No. 127177

In the
Supreme Court Of Illinois

WALWORTH INVESTMENTS-LG, LLC,	)	Appeal from the Illinois
	)	Appellate Court
Plaintiff-Appellee,	)	First District, No. 1-19-1937
	)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of Cook County,
MU SIGMA, INC., and	)	County Department, Law Division
DHIRAJ C. RAJARAM,	)	Circuit No. 2016 L 002470
	)	
Defendants-Appellants.	)	Judges: Hon. Daniel J. Kubasiak and Hon. John C. Griffin

***AMICUS CURIAE* BRIEF OF THE ILLINOIS TRIAL LAWYERS' ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE**

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POINTS AND AUTHORITIES

INTRODUCTION

The Illinois Trial Lawyers' Association (ITLA) represents injured persons and their families who regularly utilize settlement agreements containing releases to fully and finally resolve their disputes. The appeal in this case—although it arises in the context of a commercial dispute involving the sale of securities—impacts the interests of ITLA, and the interests of all litigants in Illinois for that matter, because it calls into question whether a party can obtain a release by fraud and then invoke that release to shield itself from liability for that fraud. ITLA respectfully urges this Court to recognize the impropriety of such conduct: If a party fraudulently induces a party to release all claims against it, the resulting agreement can and should be voided because an agreement is not enforceable if it is the product of fraud.

In this appeal, Defendants allegedly lied and misled Walworth into relinquishing its significant interest in Mu Sigma, including by making overt misstatements and concealing information from Walworth to cause Walworth to believe that selling its stake was in its best interests when Defendants knew it was not. If that were not troubling enough, Defendants now attempt to utilize language in the parties' repurchase agreement to escape liability for their fraudulent misconduct. To allow Defendants to insulate themselves from liability on the basis of provisions in a fraudulently-induced contract is counter to the policies established by the courts and legislature of this State.

ARGUMENT

Illinois, like Delaware – and every other state – abhors fraud. This Court long ago explained that the maxim "the law never presumes fraud" has its roots in "the abhorrence with which the law regards fraud, and its unwillingness to believe that any person could be guilty of conduct so base." *Strauss v. Kranert*, 56 Ill. 254, 257 (1870). More recently, this Court reminded us "that the law abhors a fraud is a truism which requires no citation to authority." *Geer v. Kadera*, 173 Ill. 2d 398, 415 (1996). The existence of numerous criminal and civil statutes that seek to deter would-be fraudsters and punish actual ones likewise confirms the legislature's repugnance of fraud. See e.g., 815 ILCS 505/1 et seq. (Illinois Consumer Fraud and Deceptive Practices Act); 720 ILCS 5/17-10.5 (criminal insurance fraud); 720 ILCS 5/17-27 (criminal fraud on creditors).

Because the law abhors fraud, it declares contracts tainted with it void. *Edmunds v. Hildreth*, 16 Ill. 214, 216 (1854). Indeed, where a court discovers fraud has occurred, or is occurring, it must correct it *sua sponte*. *Songer v. Partridge*, 107 Ill. 529, 530 (1883) ("A court of equity so abhors a fraud that it will take up the objection of its own motion"); *Herrick v. Lynch*, 49 Ill. App. 657, 661 (Ill. App. Ct. 1893), *aff'd*, 150 Ill. 283 (1894) ("a court of equity will not aid a fraudulent transaction").

Like every other state, Illinois also strongly favors settlement. *See In re Guardianship of Babb*, 162 Ill.2d 153, 162 (1994) (recognizing Illinois' "strong public policy favoring the peaceful settlement of claims"); *Rome v. Archer*, 41 Del. Ch. 404, 411, 197 A.2d 49, 53 (1964) ("The law, of course, favors the voluntary settlement of contested issues"). Allowing parties to voluntarily settle their grievances is a cornerstone of our civil

justice system. Settlement not only allows parties to put their differences behind them and move forward with clarity and finality, it is also adds value by reducing the need for court resources and freeing up already congested court dockets. It is no overstatement to say that Illinois' civil justice system would not be able to function absent a reliable and dependable means to dispose of legal conflicts fairly and expediently. Illinois citizens (and others conducting affairs in Illinois) need to believe in and trust the sanctity of the deals they negotiate. These ideals are threatened when that trust is lost. Indeed, they are destroyed when a releasing party can fraudulently induce an innocent party to execute a settlement agreement that would effectively shield itself from the very fraud employed to procure it.

Fraud has long been a basis to undo a release. *Rudolph v. Santa Fe Park Enterprises, Inc.*, 122 Ill.App.3d 372, 374-75 (1984) (collecting cases); *see also Babcock v. Farwell*, 245 Ill. 14, 40 (1910) (permitting defrauded party to void the release and keep the consideration). Nevertheless, Defendants seek to contravene this fundamental precept of law: they contend that the release contained in the repurchase agreement—which Walworth claims was procured by fraud—immunizes them from liability not only for fraud, but also for breach of fiduciary duty, unjust enrichment, and breach of contract. But Delaware (like Illinois) imposes a "heavy burden" on the alleged fraudster to show that the fraud victim knew about the fraudulent conduct it was releasing. *E.I. DuPont de Nemours & Co. v. Fla. Evergreen Foliage*, 744 A.2d 457, 461 (Del. 1999) ("the party seeking enforcement of the release bears the burden of proving that the released fraud claim was within the contemplation of the releasing party").

