No. 122265

IN THE
SUPREME COURT OF ILLINOIS

PAMINDER S. PARMAR, Individually and as Executor of the Estate of Surinder K. Parmar,	)	On Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-16-0286
Plaintiff-Appellee,	)	
v.	)	There Heard on Appeal from an Order of the Circuit Court of DuPage County, No. 15-MR-1412
LISA MADIGAN, as Attorney General of the State of Illinois; and MICHAEL W. FRERICHS, as Treasurer of the State of Illinois,	)	The Honorable BONNIE M. WHEATON, Judge Presiding.
Defendants-Appellants.	)	

BRIEF OF DEFENDANTS-APPELLANTS

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NATURE OF THE CASE

Plaintiff, Paminder S. Parmar, individually and in his capacity as executor of his mother's estate, sued the Illinois Attorney General and State Treasurer in the circuit court to recover estate taxes he paid to the State that he alleged had been collected unlawfully. The court dismissed the suit as barred by sovereign immunity, but the appellate court reinstated Parmar's claims. The appellate court reasoned that the "officer suit exception" to the doctrine of sovereign immunity allowed Parmar's suit to go forward because he had named as defendants the officials he claimed had unlawfully collected the disputed tax, and not "the State." The appellate court rejected the defendants' alternative arguments that Parmar could not litigate his claims because he had not complied with the State Officers and Employees Money Disposition Act ("Protest Act"), 30 ILCS 230/2a (2016), and that the common-law voluntary payment doctrine barred his suit. On the latter point, the court held that Parmar's complaint established sufficient duress to avoid the voluntary payment doctrine because he pled that he paid his mother's estate taxes out of concern that he might otherwise incur additional penalties and interest on the unpaid tax.

The Attorney General and Treasurer sought review in this Court, raising questions related to sovereign immunity, the Protest Act, and the voluntary payment doctrine. The issues presented are raised on the pleadings alone.

ISSUES PRESENTED FOR REVIEW

1. Whether sovereign immunity bars a suit in circuit court to recover taxes alleged to have been unauthorized and paid in error when the plaintiff names as defendants the state officials responsible for assessing and collecting the tax.

2. Whether a suit in circuit court against state officials claiming that they collected an unlawful tax must comply with the 30-day "under protest" requirements set out in section 2a of the Protest Act.

3. Where the General Assembly has provided in the Protest Act a statutory procedure for taxpayers to protest tax obligations without having to incur penalties or interest, and where the taxpayer has the assistance of both an accountant and attorney, whether tax payments made to the state without complying with those procedures are made under duress sufficient to avoid the voluntary payment doctrine that generally bars suits to recover payments voluntarily made.

STATEMENT OF FACTS

Background

The Illinois Estate and Generation-Skipping Transfer Tax Act ("the Act") imposes tax on the transfer of the property of Illinois estates and on certain generation-skipping transfers of Illinois property. 35 ILCS 405/3, 405/4 (2016). The Act is administered by the Illinois Attorney General's Office ("AGO"). 35 ILCS 405/16 (2016). It provides for a transfer tax based on the federal tax credit allowed to estates by the Internal Revenue Code in sections 2011 or 2604. 35 ILCS 405/2 (2016). In December 2010, President Obama approved legislation which effectively eliminated the Illinois Estate Tax for persons dying in 2011. *See* P.P. 107-16, §§ 531, 901 (repealing sections 2011 until January 1, 2011); P.L. 111-312, § 101(a) (extending repeal to January 1, 2013); 35 ILCS 405/2(c) (2010). In January 2011, the General Assembly passed legislation changing how that state tax is calculated. P.A. 96-1496; *see* 35 ILCS 405/2 (2011). The amendments took effect immediately upon becoming law, and the change affects taxes on the estates of certain wealthy Illinois individuals who died after December 31, 2010. P.A. 96-1496; 35 ILCS 405/2 (2011).

Dr. Parmar's Death and Her Estate's Payment of Tax

Dr. Surinder K. Parmar died on January 9, 2011. R. C3. She had an estate valued at more than $5 million. R. C124. Approximately 20 months after her death, on September 7, 2012, her Estate paid the Treasurer $400,000

towards its tax liability. R. C85. The next month, on October 19, 2012, the Estate filed an Illinois Estate and Generation-Skipping Transfer Return (Form 700) signed by her son Paminder, as executor, and by the Estate's attorney, as preparer. R. C103-07. In addition to the initial $400,000 payment, the Estate tendered payment to the AGO of $159,973 with the tax form. *Id*. The tax filing and tendered payments were made to satisfy the Estate's tax liability by self-assessing $397,144 in taxes due, a $99,286 late filing penalty, a $23,829 late payment penalty, and $39,714 in interest. *Id*. Neither of the Estate's tax payments was made under protest pursuant to the procedures provided by the Protest Act.

