No. 128252

IN THE
SUPREME COURT OF ILLINOIS

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

Plaintiffs-Appellees,

v.

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

Defendant-Appellant,

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

Intervenor-Defendants-Appellants.

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

APPELLANT'S ADDITIONAL BRIEF

ORAL ARGUMENT REQUESTED

JAMES W. GLASGOW, Will County State's Attorney
Gary Scott Pyles, Assistant State's Attorney
Kevin Meyers, Assistant State's Attorney
57 N. Ottawa Street
Joliet, IL 60432
(815) 724-1318
spyles@willcountyillinois.com; kmeyers@willcountyillinois.com
Attorney for Defendant Tim Brophy, Treasurer and ex-officio County Collector for Will County

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CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

NATURE OF THE CASE 5

ISSUES PRESENTED FOR REVIEW 5

STATEMENT OF JURISDICTION 5

STATUTE INVOLVED 6

STATEMENT OF FACTS 6

ARGUMENT 8

POINTS AND AUTHORITIES

I. THE APPELLATE COURT DECISION IN THIS CASE ALLOWS PLAINTIFFS AN UNCONSTITUTIONAL PRIVATE BENEFIT WHICH VIOLATES FINANCE ARTICLE OF THE ILLINOIS CONSTITUTION 8

Ill. Const. art IX, § 4 9

Ill. Const. art. VIII, § 1 8

Raymond v. Chicago Union Traction Co., 207 U.S. 20 (1907) 10

Alvarez v. Pappas, 229 Ill. 2d 217 (2008) 5, 11, 13, 14

Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395, 401 (1960) 9

Empress Casino Joliet Corp. v. Giannoulias, 231 Ill.2d 62 (2008) 9

Paschen v. Village of Winnetka, 73 Ill.App.3d 1023 (1st Dist. 1979) 9

Abrams v. Oak Lawn-Hometown Middle Sch., 2014 IL App (1st) 132987 10

People ex rel Hawthorne v. Bartlow, 111 Ill.App.3d 513, 520, 67 Ill.Dec. 243, 444 N.E.2d 282 (4th Dist. 1983) 9

Sibenaller v. Milschewski, 379 Ill. App. 3d 717, 884 N.E.2d 1215 (2008) 10

Jackson v. South Holland Dodge, Inc., 197 Ill.2d 39, 45, 258 Ill.Dec. 79, 755 N.E.2d 462 (2001) 11

35 ILCS 200/20-175 ..... 6-9, 11-17

735 ILCS 5/2-615 10

735 ILCS 5/2-619, 2-619.1 (2020 as amended) 7, 10

City of Joliet v. Mid-City Nat'l Bank of Chicago, No. 05 CV 6746,
2014 WL 4667254 (N.D. Ill. Sept. 17, 2014) 6, 7, 11, 12

City of Joliet, Illinois v. New W., L.P., 825 F.3d 827 (7th Cir. 2016) 7, 11, 12

II. PAYMENT OF CORRECT AMOUNT OF TAXES DUE BY PARTY NOT OBLIGATED TO PAY THE TAXES IS NOT "OVERPAYMENT" WITHIN MEANING OF PROPERTY TAX CODE SECTION 20-175 11

U.S. v. Dalm, 494 U.S. 596 (1990) 14

Alvarez v. Pappas, 229 Ill. 2d 217 (2008) 5, 11, 13, 14

Forest Preserve Dist. of Du Page Cnty. v. First Nat'l Bank of Franklin Park,
2011 IL 110759 16

Town & Country Utilities, Inc. v. Illinois Pollution Control Board,
225 Ill.2d 103 (2007) 12

City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955) 15

Carlasare c. Will Cnty. Officers Electoral Bd., 2012 IL App (3d) 120699 12

People v. Araiza, 2020 IL App (3d) 170735 12

Sorce v. Armstrong, 399 Ill. App. 3d 1097 (2d Dist. 2010) 14

35 ILCS 200/15-60 15

35 ILCS 200/20-175 ..... 6-9, 11-17

City of Joliet v. Mid-City Nat'l Bank of Chicago, No. 05 CV 6746,
2014 WL 4667254 (N.D. Ill. Sept. 17, 2014) 6, 7, 11, 12

City of Joliet, Illinois v. New W., L.P., 825 F.3d 827 (7th Cir. 2016) 7, 11, 12

III. PLAINTIFFS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES 16

Illinois Bell Telephone Co. v. Allphin, 60 Ill.2d 350, 358 (1975) 17

Jackson Park Yacht Club v. Illinois Dept. of Local Government Affairs,
93 Ill.App.3d 542, (1st Dist. 1981) 17

Kenilworth Ins. Co. v. Mauck, 50 Ill.App.3d 823 (1st Dist. 1977) 17

35 ILCS 200/20-175 ..... 6-9, 11-17

35 ILCS 200/23-5 18

NATURE OF THE CASE

This case involves Plaintiffs' request for a refund of real estate taxes for the tax years 2005-2016 for multiple parcels of property that comprised a housing development that was taken by the City of Joliet via eminent domain proceedings. Plaintiffs operated the housing project and paid the real estate taxes during the twelve years that the eminent domain proceedings were pending but sought a refund of those paid taxes in a Complaint filed against the Will County Collector approximately a year after obtaining their just compensation award in the federal eminent domain proceedings. The taxing bodies to which the taxes were paid and from which the taxes would be refunded intervened. The trial court granted the Defendant's and Intervenors' Motions to Dismiss pursuant to 735 ILCS 5/2-619. At issue is whether the Plaintiffs were legally liable for the taxes during the pending eminent domain proceedings and if not, whether they are entitled to a refund from the Collector or must pursue their remedy elsewhere.

ISSUES PRESENTED FOR REVIEW

Whether an "overpayment" under 35 ILCS 200/20-175, as interpreted by *Alvarez v. Pappas,* 229 Ill.2d 217 (2008), occurred where a plaintiff paid the subject property taxes without making any claim for refund at the time of payment and after receiving all the benefits of ownership, including governmental services, during the time for which the taxes were paid.

STATEMENT OF JURISDICTION

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court issued its decision on December 23, 2021. Defendant and Intervenors

timely filed a petition for rehearing on January 13, 2022, which was denied on January 28, 2022. Appellants' Petition for Leave to Appeal was filed on March 3, 2022, within 35 days of the Appellate Court's issuance of its Order.

STATUTE INVOLVED

35 ILCS 200/20-175(a):

§ 20-175. Refund for erroneous assessments or overpayments.

In counties other than Cook County, if any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise, or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant. When the County Collector is unable to determine the proper claimant, the circuit court, on petition of the person paying the taxes, or his or her agent, and being satisfied of the facts in the case, shall direct the county collector to refund the taxes and deduct the amount thereof, pro rata, from the moneys due to taxing bodies which received the taxes erroneously paid, or their legal successors. Pleadings in connection with the petition provided for in this Section shall conform to that prescribed in the Civil Practice Law. Appeals may be taken from the judgment of the circuit court, either by the county collector or by the petitioner, as in other civil cases. A claim for refund shall not be allowed unless a petition is filed within 5 years from the date the right to a refund arose. If a certificate of error results in the allowance of a homestead exemption not previously allowed, the county collector shall pay the taxpayer interest on the amount of taxes paid that are attributable to the amount of the additional allowance, at the rate of 6% per year. To cover the cost of interest, the county collector shall proportionately reduce the distribution of taxes collected for each taxing district in which the property is situated.

STATEMENT OF FACTS

The plaintiffs operated Evergreen Terrace I and Evergreen Terrace II as section 8 housing beginning in 1981 (C10). On October 7, 2005, the City of Joliet filed a condemnation action against the plaintiffs to acquire title to Evergreen Terrace I and II by eminent domain (C8-16). Judgment was ultimately entered in favor of Joliet, and fee simple title to Evergreen Terrace I and II was provided to Joliet on August 25, 2017. During that time, the property was operated as a multi-unit residential apartment complex. See *City of*

Joliet v. Mid-City Nat'l Bank of Chicago, No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014), aff'd sub nom. *City of Joliet, Illinois v. New W., L.P.*, 825 F.3d 827 (7th Cir. 2016). In that case it was found that approximately 400-600 children from the intervenors schools lived in these buildings and that the tenants were frequent users of intervenor City's law enforcement resources (C11,17-18). *City of Joliet v. Mid-City Nat'l Bank of Chicago*, No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014), aff'd sub nom. *City of Joliet, Illinois v. New W., L.P.*, 825 F.3d 827 (7th Cir. 2016).