This burden is especially important when fiduciary duties are involved. In Illinois, if a petitioner shows that a fiduciary relationship exists, any transaction between parties in which the fiduciary profits is typically presumed to be fraudulent and the fiduciary must prove by clear and convincing evidence that the transaction was fair and equitable and did not result from the fiduciary's undue influence over the principal. *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1005 (2010) (collecting cases). *See also Prueter v. Bork*, 105 Ill.App.3d 1003, 1005 (1981) (where there is a fiduciary relationship, the burden shifts to the fiduciary to prove the fairness of the transaction). This includes when the fiduciary duty exists between a corporate director or officer and a shareholder. *See Winger v. Chicago City Bank & Tr. Co.*, 394 Ill. 94, 109–10 (1946) ("A fiduciary dealing with his beneficiaries is measured by a different standard. He cannot benefit by dealing with them to their disadvantage. Therefore, directors of a corporation cannot acquire the property of the corporation without exercising the utmost good faith. [Citations omitted]. The sale is presumptively fraudulent"); *Shlensky v. S. Parkway Bldg. Corp.*, 19 Ill. 2d 268, 278 (1960) (recognizing "[t]his court, in conformity with the practically universal judicial opinion, has recognized that directors, or other officers of a corporation, occupy a fiduciary relation toward it" and placing burden on corporate director of showing transaction's fairness).

Delaware follows that same rule. *See, e.g., Coleman v. Newborn*, 948 A.2d 422, 429 (Del. Ch. 2007) ("Upon the finding of a fiduciary relationship, the party seeking to sustain the transfer can overcome the presumption of fraud by showing the fairness of the transaction"); *Swain v. Moore*, 31 Del. Ch. 288, 295, 71 A.2d 264, 267 (1950) ("Where, as here, a fiduciary relationship exists, the law will presume fraud and the burden of showing

fairness in connection with the transfer of property is on the person seeking to sustain the transaction"). Sanctioning Defendants' effort to defeat Walworth's claim without having even attempted to show that Walworth was knowingly releasing claims for fraud and fiduciary duty breach would upend these bedrock principles of Illinois and Delaware law.

Another troubling aspect of Defendants' position is their use of the "known and unknown claims" language as a basis to assert that Walworth's fraud claims are swept within the reach of the repurchase agreement's general release. That language is found in most, if not all, releases signed by ITLA's clients. But where the releasing party was unaware of other claims, as is necessarily the case where the releasor claims fraud in the execution or inducement, Illinois case law has restricted general releases to the *specific* claims described in the release agreement. *Farm Credit Bank of St. Louis v. Whitlock*, 144 Ill. 2d 440, 447 (1991) (citing *Todd v. Mitchell*, 168 Ill. 199 (1897)).

Delaware law is also in accord. In finding that the "known or unknown" language in a release did not bar a plaintiff's claim it had been fraudulently induced to sign the release, the Delaware Supreme Court explained:

> There is some merit to the contention that parties entering into a general release are chargeable with notice that any uncertainty with respect to the contours of the dispute which led to the litigation, including that which is provable and that which is not, is resolved through the release. [Citation omitted]. It is quite another thing, however, to conclude that a person is deemed to have released a claim of which he has no knowledge, when the ignorance of such a claim is attributable to fraudulent conduct by the released party. 66 Am.Jur.2d *Release* § 30 (1973). At a minimum, if one party is to be held to release a claim for fraud in the execution of the release itself, the release should include a specific statement of exculpatory language referencing the fraud.

E.I. DuPont de Nemours & Co., 744 A.2d at 460–61.

Defendants' attempt to stretch that boilerplate language to include fraud claims is likewise highly problematic and should be rejected.

CONCLUSION

ITLA's clients do not seek to needlessly prolong litigation or undo settlement agreements. But there must be a way for them to confidently sign a release without fear that, should the releasee have materially lied to induce them to sign the settlement agreement, the very instrument that is the product of fraud will be used to protect the releasee. That would give parties a perverse incentive to *not* honestly deal with one another and quickly close the deal before the other party discovers the fraud. The civil justice system cannot function if the parties cannot trust each other at the bargaining table.

Respectfully submitted,

/s/Colin H. Dunn

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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) table of contents and 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 1,640 words.

/S/Colin H. Dunn

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NOTICE OF ELECTRONIC FILING

To: See Service List below

The undersigned certifies that, on April 29, 2022, he electronically filed the attached ***AMICUS CURIAE* BRIEF OF THE ILLINOIS TRIAL LAWYERS' ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE** with the Clerk of the Supreme Court of Illinois.

/s/Colin H. Dunn

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and states that on April 29, 2022, he caused a true and correct copy of the foregoing ***AMICUS CURIAE*** **BRIEF OF THE ILLINOIS TRIAL LAWYERS' ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE** upon all counsel of record to the email addresses listed in the Service List below.

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, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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