Prior to receiving the Estate's tax return, neither the AGO nor Treasurer had taken any action towards Dr. Parmar's estate. R. C86. The AGO had no file on the matter, no liability had been assessed, and no tax payment, interest, or penalties had been demanded. *Id.* On December 5, 2012, the AGO processed the submitted return received from Parmar, determined that no outstanding liability remained, and issued a Certificate of Discharge and Determination of Tax. R. C109.

Several months later, in a letter dated March 26, 2013, Parmar requested that the AGO allow the Estate a waiver of penalties based on the heavy demands imposed on him by his family obligations and his attorney's and accountant's failures to advise him of the extent of taxes that were due

from his mother's estate. R. C112-13. On September 12, 2013, the AGO granted that request and issued an Amended Certificate of Discharge and Determination of Tax, which reduced the Estate's penalties to $0, adjusted the interest obligation downward, and permitted Parmar to claim a refund. R. C118, C120.

On July 23, 2015, after the Internal Revenue Service adjusted the Estate's federal tax liability downward, the Estate filed an amended Illinois estate tax return in which it reported an Illinois taxable estate of $5,356,528, and then self-assessed $388,068 in tax and $35,357 in interest. R. C122-28. According to the federal adjustments submitted with that return, the Estate claimed and received a deduction from the federal estate tax based on the estate taxes it paid to Illinois. *Id*. The AGO processed the amended return, determined that there still was no outstanding tax liability, penalties, or interest owed, and issued a Second Amended Certificate of Discharge and Determination of Tax. R. C130. The certificate stated that its issuance was evidence of the release of all state tax liens on the Estate's property. *Id.*

The Estate's Suit in the Circuit Court

On October 1, 2015, more than three years after Parmar had tendered his initial payment to the Treasurer, he filed a nine-count complaint in the circuit court of DuPage County claiming that his payments were unauthorized by law. R. C2-77. Named as defendants were the Illinois Attorney General,

the State Treasurer, the Director of the Illinois Department of Revenue, and the Governor. R. C2.

Counts I and IX alleged improprieties in the passage of Public Act 96-1496 — on which the Estate presumably had relied in calculating and tendering the tax payments. Specifically, count I alleged that the Senate bill was not read by title on three different days in each legislative house, in violation of the Illinois Constitution (Ill. Const. 1970, art. IV, §8). R. C15-16. Count IX alleged that one of the promoters of the bill misrepresented its substance on the floor of the State House of Representatives. R. C33-34. The Estate asserted that this legislator's misrepresentations about the law invalidated the subsequent vote approving it. R. C33.

Counts II through VII concerned how the changes made to the Act by the General Assembly should be interpreted. Count II alleged that, under the Statute on Statutes, 5 ILCS 70/0.01 *et seq.* (2016), as well as case law, the amended provision must be given prospective effect only, even though the law recites that it applies to the estates of persons dying after December 31, 2010. R. C17-19. Counts III through VII alleged that, if given such "retroactive application," the amendment would violate the due process and takings clauses of the Illinois and federal constitutions and the *ex post facto* clause of the Illinois Constitution. R. C20-30. Count VIII alleged that, since the amended section could not lawfully be applied to persons who died before its enactment,

all contrary administrative rules issued by the AGO were invalid and ineffective. R. C31-33.

Parmar sought in each count either a declaration that no tax was due from his mother's estate or an order declaring P.A. 96-1496 unconstitutional as applied to the estates of persons who died on or before January 13, 2011. R. C16, C19, C24-30, C32-34. He requested that the circuit court enter an order requiring the Treasurer to issue the Estate a full tax refund. R. C16, C19, C24, C26, C29-30, C32.

On November 3, 2015, the defendants filed a motion to dismiss the action pursuant to section 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-619.1 (2016). R. C85. Among the arguments raised, defendants contended that the action was barred by the State Lawsuit Immunity Act ("Immunity Act"), 745 ILCS 5/1 *et seq*. (2016), because Parmar's suit sought to obtain a tax refund from state revenue. R. C87-88. Additionally, defendants tendered the affidavit of Illinois Assistant Attorney General John A. Flores setting forth the history of the Estate's interactions with the AGO and its tax payments — including the AGO's issuance of the Second Amended Certificate of Discharge and Determination of Tax waiving the State's tax liens. R. C95-97. This certificate recognized, on July 24, 2015, the "complete release of all the property of the estate from [the] lien imposed by the [Act]," as well as the discharge from "any personal liability" of Parmar for non-payment of the

estate tax, including penalties and interest. R. C109. Parmar's payment of taxes, the defendants contended, established that he had forfeited any claim he might have brought regarding the validity of the taxes that the Estate already had paid to the Treasurer. R. C89-90.