In August 2018, the plaintiffs filed a complaint against the Will County Treasurer TIM BROPHY for a refund of property taxes and seeking a declaratory judgment and mandamus (C8-16). Prior to the filing of the complaint, the plaintiffs did not present any claims to the County Collector for consideration. The plaintiffs argued that, based on the August 2017 judgment, Joliet retroactively held title to Evergreen Terrace I and II back to October 7, 2005, the date the condemnation action was filed. The plaintiffs stated that from 2005, they paid $6,350,472.61 in property taxes and were entitled to a refund of this amount as Joliet was the true owner of the property during this time and was retroactively exempt from real estate taxation (C8-16). The plaintiffs argued that payment of the taxes amounted to an overpayment requiring a refund under section 20-175(a) of the Property Tax Code (Code) 35 ILCS 200/20-175(a) (2018 as amended) (C8-16). The Forest Preserve, Joliet Public School District 86, Joliet High School District 204, Joliet Junior College, the City of Joliet, and the Joliet Park District were allowed to intervene as parties who would be affected by the refund of the taxes. The defendants filed separate motions to dismiss, some pursuant to section 2-619 and some under section 2-619.1 of the Code of Civil Procedure

(735 ILCS 5/2-619, 2-619.1 2020 as amended), stating that the plaintiffs did not file a tax case objection pursuant to section 23-10 of the Code, the taxes paid did not amount to an overpayment under section 20-175(a), the property was not automatically exempt from real estate taxation, and the plaintiffs voluntarily paid the taxes without protest (C35-44). The plaintiffs filed a response to the motions to dismiss, arguing that Illinois law states that condemnee landowners are not responsible for payment of the property taxes accrued after the condemnation petition was filed (C205-220). Further, the plaintiffs stated that they were not arguing for a property tax exemption, but solely arguing that they were no longer responsible as a matter of law for the taxes accrued on the properties after the filing of the condemnation complaint (C205-220). The trial court dismissed the complaint finding Section 20-175 of the Illinois Property Tax code did not apply and the voluntary payment doctrine barred recovery (C531-535). The appellate court reversed finding that Section 20-175 did apply and that as an exception to the voluntary payment doctrine allowed Petitioner relief in this matter. Defendant Treasurer and intervenors sought leave to appeal which was granted by this Court.

ARGUMENT

I. THE APPELLATE COURT DECISION IN THIS CASE ALLOWS PLAINITFF AN UNCONSTITUTIONAL PRIVATE BENEFIT WHICH VIOLATES FINANCE ARTICLE OF THE ILLINOIS CONSTITUTION

The appellate ruled in this case that the plaintiffs were entitled to a refund of an overpayment of real estate taxes within the meaning of Section 20-175 of the Illinois Property Tax Code. The Illinois Constitution provides that "(a) Public funds, property or credit shall be used only for public purposes." Ill. Const. art. VIII, § 1. By finding that the

plaintiff owners can make a claim for a refund of their property taxes, the appellate court's ruling allows a violation of the state constitution's public funds clause. The public policy implications of this ruling are numerous. Here, the appellate court's decision has allowed a private benefit (leasing public property for profit) without the corresponding burden of being liable for property taxes. The principles regarding a public purpose under article VIII, section 1(a), are well settled. To establish that a statute is unconstitutional, "'facts must be alleged indicating that governmental action has been taken which directly benefits a private interest without a corresponding public benefit.' " *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill.2d 62 (2008) (quoting *Paschen v. Village of Winnetka*, 73 Ill.App.3d 1023 (1st Dist. 1979)). By allowing the plaintiffs to use this public property for private purposes without being taxed violates the spirit of that provision of the Illinois Constitution. The appellate court in this case has erred in finding that a property owner, who for over a decade operated this property at a profit, an apartment building complex that was condemned and taken by a municipality, is entitled to a refund of 6.3 million dollars in property taxes.

The Defendant Treasurer also submits that the ruling violates the meaning of Section 20-175 of the Illinois Property Tax code as well as the spirit of equality in taxation. 35 ILCS 200/20-175 (2018 as amended). It is a fundamental constitutional principle that uniformity of taxation requires equalization of the burden of taxation. Ill. Const. art. IX, § 4; *Apex Motor Fuel Co. v. Barrett*, 20 Ill.2d 395, 401, 169 N.E.2d 769 (1960); *People ex rel. Hawthorne v. Bartlow*, 111 Ill.App. 3d 513 (4th Dist. 1983). Further, the Supreme Court of the United States held that unless all property in the same class was assessed on a similar

basis, the 14th amendment of the Constitution of the United States would be violated. *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20 (1907). If the appellate court's ruling were allowed to stand, the plaintiff would receive a benefit that other similarly situated tax assessed owners did not receive which is the ability to receive the benefit of the public services without paying taxes to support those services.

Allowing the plaintiffs a refund would also harm the taxing bodies that provided those services to the plaintiffs and its tenants. "Taxes are raised for certain specific governmental purposes; and, if they could be diverted to the payment of claims, the more important work of government, which every municipality must perform regardless of its other relations, would be seriously impaired if not totally destroyed." *Abrams v. Oak Lawn-Hometown Middle Sch.*, 2014 IL App (1st) 132987, 9 N.E.3d 42 (quoting 18 Eugene McQuillin, Municipal Corporations § 53.24 (3d Ed. 1963)). The tax refund sought by plaintiffs, after receiving the educational and police services provided by the taxing bodies to support the very same services, violates the above cited constitutional provisions.

The trial court dismissed Plaintiffs' complaint on a motion to dismiss. Under section 2–619.1 of the Code of Civil Procedure, a complaint may be dismissed either because it is insufficient in law (see 735 ILCS 5/2–615(a) (West 2006)) or because it is barred by affirmative matter that avoids the legal effect of the claim (see 735 ILCS 5/2–619(a) (West 2006)). 735 ILCS 5/2–619.1 (West 2006). Here, the trial court dismissed the case pursuant to 2-619, and did not consider the 2-615 arguments of the defendant-intervenors (C531-535). See *Sibenaller v. Milschewski*, 379 Ill. App. 3d 717, 884 N.E.2d 1215 (2008). Therefore, the Court must decide whether the complaint's allegations,

construed in the light most favorable to plaintiff, establish a valid claim for relief. See *Jackson v. South Holland Dodge, Inc.*, 197 Ill.2d 39, 45, 258 Ill.Dec. 79, 755 N.E.2d 462 (2001). The standard of review is de novo. *Alvarez v. Pappas*, 229 Ill. 2d 217, 221 (2008).

The plaintiffs were assessed property taxes for the property that was operated as a multi-unit residential for-profit apartment building complex (C8-16). The plaintiffs in this matter continued to operate the buildings and lease to tenants while the condemnation proceeding wound its way through the federal courts. In prior court opinions involving the parties in this case, it was found that approximately 400-600 children from the intervenors schools lived in these buildings and that the tenants were frequently users of intervenor City's law enforcement resources. *City of Joliet v. Mid-City Nat'l Bank of Chicago*, No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014), aff'd sub nom. *City of Joliet, Illinois v. New W., L.P.*, 825 F.3d 827 (7th Cir. 2016). Yet, the plaintiffs feel that despite that they should be treated differently than other operators of other multi-unit residential buildings in Will County. The appellate court's ruling would be an unequal treatment regarding the property taxes paid by the plaintiffs in proportion of other multi-unit residential owners. Therefore, the judgment of the appellate court should be reversed.

II. PAYMENT OF CORRECT AMOUNT OF TAXES DUE BY PARTY NOT OBLIGATED TO PAY THE TAXES IS NOT "OVERPAYMENT" WITHIN MEANING OF PROPERTY TAX CODE SECTION 20-175

In order for the plaintiffs to have a refund of non-protested taxes there must be an "overpayment" (none of the other examples in 20-175 apply here). 35 ILCS 200/20-175 (2018 as amended). As there was not an overpayment, the only dispute relates to who owed the taxes. As such, Section 20-175 does not apply. The plaintiffs made payments totaling

approximately 6.3 million dollars in property taxes between 2005 and 2017 while they operated the Evergreen Terrace properties (C8-16). See *City of Joliet v. Mid-City Nat'l Bank of Chicago*, No. 05 CV 6746, 2014 WL 4667254 (N.D. Ill. Sept. 17, 2014), aff'd sub nom. *City of Joliet, Illinois v. New W., L.P.*, 825 F.3d 827 (7th Cir. 2016). Plaintiffs concede that there was no formal protest made regarding the payment of those taxes during that time and that they were voluntarily paid. Normally, when tax payments are voluntarily paid, there can be no refund. However, the appellate court found that the plaintiffs were entitled to a refund of the property taxes in that there was an "overpayment" as defined in Section 20-175 of the Illinois Property tax code. 35 ILCS 200/20-175 (2018 as amended).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *Carlasare v. Will Cnty. Officers Electoral Bd.*, 2012 IL App (3d) 120699, 977 N.E.2d 298. The most reliable indicator of that intent is the language of the statute itself. *People v. Araiza*, 2020 IL App (3d) 170735. The words and phrases of a statute should not be construed in isolation and must be interpreted considering the other relevant provisions of the statute. *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill.2d 103, 117, 310 Ill.Dec. 416, 866 N.E.2d 227 (2007). That approach exemplifies attention to the text. See *Town & Country Utilities, Inc.*, 225 Ill.2d at 117, 310 Ill.Dec. 416, 866 N.E.2d 227. If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. *Carlasare v. Will Cnty. Officers Electoral Bd.*, 2012 IL App (3d) 120699, 977 N.E.2d 298. A court may not depart from the plain language of the statute and read into it exceptions, limitations, or conditions that are not consistent with the express

legislative intent. *Town & Country Utilities, Inc.*, 225 Ill.2d at 117, 310 Ill.Dec. 416, 866 N.E.2d 227.

