Court Defendant-Appellee's Brief in Opposition to Plaintiffs' Brief.

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that on September 17, 2019, we served Defendant-Appellee's Brief in Opposition to Plaintiffs' Brief and the Notice of Filing for said brief to Plaintiffs' attorney via electronic service through Odyssey eFileIL.

/s/ John P.M. Peskind