In responding to the State's motion, Parmar argued that the General Assembly had waived sovereign immunity by enacting section 15 of the Act. R. C142. His response did not argue that the "officer suit exception" to the doctrine of sovereign immunity applied to his claims. *See* R. C141-57.

The circuit court dismissed Parmar's action, finding that his claims were jurisdictionally barred. R. C171. Later, during the hearing on his motion to reconsider, Parmar was granted leave to voluntarily dismiss the Governor and Illinois Department of Revenue as defendants. R. C183. The court denied reconsideration of its decision to dismiss Parmar's action. R. C209.

The Appellate Court's Reversal

On appeal, the parties advanced the same arguments made in the circuit court. Parmar contended that section 15(a) of the Act, which provides that "[j]urisdiction to hear and determine all disputes in relation to a tax arising under [the] Act shall be in the circuit court for the county having venue," 35 ILCS 405/15(a) (2016), expressed the General Assembly's intent to waive the State's sovereign immunity for claims involving the estate tax. AT Br. 6-7; RY Br. 1-3. He also argued that the Estate Tax Refund Fund established by section 13 of the Act, 35 ILCS 405/13 (2016), and used by the Treasurer to pay

refunds if the federal tax credit is reduced after a taxpayer files his Illinois tax return, *see* 35 ILCS 405/7 (2016), could serve as the circuit court's source of funds to pay him a recovery. *Id*. As with his response to the State's motion to dismiss, Parmar never argued that the "officer suit exception" to sovereign immunity applied to his claims. AT Br. 4-12. He contended only that "even if this Court decides that section 15(a) of the Act does not specifically grant the circuit court subject matter jurisdiction . . . the circuit court would still have subject matter jurisdiction because Plaintiff's cause of action is not a 'claim' against the State of Illinois such that state sovereign immunity under 745 ILCS 5/1 *et seq*. would apply . . . . " AT Br. 6.

With regard to the defendants' invocation of the voluntary payment doctrine, Parmar's reply brief argued that because he was potentially personally liable as executor of his mother's estate for the payment of taxes, interest, and penalties, the Estate's payment of taxes had been under "actual express duress." RY Br. 5-6. He also argued that due process and Illinois public policy required the circuit court to consider his claims. *Id.* at 7-8.

On April 14, 2017, the appellate court issued a decision reversing the circuit court's judgment and remanding the case for further proceedings. 2017 IL App (2d) 160286. The court determined that the doctrine of sovereign immunity does not apply when a plaintiff alleges that one of the State's agents acted in violation of statutory or constitutional law, or in excess of proper authority. *Id.*, ¶ 22. Quoting *Leetaru v. Board of Trustees of the University of*

Illinois, 2015 IL 117485 (2015), it emphasized language that suggested to it that a plaintiff can avoid the Immunity Act and bring a lawsuit against state officials to recover payments improperly made from the state treasury. *Id.* This can occur, the court held, when the plaintiff alleges acts that have been committed "illegally," or when a state officer "purports to act under an unconstitutional act or under authority which he does not have." *Id.,* ¶ 21, citing *Leetaru*, 2015 IL 117485, ¶¶ 44-47. The court thus stated that Parmar had made out a "textbook" case falling within the officer suit exception because he had alleged that the AGO and Treasurer had acted pursuant to changes the General Assembly had unlawfully made to the Act that were void "*ab initio.*" *Id.*, ¶ 27.

The court further held that the requirements of the Protest Act did not apply to Parmar's suit. The court stated that, "[d]efendants fail to recognize . . . that if a suit is not actually against the State, there is no need for a waiver of sovereign immunity." *Id.*, ¶ 29.

With regard to the voluntary payment doctrine, the court held that the various provisions of the Act creating the prospect of the AGO assessing penalties, interest, and personal liability against estate executors "amounted to duress." *Id.*, ¶¶ 34-36. Accordingly, the court stated that the pleadings and "undisputed facts" established that Parmar had paid the estate tax "involuntarily." *Id.*, ¶ 40.

The appellate court reversed and remanded the case for further

proceedings. *Id.*, ¶ 42. The AGO and Treasurer petitioned for this Court's review.