Section 20-175 has been interpretated as an exception to the voluntary payment doctrine. Section 20–175 of the Code provides in pertinent part:

> "If any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant. * * * A claim for refund shall not be allowed unless a petition is filed within 5 years from the date the right to a refund arose." (Emphasis added.) 35 ILCS 200/20–175 (2018 as amended).

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

However, the plain language of section 20–175 applies to only specific types of "erroneous assessments" or "overpayments," namely, those involving property that has been twice assessed for the same year or assessed before it becomes taxable. It does not, as the plaintiffs contend, apply to all types of erroneous assessment or overpayment. Although *Alvarez* interpreted "overpaid" taxes to not require an erroneous assessment, this was in the context of taxes paid twice, which section 20–175 was intended to address. To determine the meaning of an overpayment under the statute, in *Alvarez* this Court stated

that "Webster's dictionary defines 'overpayment' as: 'payment in excess of what is due.'" Id. at 225. This Court also quoted the U.S. Supreme Court case of *U.S. v. Dalm*, 494 U.S. 596, 609 n.6 (1990), stating "the commonsense interpretation of 'overpayment' is that 'a tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all.'" *Alvarez*, 229 Ill. 2d at 225. Under those definitions, there was no overpayment in this case.

In *Sorce v. Armstrong*, 399 Ill. App. 3d 1097 (2d Dist. 2010), the appellate court held that "overpayment" does not include amounts paid up to 100% of the tax bill. In *Sorce*, the plaintiff argued that their property's taxes were wrongly calculated and, therefore, the plaintiff, having paid the tax as levied, had overpaid their property taxes and had a claim for a refund under Section 20-175. The appellate court disagreed, finding that the *Alvarez* decision "did not extend the application of section 20-175 to all tax payments that were based on some error in the calculation of taxes due." Id. at 1160 (quoting *Alvarez v. Pappas*, 229 Ill. 2d 217 (2008)). Instead, the court found that the plaintiff "did not pay more than 100% of their individual tax bills," and therefore did not overpay. Id.

The appellate court in this case, held that the plaintiffs' payments were an "overpayment" related to the retroactively owned property of the City of Joliet and found that it is cognizable for the plaintiffs to bring their claim under Section 20-175(a). 35 ILCS 200/20-175. Presumably, the appellate court reasoned that since the City of Joliet was now the owner in 2005 (due to the date of the filing of the condemnation complaint), that the property was tax exempt and thus any property tax payments made by plaintiff would have been "overpayments" under Section 20-175. However, the Evergreen Terrace property,

whether owned by the plaintiffs or by the City would not have been tax exempt. The Evergreen Terrace property was run as a residential apartment complex and as a profit generating property, and therefore, it would not be tax exempt as it's use was not for a public purpose regardless of the owner. 35 ILCS 200/15-60 (as amended) (Land owned by city was subject to taxation unless used exclusively for municipal or public purposes. *City of Lawrenceville v. Maxwell*, 6 Ill.2d 42 (1955)).

If the property was not tax exempt, then there would be no overpayment (regardless of the owner) to the Treasurer as the property tax was still due. As such, the exception to the voluntary payment doctrine would not apply and thus no refund would be available as the plaintiffs did not protest the payment. The only dispute would be which entity was responsible for the tax and that would be a dispute between the plaintiffs and the City of Joliet (this presumably should have been an issue in the condemnation case). As such, the plaintiffs would not qualify under Section 20-175 for an exception to the voluntary payment doctrine and as such this matter should be dismissed as the trial court had done in this matter. 35 ILCS 200/20–175 (2018 as amended).

The appellate court references the case of *Forest Preserve District v. First National Bank of Franklin Park* which appears to reference the ability for a condemnee to request a reimbursement of taxes paid after the filing of condemnation suit. This Court in that case appeared to grapple with the concept of when a taking occurs. While the court held that a taking occurred when compensation is paid and the condemning entity acquires title and the right to possess property the court, in discussing liability of tax payments, left the issue open. The Treasurer submits that the court was correct in finding that in a more "corporeal

sense," a taking does not take place until compensation has been ascertained and paid, because until that point, as the owners "continue to enjoy title and the rights associated with possession of the property." *Forest Pres. Dist. of Du Page Cnty. v. First Nat. Bank of Franklin Park*, 2011 IL 110759. That reasoning should prevail in this case. The plaintiffs continued to operate the building during the 12 years that the condemnation proceeding wound through the federal courts. For the reasons discussed above, the plaintiffs after collecting rents (which presumably had an amount dedicated for property tax expenses) for over a decade wish for a windfall based on a refund from the various tax bodies. That certainly violates the constitutional principles equality in taxation and the spirit of Section 20-175.

The Intervenors in this case make additional arguments regarding the application of Section 20-175 and the issue of when a title should pass in a condemnation case. The Defendant treasurer TIM BROPHY adopts those arguments made in their brief.

III. PLAINTIFFS FAILED TO EXHAUST THEIR ADMINISTRATIVE REMEDIES

The appellate court decision in this case involving the application of Section 20-175 raises an additional issue. Even if this Court were to find that Section 20-175 did apply, the plaintiffs in this case did not follow the procedures to get a refund. Section 20-175 requires that any claim for reimbursement be submitted to the County Collector and if the County Collector is unable to determine the proper claimant, only then can the plaintiffs file with the circuit court. 35 ILCS 200/20-175 (2018 as amended). The plaintiff in its complaint did not plead or aver that it submitted the claim for reimbursement to the County Collector. As such, the plaintiffs did not exhaust its administrative remedies prior to filing

this claim under Section 20-175. 35 ILCS 200/20-175 (2018 as amended).

The doctrine of exhaustion of administrative remedies provides that "a party aggrieved by administrative action ordinarily cannot seek review in the courts without first pursuing all administrative remedies available to him." (*Illinois Bell Telephone Co. v. Allphin*, 60 Ill.2d 350, 358 (1975)). This doctrine has been developed to allow the full development of the facts before the agency; to allow the agency an opportunity to utilize its expertise; and to permit the aggrieved party to succeed before the agency, rendering judicial review unnecessary. 60 Ill.2d 350, 358, 326 N.E.2d 737. The general rule is judicial review of an administrative decision may not be had until the aggrieved party has exhausted all administrative remedies. (*Jackson Park Yacht Club v. Illinois Dept. of Local Government Affairs* (1st Dist. 1981), 93 Ill.App.3d 542). The purpose underlying the doctrine of exhaustion of administrative remedies is to allow administrative agencies to correct their own errors, clarify policies, and reconcile conflicts before resorting to judicial relief. In this manner, the aggrieved party may succeed before the agency, rendering judicial review unnecessary. (*Kenilworth Ins. Co. v. Mauck*, 50 Ill.App.3d 823 (1st Dist. 1977)).

Section 20-175 provided an administrative remedy to the plaintiffs in allowing the plaintiffs to submit their claim for overpayment to the County Collector. 35 ILCS 200/20-175 (2020 as amended). The plaintiffs never made a request to the County Collector for reimbursement of any alleged overpayment (C8-16). There is no claim that the County Collector rejected any request and was never allowed to fulfill its duty under Section 20-175. As the plaintiffs never made any request to the County Collector for reimbursement,

plaintiffs failed to exhaust their administrative remedies provided under the statute. 35 ILCS 200/20–175 (2018 as amended). Even if the plaintiffs were entitled to this refund of an alleged overpayment, they did not utilize the procedures contained in the Illinois Property Tax code to receive a refund. 35 ILCS 200/23-5 et seq.

The plaintiffs received the benefit of the governmental services provided by the various intervenors in this matter and that no overpayment as defined by section 20-175 occurred. The Illinois Constitution provides that public property cannot be used for private benefit and that taxation of real property be equal. The appellate court ruling in this case runs counter to those principles and must be reversed. As such the appellate court should be reversed, and the trial court ruling affirmed.

CONCLUSION

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

Respectfully submitted,

By: _____
Gary Scott Pyles
Assistant State's Attorney

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

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 15 pages.

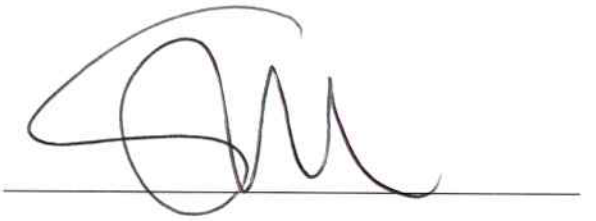

TABLE OF CONTENTS OF THE APPENDIX

Trial Court order A1

Appellate Court decision A6

Order granting Petition for Leave A18

Common Law Record – Table of Contents (C2) A19

Report of Proceedings – Table of Contents (R1) A25

IN THE CIRCUIT COURT OF TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated May 9, 1980, known as Trust No. 1252; MB FINANCIAL BANK, N A., as Successor Trustee to a certain trust dated July 1, 1982, known as Trust No. 1335; NEW WEST, an Illinois Limited Partnership, beneficial owner of Trust No 1252; NEW BLUFF, an Illinois Limited Partnership, beneficial owner of Trust No. 1335; and BURNHAM MANAGEMENT COMPANY, an Illinois Corporation, as tax assessee,	)	
Plaintiffs,	)	
v.	)	Case No. 18 MR 2346
TIM BROPHY, Treasurer and ex-officio County Collector for Will County, Illinois,	)	Judge John C. Anderson
Defendant,	)	
FOREST PRESERVE DISTRICT OF WILL COUNTY, JOLIET PUBLIC SCHOOL DIST. 86; JOLIET HIGH SCHOOL DIST. 204; JOLIET JUNIOR COLLEGE DIST. 525; FOREST PRESERVE DISTRICT OF WILL COUNTY; CITY OF JOLIET; and JOLIET PARK DISTRICT,	)	
Intervenors.	)	

ORDER

This case is before the Court on several motions to dismiss: a 2-619 motion filed by Will County State's Attorney on behalf of the treasurer;[1] a 2-619.1 motion by the City of Joliet; a 2-619.1 motion by Joliet Public School District 86; a 2-619 motion by Joliet Township High School District 204 and Joliet Junior College District 525; a 2-619 motion filed by Joliet Park District; and a 2-619.1 motion filed by the Forest Preserve of Will County.

[1] The Complaint is directed against Stephen Weber in his official capacity as treasurer. However, Mr Weber is no longer the Will County Treasurer On the Court's motion pursuant to 735 ILCS 5/2-401, the current treasurer, Tim Brophy is substituted for Mr Weber Mr Brophy is a defendant solely in his official capacity as treasurer.

I. BACKGROUND

Plaintiffs previously owned real estate located in Joliet, Illinois, commonly known as the Evergreen Terrace housing complex. The City of Joliet obtained ownership of the property through a condemnation proceeding. *See City of Joliet v. Mid-City Bank of Chicago*, 05-CV-6746 (N.D. Ill.). Joliet obtained the property in August 2017

Plaintiffs filed a three-count complaint for the return of real estate taxes paid for the tax years 2005 through 2016. Count I seeks a refund of taxes pursuant to 35 ILCS 200/20-175; Count II is a declaratory judgment seeking a finding that property was exempt from real estate taxes from October 7, 2005 through August 25, 2017, and that plaintiffs are entitled to a refund for taxes paid; and Count III is a mandamus action. Despite having asserted three separate counts, Plaintiffs' theory of recovery generally overlaps across all three counts.

II. ANALYSIS

The Defendants/Intervenors base their individual motions on varying grounds. Some are 2-619 motions, while others are based on 2-619.1 (combined 2-619 or 2-615 motions). Because the various motions largely overlap (and even adopt or incorporate others by reference), the Court will address them collectively where appropriate.

A. Standards for 2-619 and 2-615 Motions to Dismiss

A motion pursuant to section 2-619 of the Code "'admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter that avoids or defeats the claim.'" *Becker v. Zellner*, 292 Ill App. 3d 116, 122 (1997) (*quoting Brock v Anderson Road Ass'n*, 287 Ill. App. 3d 16, 21 (1997)). It assumes that a cause of action has been stated. *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (2003). A section 2–619 motion "raises defects, defenses or other affirmative matter which appears on the face of the complaint or is established by external submissions which act to defeat the plaintiff's claim." *Neppl v Murphy*, 316 Ill. App. 3d 581, 584 (2000). "[A] section 2–619 proceeding enables the court to dismiss the complaint after considering issues of law or easily proved issues of fact." *Neppl*, 316 Ill. App. 3d at 585. In ruling on a section 2–619 motion, the circuit court may consider the pleadings, depositions, and affidavits. *Doe v Montessori School of Lake Forest*, 287 Ill. App. 3d 289, 296 (1997).

A "motion to dismiss under section 2-615 differs significantly from a motion for involuntary dismissal under section 2-619." *Becker v Zellner*, 292 Ill. App. 3d 116, 122 (1997). "[A] section 2-615 motion is based on the pleadings rather than on the underlying facts." *Cwikla v Sheir*, 345 Ill. App. 3d 23, 29 (2003). A section 2-615 motion is solely concerned with defects on the face of the complaint *Becker*, 292 Ill. App 3d at 122. It admits "all well-pleaded facts and attacks the legal sufficiency of the complaint." *Randle v AmeriCash Loans, LLC*, 403 Ill. App. 3d 529, 533 (2010) The allegations in the pleadings are the only matters that the court is to consider in ruling on a 2-615 motion. *Illinois Graphics Co v Nickum*, 159 Ill. 2d 469, 485 (1994).

B. 2-619 Attacks on Count I (35 ILCS 200/20-175)

1. Standing

The Court adopts the reasoning of the various Defendants/Intervenors in connection with the 2-619 motions to dismiss that have been filed. Plaintiffs essentially allege that, because Joliet's acquisition of the property is retroactively effective from the date it implemented its condemnation proceeding in October 2005, the property was retroactively exempt from real estate taxation. As Defendants/Intervenors argue, however, Plaintiffs have presented no adequate basis to support that position. Plaintiffs never alleged that they sought tax-exempt status for the property. Nor could they seek tax-exempt status. If a determination of property-tax exemption were to be made, it would have had to be made on ***Joliet***'s application. *See* 35 ILCS 200/15-5 et seq.; 35 ILCS 200/15-5; 35 ILCS 200/15-10.[2] Thus Plaintiffs lack standing to rely on 20-175.

2. Statutory Limitations under 35 ILCS 200/23-25

The Court also agrees with defendants' arguments that 35 ILCS 200/23-25 restricts the Court from providing the relief Plaintiffs seek. The Court adopts defendants' arguments relative to section 23-25, including Defendants/Intervenors' discussion of the authorities on which Plaintiffs rely.

3. Voluntary Payment

District 204 and JJC argue dismissal is further appropriate under 35 ILCS 200/23-5, which requires taxes to be paid under protest even when there exists an objection. Section 23-5 states in pertinent part:

> [I]f a person desires to object to all or any part of a property tax for any year, for any reason other than that the property is exempt from taxation, he or she shall pay all of the tax due ***. Whenever taxes are paid in compliance with this Section and a tax objection complaint is filed in compliance with Section 23-10, 100% of the taxes shall be deemed paid under protest ***.

35 ILCS 220/23-5

It appears that section 23-5, which became effective in 1995, codifies what has been commonly known as the "voluntary payment doctrine." *See Leafblad v. Skidmore*, 343 Ill.App.3d 640, 643 (2003) ("as plaintiff voluntarily paid the disputed taxes, he cannot recover his payments even if the taxes were illegal").

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[2] The treasurer argues that the Complaint "fails to allege any successful application by the City of Joliet to have the Department of Revenue certify the subject properties as tax exempt for the applicable years." This seems like more of a 2-615 argument rather than a 2-619 argument. However, there appears to be no dispute that there in fact was no such application. Regardless, whether the Court analyzed this issue within the context of 2-619 or 2-615, the result would be the same.

Plaintiffs point to a common-law exception to the voluntary payment doctrine, which holds that payment under protest is unnecessary when the taxes are paid under duress. *See, e g., Geary v Dominick's Finer Foods*, 129 Ill.2d 389, 393-408 (1989). The Court perceives at least three problems with plaintiffs' arguments on this issue.

First, most of the cases they cite rely on a judicially-constructed doctrine which predates the existence of section 23-5. The continued viability of the duress exception seems questionable given the fact the legislature—which assuredly knew about the judicially-created exception—omitted a duress exception when it implemented section 23-5. Codification supersedes general common-law doctrine (*Seeman v. Wes Kochel, Inc.*, 2016 IL App (3d) 150640, ¶ 23), and Courts must give effect to a statute's plain meaning, and must avoid reading into the statute exceptions, limitations, or conditions not expressed by the legislature. *People ex rel. Dept of Prog Regulation v Manos*, 202 Ill.2d 563, 568 (2002). It thus appears that the common-law duress exception might no longer exist.