ARGUMENT

The appellate court's decision misapplied the officer suit exception to the doctrine of sovereign immunity and eliminated the protections for state officers and revenue provided by section 2a of the Protest Act. The appellate court also wrongly rejected the voluntary payment doctrine that gives the State an affirmative defense to claims seeking to recover taxes previously paid. For all of these reasons, the appellate court's decision should be reversed.

I. This Court's Review Is *De Novo*.

The circuit court dismissed Parmar's suit based on section 2-619(a)(1) of the Code of Civil Procedure because the court lacked subject matter jurisdiction. R. C214-15; 735 ILCS 5/2-619(a)(1) (2016). In reviewing the grant of a section 2–619 motion, this Court interprets the pleadings and supporting materials in the light most favorable to the plaintiff. *Abruzzo v. City of Park Ridge*, 231 Ill. 2d 324, 332 (2008). A section 2–619 dismissal resembles the grant of a motion for summary judgment, meaning that this Court must determine whether a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether the dismissal was proper as a matter of law. *Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 254 (2004). The decision to grant such a motion is reviewed *de novo*. *People ex rel. Madigan v. Burge*, 2014 IL 115635, ¶ 18; *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 12 (2005).

The circuit court did not reach the defendants' alternative arguments

that, even if dismissal were not proper under section 2-619(a)(1), it was proper under section 2-619(a)(9) because of other matter affirmatively appearing in the record. In this regard, defendants argued that Parmar's suit should be dismissed because the allegations of the complaint, along with the unrebutted material tendered by defendants, established that the Estate tendered payments discharging its taxes voluntarily without complying with section 2a of the Protest Monies Act. R. C88-89; 166-67. The question of whether Parmar's action should have been dismissed pursuant to section 2-619(a)(9) presents a question of law that was fully raised and argued below. *See In re Estate of Boyar*, 2013 IL 113655, ¶ 27; *Doe v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009). Accordingly, this Court may also affirm the circuit court's dismissal based on section 2-619(a)(9). *See In re Estate of Funk*, 221 Ill. 2d 30, 96 (2006); *Rodriguez v. Sheriff's Merit Comm'n of Kane Cty.*, 218 Ill. 2d 342, 357 (2006).

II. Parmar's Claims Are Barred by Sovereign Immunity.

The Illinois Constitution of 1970 abolished sovereign immunity, but allowed the General Assembly to reestablish it by statute. Ill. Const. 1970, art. XIII, § 4; see *Currie v. Lao*, 148 Ill. 2d 151, 157 (1992). Using this authority, the legislature crafted the Immunity Act, providing that the State cannot be made a defendant or other party in court except as provided in the Court of Claims Act, 705 ILCS 505/1 *et seq.* (2016) (along with several other statutes

that are inapplicable here). The circuit court properly concluded that the Immunity Act barred Parmar's complaint.

A. Parmar's Claims Cannot Be Brought in Circuit Court Because They Are Barred by the Immunity Act; the Officer Suit Exception Does Not Apply.

Whether an action is in fact one against "the State" under the Immunity Act and thus barred by the sovereign immunity doctrine depends not on the formal identification of the parties but on the issues involved and the relief sought. *Leetaru*, 2015 IL 117485, ¶ 45; *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990). Thus, this Court has made clear that the Immunity Act's prohibition against making the State of Illinois a party to a suit "cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested." *Smith v. Jones*, 113 Ill. 2d 126, 131 (1986); *Sass v. Kramer*, 72 Ill. 2d 485, 491 (1978).

The General Assembly has, on occasion, waived the sovereign immunity provided for in the Immunity Act, but only it can do so. *See*, *e.g.*, *Brucato v. Edgar*, 128 Ill. App. 3d 260, 266-67 (1st Dist. 1984) (Secretary of State unable to waive sovereign immunity on behalf of State). This Court also has made clear that such waivers must be "clear and unequivocal." *In re Special Educ. of Walker*, 131 Ill. 2d 300, 303 (1989) (statute allowing suit against "any other governmental entity" not sufficiently clear reference to "the State" to waive

sovereign immunity).

In this case, while acknowledging that the plaintiff must generally identify a statutory waiver to avoid sovereign immunity where a suit seeks monetary relief from the state government, the appellate court pointed to *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, as embracing an additional way a plaintiff can avoid the Immunity Act. 2017 IL App (2d) 160286, ¶ 22. The court described this type of exception from immunity as follows:

> [T]he officer-suit exception applies when the state officer is alleged to "have acted in violation of statutory or constitutional law or in excess of [the officer's] authority." The exception does not apply where the plaintiff alleges a "simple breach of contract and nothing more[,]" or alleges that the officer "exercised the authority delegated to him or her erroneously."