Second, assuming the duress exception ***does*** exist,[3] plaintiffs' argument—that they were legally required to pay the real estate taxes and failure to do so would have threatened their ownership—is so broadly stated that it necessarily renders 23-5 and the common-law doctrine meaningless. The Court will not apply the duress exception so broadly that it swallows a statutory requirement.

Third, duress must be pled, and failure to plead it justifies dismissal.[4] *Goldstein Oil Co. v Cook Cty*, 156 Ill. App. 3d 180, 183 (1987) (citing cases and stating "In a claim for a refund of taxes, involuntary payment is an element of the taxpayer's prima facie case, and if a complaint fails to plead a sufficient factual basis to support this element, the action is subject to dismissal"); *see also King v First Capital Fin Servs Corp.*, 215 Ill. 2d 1, 33 (2005) (noting that plaintiffs did not plead any facts in their complaints that might demonstrate that they were compelled to either pay the fee or face a certain consequence). Even accepting the affidavit of John Paschen Jr. on this issue, the Court would not be persuaded that Plaintiffs acted under legitimate duress, and it does not appear that repleading would change that.

Plaintiff also argues that, at the time the property taxes were paid, Joliet had not yet acquired the property and Joliet "could have" decided to abandon its condemnation action.

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[3] To be clear, as far as this Court is aware, no reviewing court has declared that the common-law voluntary payment doctrine has been superseded by statute. While that certainly ***appears*** to be the case, this Court makes no such express finding As Plaintiffs point out in their supplemental memorandum of law, Illinois reviewing courts appear to have observed the existence of a common-law voluntary payment doctrine post-1995 (*see, e g., Sullivan v Bd of Com'rs of Oak Lawn Park Dist*, 318 Ill App 3d 1067 (2001); *Alvarez v Pappas*, 229 Ill 2d 217 (2008)), perhaps that is simply because the question has not been formally raised Indeed, *Sullivan* and *Alvarez* did not consider the implications of section 23-5 Regardless, under these circumstances, the question of whether the common-law voluntary payment doctrine has been superseded by statute, and effectively no longer exists, is a question for a reviewing court to decide Today's ruling calls the viability of the common-law doctrine into question, but presumes that it remains in place

[4] At first blush, the absence of a duress allegation looks like more of a 2-615 problem. However, Plaintiffs have submitted an affidavit in connection with this issue, and at argument on the pending motions, Plaintiffs' counsel acknowledged that live testimony would be unnecessary and would not offer anything beyond what is already in the affidavit

Plaintiffs contend that Joliet's ability to abandon its pursuit of the property meant that Plaintiffs would have had no valid objection to assert. However, it would be absurd to suggest Plaintiffs were unaware of the condemnation proceeding, and that they were aware that Joliet's successful acquisition of the property could potentially, arguably, impact their real estate tax liability. Plaintiffs could have asserted a protest and they did not.

Accordingly, the Court agrees that Plaintiff's claims are further barred by the voluntary protest doctrine, ***both*** as codified in section 23-5 ***and*** in its common-law form.

C. 2-619 Attacks on Counts II and III

The Court finds Count II fails for essentially the same reasons expressed by defendants in their briefs and as explained relative to Count I.

Counts II and III are dismissed on 2-619 grounds.

D. 2-615 Issues

In light of the foregoing, the Court need not reach movants' 2-615 arguments.

III. CONCLUSION

The Court finds that Plaintiffs' complaint is defective under 2-619 for the reasons stated above and in Defendants/Intervenors respective motions. The Court finds repleading would not cure the defects identified by Defendants/Intervenors. The Complaint is dismissed with prejudice. All future dates are stricken Clerk to notify.

Dated: December 4, 2019

ENTERED:

Hon. John C. Anderson
Circuit Court Judge

2021 IL App (3d) 200192-U

Order filed December 23, 2021
Modified Order Upon Denial of Rehearing on January 28, 2022

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated May 9, 1980, known as Trust No. 1252; MB FINANCIAL BANK, N.A., as Successor Trustee to a certain trust dated July 1, 1952, known as Trust No. 1335; NEW WEST, an Illinois Limited Partnership, beneficial owner of Trust No. 1252; NEW BLUFF, an Illinois Limited Partnership, beneficial owner of Trust No. 1335; and BURNHAM MANAGEMENT COMPANY, an Illinois Corporation, as tax assessee,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiffs-Appellants,	)	
v.	)	Appeal No. 3-20-0192 Circuit No. 18-MR-2346
TIM BROPHY, Treasurer and ex-officio County Collector for Will County, Illinois,	)	
Defendant-Appellee,	)	
and	)	
FOREST PRESERVE DISTRICT OF WILL COUNTY; JOLIET PUBLIC SCHOOL DISTRICT 86; JOLIET HIGH SCHOOL DISTRICT 204; JOLIET JUNIOR COLLEGE DISTRICT 525; CITY OF JOLIET; and JOLIET PARK DISTRICT,	)	Honorable

	)	John C. Anderson,
Intervenors-Appellees.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Daugherity and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The court erred in dismissing the plaintiffs' claim for a refund of their property taxes but did not err in dismissing the actions for declaratory judgment and *mandamus*.

¶ 2 The plaintiffs, MB Financial Bank, N.A., New West, New Bluff, and Burnham Management Company, appeal the circuit court's granting of the motion to dismiss the complaint filed by the defendant, Tim Brophy, and intervenors, Forest Preserve District of Will County, Joliet Public School District 86, Joliet High School District 204, Joliet Junior College District 525, City of Joliet, and Joliet Park District,[1] arguing that the motion should have been denied.

¶ 3 I. BACKGROUND

¶ 4 The plaintiffs operated Evergreen Terrace I and Evergreen Terrace II as section 8 housing beginning in 1981. On October 7, 2005, the City of Joliet filed a condemnation action against the plaintiffs to acquire fee simple title to Evergreen Terrace I and II by eminent domain. Judgment was ultimately entered in favor of Joliet, and fee simple title to Evergreen Terrace I and II was provided to Joliet on August 25, 2017.

¶ 5 In August 2018, the plaintiffs filed a complaint against the then Treasurer of Will County, Stephen P. Weber, for a refund of property taxes and seeking a declaratory judgment and *mandamus*. The plaintiffs argued that, based on the August 2017 judgment, Joliet retroactively

[1]The defendant and the intervenors will collectively be called "the defendants" throughout.

held title to Evergreen Terrace I and II back to October 7, 2005, the date the condemnation action was filed. The plaintiffs stated that from 2005, they paid $6,350,472.61 in property taxes and were entitled to a refund of this amount as Joliet was the true owner of the property during this time and was retroactively exempt from real estate taxation. The plaintiffs argued that payment of the taxes amounted to an overpayment requiring a refund under section 20-175(a) of the Property Tax Code (Code) 35 ILCS 200/20-175(a) (West 2018). The plaintiffs submitted the affidavit of John Jacob Paschen, Jr., the Executive Vice President of Burnham, who stated that failure to pay the real estate taxes for the properties would have been a breach of their agreement with the United States Department of Housing and Urban Development (HUD). The Forest Preserve, Joliet Public School District 86, Joliet High School District 204, Joliet Junior College, the City of Joliet, and the Joliet Park District were allowed to intervene as parties who would be affected by the refund of the taxes.

¶ 6 The defendants filed separate motions to dismiss, some pursuant to section 2-619 and some under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619, 2-619.1 (West 2018)), stating that the plaintiffs did not file a tax case objection pursuant to section 23-10 of the Code, the taxes paid did not amount to an overpayment under section 20-175(a), the property was not automatically exempt from real estate taxation, and the plaintiffs voluntarily paid the taxes without protest. The plaintiffs filed a response to the motions to dismiss, arguing that Illinois law states that condemnee landowners are not responsible for payment of the property taxes accrued after the condemnation petition was filed. Further, the plaintiffs stated that they were not arguing for a property tax exemption, but solely arguing that they were no longer responsible as a matter of law for the taxes accrued on the properties after the filing of the condemnation complaint. On the court's motion and by agreement of the parties, Tim Brophy, the current treasurer, was substituted for Weber.

¶ 7 In a written decision, the court granted the 2-619 motions to dismiss. The court found that the plaintiffs lacked standing to rely on section 20-175(a) because they never sought tax exempt status. The court further found that section 23-25 restricted the court from providing relief to the plaintiffs and the plaintiffs voluntarily paid the taxes without duress. The court found that the declaratory judgment and *mandamus* actions failed for the same reason. In light of its findings on the 2-619 motions, the court did not reach the defendants' 2-615 arguments contained in the section 2-619.1 motions. The court dismissed the case with prejudice. The plaintiffs filed a motion to reconsider, which was denied.

¶ 8 II. ANALYSIS

¶ 9 On appeal, the plaintiffs argue that the court erred in granting the motion to dismiss. Specifically, the plaintiffs argue that their "property tax payments of $6,350,472.61 after the date the condemnation petition was filed retroactively became overpayments subject to refund under [section] 20-175(a) because Plaintiffs were retroactively no longer the owners of the Properties after October 7, 2005."[2]

¶ 10 While the defendants in this case filed motions to dismiss under section 2-619 and 2-619.1 of the Code, the court only reached the arguments made under the section 2-619 motions to dismiss. A section 2-619 motion to dismiss admits the sufficiency of the complaint but asserts a defense outside the complaint that defeats it. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. In ruling on a section 2-619 motion to dismiss, the court must construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). On appeal, we review a dismissal pursuant

[2]We note that the defendants argue that the plaintiffs forfeited this argument by failing to raise it in the trial court. We disagree. A full reading of the record confirms that the plaintiffs did in fact raise this argument.

to section 2-619 *de novo*. *Id.* at 368. Moreover, we also review *de novo* the dismissal of a complaint for lack of standing. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999).

¶ 11 A. Standing

¶ 12 At the outset, we note that the court found the plaintiffs did not have standing to raise an overpayment under section 20-175(a) because they never sought tax exempt status. The plaintiffs agree that they did not file for tax exempt status but state that it was not necessary that they do so under section 20-175(a) and agree that they would not have qualified for exempt status. Section 20-175(a) stated:

> "In counties other than Cook County, if any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise, or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant. When the County Collector is unable to determine the proper claimant, the circuit court, on petition of the person paying the taxes, or his or her agent, and being satisfied of the facts in the case, shall direct the county collector to refund the taxes and deduct the amount thereof, *pro rata*, from the moneys due to taxing bodies which received the taxes erroneously paid, or their legal successors. Pleadings in connection with the petition provided for in this Section shall conform to that prescribed in the Civil Practice Law. Appeals may be taken from the judgment of the circuit court, either by the county collector or by the petitioner, as in other civil cases. A claim for refund shall not be allowed unless a petition is filed within 5 years from the date the right to a refund arose. If a certificate of error results in the allowance of a homestead

exemption not previously allowed, the county collector shall pay the taxpayer interest on the amount of taxes paid that are attributable to the amount of the additional allowance, at the rate of 6% per year. To cover the cost of interest, the county collector shall proportionately reduce the distribution of taxes collected for each taxing district in which the property is situated." 35 ILCS 200/20-175(a) (West 2018).

¶ 13 We believe that the circuit court misinterpreted the plaintiffs' argument. They are not arguing that they were exempt from paying taxes. Instead, they are arguing that they are entitled to a refund under section 20-175(a) because they overpaid the taxes as they were not the true owners of the property when Joliet became the owners retroactive to 2005. As evidenced by the text of section 20-175(a) stated above, the plaintiffs' lack of seeking an exemption provides no barrier to their standing to argue the application of the overpayment statute.

¶ 14 B. Taxes During a Condemnation Proceeding

¶ 15 Next, we turn to the question of whether the plaintiffs properly brought the action for reimbursement of their taxes. To answer this question, we first consider whether the plaintiffs were liable for the taxes, and then consider whether the action they brought under section 20-175(a) and for declaratory judgment was the proper vehicle to seek reimbursement.

¶ 16 1. Tax Responsibility

¶ 17 The owner of a property on January 1 of any given year is responsible for the taxes on that property. 35 ILCS 200/9-175 (West 2018). However, our supreme court has consistently held that where there is a taking of title under eminent domain, the date of the filing of the condemnation petition is intended to be the termination date for the responsibility for taxes on the land, and real estate taxes for the year in which the petition is filed should be prorated as of the date of the filing

of the condemnation petition. See, *e.g.*, *Board of Junior College, District 504 v. Carey*, 43 Ill. 2d 82 (1969); *Public Building Comm'n of Chicago v. Continental Illinois National Bank & Trust Co.*, 300 Ill. 2d 115 (1963); *Chicago Park District v. Downey Coal Co.*, 1 Ill. 2d 54 (1953); *City of Chicago v. McCausland*, 379 Ill. 602 (1942). In *Carey*, the supreme court invalidated a portion of a statute, stating that it "would make the condemnee liable for taxes on land when in law he had become divested of title to the land. The section would unconstitutionally effect a taking of private property for public use without just compensation." *Carey*, 43 Ill. 2d at 86. While these cases concern liens placed on the land for unpaid taxes during a condemnation proceeding, we find that such law is equally applicable, here, where the plaintiffs continued to pay the taxes during the pendency of the condemnation action. In reaching these decisions, the supreme court has noted that, in condemnation proceedings, considerable time may elapse before a judgment is reached, and the municipality could decide to abandon the action at any time. See *McCausland*, 379 Ill. at 606. It would be nonsensical to hold that a condemnee who fails to pay taxes during the pendency of the condemnation proceedings is not liable for the taxes but find liable a condemnee who continues to pay the taxes to protect its interest should it win the lawsuit or the municipality abandon the proceedings.

¶ 18 Here, after the August 2017 judgment Joliet obtained title to the properties retroactive to October 7, 2005, under Illinois law. *Downey Coal Co.*, 1 Ill. 2d at 57; *Forest Preserve District of Du Page County v. West Suburban Bank*, 161 Ill. 2d 448, 455 (1994). Therefore, as of October 7, 2005, Joliet was the owner of the property, was responsible for the taxes, and the plaintiffs may seek reimbursement of such paid taxes.

¶ 19 The defendants argue Joliet only became responsible for the real estate taxes from the date of the taking judgment, not the retroactive date of ownership. In support of this position, they cite

Forest Preserve District of Du Page County v. First National Bank of Franklin Park, 2011 IL 110759. However, in that case the court solely considered which date should be used to value the property for just compensation, and specifically stated that this was a question separate from the question of whether landowners were liable for property taxes assessed after the condemnation was filed. *Id.* ¶ 45. In fact, the supreme court specifically stated:

> "A party is liable for taxes on the property until compensation is paid and the landowner relinquishes title, *but he may be reimbursed by the county for the taxes paid dating back to the filing of the complaint*. Yet, the condemning authority could abandon the taking at any time before acquiring title, leaving the landowner liable for the taxes without any hope of reimbursement." *Id.* ¶ 45. (Emphasis added.)

This supports our holding that a condemnee who pays the taxes on the property during condemnation proceedings is eligible for reimbursement. Moreover, the cases cited above (*supra* ¶ 17) remain good law.

¶ 20 We find further support for this decision in section 9-185 of the Code, which states that when a municipality acquires property by condemnation and it is exempt from taxation under the Code, it is exempt as of the date the condemnation petition is filed. 35 ILCS 200/9-185 (West 2018); *Application of County Treasurer and Ex Officio County Collector of Lake County v. Drobnick*, 13 Ill. App. 3d 927, 930 (1973). Therefore, regardless of whether the property in this case was tax exempt when it was condemned by Joliet, the legislature clearly intended the municipality to be liable or exempt from taxes from the date the petition was filed.

¶ 21 2. Section 20-175(a)

¶ 22 Having determined that Joliet was responsible for the taxes from the date the condemnation petition was filed, we turn to the question of whether the proper vehicles for raising this claim was

under section 20-175(a) and/or actions seeking declaratory judgment or *mandamus*, as the plaintiffs raised in their complaint.

¶ 23 As set out above, the pertinent portion of section 20-175(a) states:

> "In counties other than Cook County, if any property is twice assessed for the same year, or assessed before it becomes taxable, and the erroneously assessed taxes have been paid either at sale or otherwise, or have been overpaid by the same claimant or by different claimants, the County Collector, upon being satisfied of the facts in the case, shall refund the taxes to the proper claimant." 35 ILCS 200/20-175(a) (West 2018).

While the voluntary payment doctrine provides that a taxpayer may not recover taxes that are voluntarily paid, this section provides an exception to that doctrine. *Alvarez v. Pappas*, 229 Ill. 2d 217, 221 (2008).

¶ 24 To determine the meaning of an overpayment under the statute, in *Alvarez* the supreme court stated that "Webster's dictionary defines 'overpayment' as: 'payment in excess of what is due.' " *Id.* at 225. The supreme court also quoted the U.S. Supreme Court case of *U.S. v. Dalm*, 494 U.S. 596, 609 n.6 (1990), stating "the commonsense interpretation of 'overpayment' is that 'a tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all.' " *Alvarez*, 229 Ill. 2d at 225. As stated above, the plaintiffs were not responsible for the tax payments related to the retroactively owned property. We find that it is cognizable for the plaintiffs to bring their claim under section 20-175(a).

¶ 25 The defendants argue that, even if the plaintiffs could bring an action under section 20-175(a), it would be barred by the five-year statute of limitations contained in that section. Section 20-175(a) states, *inter alia*, "A claim for refund shall not be allowed unless a petition is filed within

5 years from the date the right to a refund arose." 35 ILCS 200/20-175(a) (West 2018).While the right to request a refund under this section "*generally* accrues at the time the taxes are paid" (*Alvarez*, 229 Ill. 2d at 234 (emphasis added)), here, the right to a refund did not arise until 2017, when the judgment was entered for Joliet. Therefore, the plaintiffs' claim was properly brought within the statute of limitations in 2018.

¶ 26 3. Declaratory Judgment

¶ 27 To the extent that the plaintiffs may not be successful under a claim under section 20-175(a), they argue that they could also bring actions for declaratory judgment and *mandamus*.

> "It has been held *** that the general rule requiring a taxpayer to seek the relief provided by statute is subject to two exceptions: a taxpayer need not look to the remedy at law but may seek injunctive or declaratory relief in [the] circuit court where the tax or assessment is unauthorized by law or where it is levied upon property exempt from taxation." *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 296 (2010).

To claim that a tax is "unauthorized by law" the complaint must allege that the tax itself was invalid or that the assessor lacked authority or discretion to impose the tax as applied to the taxpayers. *Lackey v. Pulaski Drainage District*, 4 Ill. 2d 72, 78 (1954). We do not believe that the tax was unauthorized by law. The property was properly assessed and taxed, the question is who owed the taxes, which we do not believe is a question of unauthorized taxes. The plaintiffs have abandoned their claims that the property was tax exempt. Thus, the claims for declaratory judgment and *mandamus* were properly dismissed.

¶ 28 C. Tax Objection

¶ 29 The defendants argue that in order to seek a refund of the taxes, it was necessary for the plaintiffs to pay the taxes under protest and file a tax objection in the circuit court. 35 ILCS 200/23-5, 23-15 (West 2018). We disagree. First, we note that section 20-175(a) as set out above (*supra* ¶ 12) does not require the filing of an objection or paying under protest in order to seek a refund under that section.

¶ 30 Second, we agree with the plaintiffs that an objection to the taxes was not ripe for adjudication at the time they were paid. Courts do not decide hypotheticals or render advisory opinions. *Simcox v. Simcox*, 131 Ill. 2d 491, 498 (1989); *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10. The basic rationale of the ripeness doctrine is to prevent the courts from entangling themselves in abstract disagreements through premature adjudication. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 490 (2008). At the time the taxes were paid, any objection to the taxes was speculative and hypothetical: the plaintiffs might have lost their ownership of the property, but they might have retained their ownership through prevailing in the litigation or through Joliet abandoning the claim of condemnation.

¶ 31 In sum, we uphold the court's dismissal of the declaratory judgment and *mandamus* actions but reverse the dismissal of the claim under section 20-175(a). We note that the court did not consider the section 2-615 arguments presented by the defendants, but the defendants' section 2-615 arguments were much the same as the section 2-619 arguments considered, here. Thus, we remand for the court to procedurally consider those arguments and for further proceedings consistent with this decision.

¶ 32 III. CONCLUSION

¶ 33 The judgment of the circuit court of Will County is affirmed in part, reversed in part, and remanded.

¶ 34 Affirmed in part, reversed in part, and remanded.

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

May 25, 2022

In re: MB Financial Bank, N.A., etc., et al., Appellees, v. Tim Brophy, etc., et al., Appellants. Appeal, Appellate Court, Third District. 128252

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MB FINANCIAL BANK, N.A.
Plaintiff/Petitioner

Reviewing Court No: 3-20-0192
Circuit Court No: 2018MR002346
Trial Judge: JOHN C. ANDERSON

v.

TIM BROPHY
Defendant/Respondent

COMMON LAW RECORD - TABLE OF CONTENTS

Page 1 of 6

Date Filed	Title/Description	Page No.
08/24/2018	COMPLAINT FOR REFUND OF PROPERTY TAXES, DECLARATORY JUDGMENT AND MANDAMUS	C 8-C 31
09/14/2018	APPEARANCE	C 32
09/14/2018	NOTICE (WITH COURT APPEARANCE DATE)	C 33-C 34
09/14/2018	MOTION TO DISMISS	C 35-C 44
09/21/2018	PETITION FOR LEAVE TO INTERVENE	C 45-C 83
09/21/2018	NOTICE OF MOTION (WITH COURT APPEARANCE DATE)	C 84-C 86
09/24/2018	SEE ORDER SIGNED	C 87
10/11/2018	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 88-C 89
10/11/2018	CITY OF JOLIET'S PETITION FOR LEAVE TO INTERVENE	C 90-C 92
10/11/2018	SUPPORTING DOCUMENT(S) EXHIBIT(S)	C 93-C 101
10/11/2018	SUPPORTING DOCUMENT(S) EXHIBIT(S)	C 102-C 113
10/12/2018	NOTICE OF MOTION (WITH COURT APPEARANCE DATE)	C 114-C 116
10/12/2018	PETITION TO INTERVENE	C 117-C 124
10/15/2018	PETITION TO INTERVENE BY SCHOOL DISTRICT 86	C 125-C 136

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 6

Date Filed	Title/Description	Page No.
10/15/2018	NOTICE OF FILING PETITION TO INTERVENE BY SCHOOL DISTRICT 86 (WITHOUT COURT APPEARANCE DATE)	C 137-C 139
10/18/2018	SEE ORDER SIGNED	C 140
10/18/2018	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 141-C 144
10/18/2018	APPEARANCE	C 145
10/18/2018	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 146-C 149
10/18/2018	MOTION TO DISMISS	C 150-C 154
10/24/2018	APPEARANCE FOR INTERVENOR SCHOOL DISTRICT 86	C 155
10/24/2018	MOTION TO DISMISS OF SCHOOL DISTRICT 86	C 156-C 163
10/24/2018	NOTICE OF FILING OF MOTION TO DISMISS COMPLAINT BY SCHOOL DISTRICT 86 (WITHOUT COURT APPEARANCE DATE)	C 164-C 167
10/25/2018	APPEARANCE	C 168-C 169
10/25/2018	FOREST PRESERVE DISTRICT OF WILL COUNTY'S MOTION TO DISMISS	C 170-C 181
10/25/2018	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 182-C 184
10/26/2018	NOTICE (WITHOUT COURT APPEARANCE DATE)	C 185-C 188
10/26/2018	CITY OF JOLIETS MOTION TO DISMISS	C 189-C 200
12/06/2018	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 201-C 204
12/06/2018	PLAINTIFF'S RESPONSE TO DEFENDANT'S & INTERVENORS' SECTION 2-615 AND 2-619 MOTIONS TO DISMISS	C 205-C 220
12/13/2018	MOTION TO WITHDRAW AS ATTORNEYS OF RECORD	C 221-C 222
12/17/2018	NOTICE OF MOTION(WITH COURT APPEARANCE DATE)	C 223-C 226

COMMON LAW RECORD - TABLE OF CONTENTS

Date Filed	Title/Description	Page No.
12/17/2018	NOTICE OF MOTION (WITH COURT APPEARANCE DATE) FILED BY TETZLAFF LAW OFFICES	C 227-C 230
12/17/2018	MOTION TO RESET HEARING DATE FILED BY TETZLAFF LAW OFFICES	C 231-C 232
12/17/2018	APPEARANCE FILED FOR BURNHAM MANAGEMENT COMPANY	C 233
12/20/2018	SEE ORDER SIGNED	C 234
12/20/2018	SEE ORDER SIGNED	C 235
01/04/2019	MOTION FOR EXTENSION OF TIME TO FILE INTERVENORS' JOINT REPLY TO PLAINTIFFS' RESPONSE TO INTERVENORS' MOTIONS TO DISMISS	C 236-C 241
01/09/2019	SEE ORDER SIGNED	C 242
01/09/2019	NOTICE OF MOTION (WITH COURT APPEARANCE DATE) FILED BY ATTORNEY EUGENE EDWARDS	C 243-C 244
01/09/2019	MOTION FOR EXTENSION OF TIME TO FILE INTERVENORS JOINT REPLY TO PLAINTIFFS' RESPONSE TO INTERVENORS' MOTIONS TO DISMISS	C 245-C 247
01/10/2019	NOTICE OF FILING (WITHOUT COURT APPEARANCE DATE)	C 248-C 251
01/10/2019	REPLY ARGUMENT ON SECTION 619 MOTION TO DISMISS	C 252-C 264
02/13/2019	INTERVENORS' JOINT REPLY TO PLAINTIFFS' RESPONSE TO INTERVENORS' MOTIONS TO DISMISS COMPLAINT	C 265-C 281
02/26/2019	SEE ORDER SIGNED	C 282
03/27/2019	SEE ORDER SIGNED	C 283
06/05/2019	SEE ORDER SIGNED	C 284
07/02/2019	SUPPLEMENTAL AFFIDAVIT OF JOHN JACOB PASCHEN, JR.	C 285-C 292
07/02/2019	EXHIBIT(S)	C 293-C 304
07/02/2019	EXHIBIT (S)	C 305-C 315

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 4 of 6

Date Filed	Title/Description	Page No.
07/02/2019	EXHIBIT(S)	C 316-C 329
07/02/2019	EXHIBIT(S)	C 330-C 343
07/02/2018	EXHIBIT (S)	C 344-C 350
07/02/2019	EXHIBIT(S)	C 351-C 357
07/02/2019	EXHIBIT (S)	C 358-C 373
07/02/2019	EXHIBIT (S)	C 374-C 389
07/02/2019	NOTICE FILING	C 390-C 393
07/22/2019	NOTICE OF FILING	C 394-C 397
07/22/2019	MOTION TO STRIKE AND DISMISS PLAINTIFF'S AFFIDAVIT	C 398-C 400
07/29/2019	PALINTIFF'S RESPONSE IN OPPOSITION TO INTERVENORS' MOTION TO STRIKE AND DISMISS PLAINTIFFS' AFFIDAVIT	C 401-C 403
07/29/2019	EXHIBIT(S)	C 404-C 406
07/29/2019	NOTICE OF FILING	C 407-C 410
07/31/2019	SEE ORDER SIGNED	C 411
08/13/2019	PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM OF LAW IN RESPONSE TO QUESTIONS RAISED BY THE COURT	C 412-C 413
08/13/2019	EXHIBIT(S)	C 414-C 425
08/16/2019	NOTICE OF MOTION	C 426-C 429
08/22/2019	INTERVENORS' MOTION FOR LEAVE TO FILE RESPONSE TO PLAINTIFFS' SUPPLEMENTAL MEMORANDUM OF LAW	C 430-C 432
08/22/2019	NOTICE OF MOTION	C 433-C 435
08/26/2019	PLAINTIFFS' RESPONSE TO INTERVENORS JOINT MOTION FOR LEAVE TO FILE A RESPONSE	C 436-C 437
08/26/2019	NOTICE OF FILING	C 438-C 441
08/30/2019	SEE ORDER SIGNED	C 442
09/30/2019	RESPONSE TO SUPPLEMENTAL MEMORANDUM OF LAW	C 443-C 453

COMMON LAW RECORD - TABLE OF CONTENTS

Date Filed	Title/Description	Page No.
10/04/2019	SUPPLEMENTAL MEMORANDUM OF LAW IN RESPONSE TO QUESTIONS RAISED BY THE COURT	C 454-C 465
10/04/2019	NOTICE OF FILING	C 466-C 469
10/15/2019	SEE ORDER SIGNED	C 470
10/21/2019	JOLIET PARK DISTRICTS PETITION FOR LEAVE TO INTERVENE	C 471-C 508
10/21/2019	JOLIET PARK DISTRICT'S MOTION TO DISMISS	C 509-C 520
10/21/2019	NOTICE OF MOTION	C 521-C 524
10/30/2019	SEE ORDER SIGNED	C 525
11/07/2019	APPEARANCE - NO FEE	C 526
11/07/2019	NOTICE OF FILING	C 527-C 530
12/04/2019	SEE ORDER SIGNED	C 531-C 535
12/16/2019	E-MAIL CORRESPONDENCE	C 536
12/30/2019	MOTION FOR RECONSIDERATION	C 537-C 551
12/30/2019	NOTICE OF MOTION	C 552-C 555
01/08/2020	SEE ORDER SIGNED	C 556
02/06/2020	INTERVENOR FOREDT PRESERVE DISTRICT OF WILL COUNTY'S RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION	C 557-C 571
02/06/2020	NOTICE OF FILING	C 572-C 574
02/10/2020	NOTICE OF FILING	C 575-C 576
02/10/2020	VARIOUS INTERVENORS' RESPONSE TO PLAINTIFFS' MOTION FOR RECONSIDERATION	C 577-C 589
02/28/2020	REPLY TO INTERVENOR FOREST PARK PRESEREV DISTRICT OF WILL COUNTY'S RESPONSE TO PLAINTIFFS' MOTION FOR RECONSIDERATION	C 590-C 602
02/28/2020	NOTICE OF FILING	C 603-C 606
02/28/2020	REPLY TO VARIOUS INTERVENORS RESPONSE	C 607-C 614
02/28/2020	NOTICE OF FILING	C 615-C 618
03/18/2020	AGREED ORDER	C 619
04/23/2020	ORDER	C 620
05/18/2020	NOTICE OF APPEAL FILED	C 621-C 624

Table of Contents

COMMON LAW RECORD - TABLE OF CONTENTS

Page 6 of 6

Date Filed	Title/Description	Page No.
05/18/2020	EXHIBIT(S)	C 625-C 630
05/18/2020	EXHIBIT (S)	C 631-C 632
05/18/2020	NOTICE OF FILING	C 633-C 637
05/28/2020	NOTICE OF FILING	C 638-C 642
05/28/2020	REQUEST FOR PREPARATION OF RECORD ON APPEAL	C 643
05/28/2020	NOTICE OF FILING	C 644-C 648
05/28/2020	REQUEST FOR REPORT OF PROCEEDINGS	C 649-C 665
	18 MR 2346 DOCKETING DUE DATES	C 666-C 667
	3-20-0192	
	18 MR 2346 DOCKET 3-20-0192	C 668-C 675

Table of Contents

APPEAL TO THE APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

MB FINANCIAL BANK, N.A.
Plaintiff/Petitioner

Reviewing Court No: 3-20-0192
Circuit Court No: 2018MR002346
Trial Judge: JOHN C. ANDERSON

v.

TIM BROPHY
Defendant/Respondent

REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

Date of Proceeding	Title/Description	Page No.
10/18/2018	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 2-R 6
10/30/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 7-R 10
03/27/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 11-R 15
12/20/2018	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 16-R 18
09/24/2018	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 19-R 24
01/09/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 25-R 28
02/26/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 29-R 33
01/08/2020	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 34-R 38
07/31/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 39-R 61
10/15/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 62-R 66
06/05/2019	REPORT OF PROCEEDINGS - STEVE VITHOULKAS	R 67-R 80

No. 128252

IN THE
SUPREME COURT OF ILLINOIS

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

Plaintiffs-Appellees,

v.

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

Defendant-Appellant,

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

Intervenor-Defendants-Appellants.

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

NOTICE OF FILING

TO: *See Attached Service List*

PLEASE TAKE NOTICE that we have caused to be electronically filed with the Clerk of the Supreme Court of Illinois this 29th day of June, 2022, the following document(s), a copy of which is attached hereto:

APPELLANT'S ADDITIONAL BRIEF

Respectfully submitted,

By: _____

Gary Scott Pyles
Assistant State's Attorney

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

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct and that a copy of the foregoing with attachments was served via the court's electronic filing service through Odyssey eFile IL upon the attorneys of record to the email addresses as listed in the pleadings on the 29 day of June, 2022.

_____

SERVICE LIST

Kathy M. Sons - ksons@kggllc.com
KGG, LLC, 111 N. Ottawa Street, Joliet, IL 60432

Theodore R. Tetzlaff - ttetzlaff@tetzlafflegal.com
Tetzlaff Law Offices, 227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Joshua Redman - jredman@tetzlafflegal.com
Tetzlaff Law Offices, 227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Tetzlaff Law Offices - info@tetzlafflegal.com
227 W. Monroe Street, Suite 3650, Chicago, IL 60606

Carl Buck – cbuck@rcklawfirm.com
Rathbun Cservenyak & Kozol, LLC, 3260 Executive Drive, Joliet, IL 60431

Lorien Schoenstedt – lschoenstedt@rcklawfirm.com
Rathbun Cservenyak & Kozol, LLC, 3260 Executive Drive, Joliet, IL 60431

John M. Izzo – jizzo@petrarcagleason.com
Petrarca Gleason Boyle & Izzo, LLC, 19730 Governors Highway, Suite 10, Flossmoor, IL 60422

Graeme J. Quinn – gquinn@petrarcagleason.com
Petrarca Gleason Boyle & Izzo, LLC, 19730 Governors Highway, Suite 10, Flossmoor, IL 60422

Steven B. Adams – sadams@robbins-schwartz.com
Robbins Schwartz, 55 W. Monroe Street, Suite 800, Chicago, IL 60603

Jacqueline McLerran – jmclerran@robbins-schwartz.com
Robbins Schwartz, 55 W. Monroe Street, Suite 800, Chicago, IL 60603