Id.

In *Leetaru,* a graduate student at the University of Illinois filed an action to enjoin the university's trustees and a vice chancellor from pursuing an investigation against him that he asserted violated his right to due process. 2015 IL 117485, ¶ 1. The circuit court and appellate court each concluded that defendants were entitled to sovereign immunity because the university was "the State" for purposes of the suit, and so dismissed the case. But this court reversed. *Id.*, ¶ 2. It noted that Leetaru had not sued the State at all, but the individual trustees of the university and a vice chancellor. *Id.*, ¶ 43. Defendants contended that sovereign immunity applied nonetheless because

the suit sought to control the actions of the State, but the court determined that whether immunity applied depended upon "the issues involved and the relief sought." *Id.*, ¶ 45. The court held that immunity would not bar a suit by a plaintiff "to seek injunctive relief in circuit court to prevent unauthorized or unconstitutional conduct by the State, its agencies, boards, departments, commissions and agents or to compel their compliance with legal or constitutional requirements." *Id.*, ¶ 48.

Missing from the appellate court's invocation of *Leetaru* and the court's description of the "officer suit exception" is a recognition that the State's immunity *always* operates to prevent a plaintiff from bringing suit to recover money from state treasury for past wrongs. As *Leetaru* itself recognized, the officer suit exception applies only to cases seeking *prospective injunctive* relief against the state's agents. *Leetaru*, 2015 IL 117485, ¶ 48; *see also id.* at ¶ 51 (emphasizing that "Leetaru's action does not seek redress for some past wrong" but "seeks only to prohibit future conduct . . . undertaken by agents of the State in violation of statutory or constitutional law or in excess of their authority.").

Many cases have made this point, explaining that there is an important distinction between "present claims" against the State, barred absent some specific waiver of immunity granted by the General Assembly, and actions against state officials that seek to enjoin them from prospective actions that

are unlawful or in excess of properly delegated authority. *E.g.*, *PHL, Inc. v. Pullman Bank & Tr. Co.*, 216 Ill. 2d 250, 268 (2005) (quoting *Ellis v. Bd. of Governors of State Colls. & Univs.*, 102 Ill. 2d 387, 395 (1984)); *Senn Park Nursing Ctr. v. Miller*, 104 Ill. 2d 169, 188-89 (1984); *Bio-Medical Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 548 (1977). In federal court, the counterpart to this forward-looking exception to sovereign immunity is the *Ex parte Young* doctrine. *See, e.g.*, *Verizon Maryland Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) ("In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straightforward inquiry' into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as *prospective*") (emphasis added, quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296, 298-299 (1997)).

The appellate court's decision overlooks this essential distinction, and in so doing construes the officer suit exception so broadly that it swallows the immunity rule entirety. For *every* action of "the State" must be undertaken by some public official or agent who can then be named as a nominal defendant by a plaintiff in a complaint. And *every* claim brought against "the State," however pleaded, seeks to establish that one of its agents has violated the law or exceeded some delegation of authority. Here, for example, the Attorney General and Treasurer are charged with having violating the Act (and the

constitution) where state employees did nothing more than accept voluntary payments and review returns that he had filed. R. C109, C118, C130. Even if doing these acts somehow could be characterized as having violated the law (and it is difficult to see how accounting for and depositing funds freely tendered ever could be so construed), Parmar's suit is surely not one to enjoin defendants from some ongoing conduct or from undertaking any future action, as might be permitted by the officer suit exception addressed in *Leetaru*. *See* 2015 IL 117485, ¶ 48, ¶ 51; *see also*, *CGE Ford Heights, LLC v. Miller*, 306 Ill. App. 3d 431, 437 (1999) (noting, in case where plaintiffs sought an injunction and no damages, that "State immunity generally is not triggered by an action to stop a state official from unconstitutional or unauthorized conduct.").

The doctrine of sovereign immunity protects the State's resources and revenues and preserves the careful separation of powers that exists between the judiciary, executive, and legislative branches. The appellate court's interpretation of the officer suit exception improperly expands the holding of *Leetaru* beyond the context that was presented by that case, and thus erodes the sovereign immunity doctrine to the point of irrelevance. For here, unlike in *Leetaru*, Parmar's complaint did not seek to enjoin defendants from taking any future action, but instead, raised a claim for damages against them for official past conduct. R. C16, C19, C24, C26, C29-30, C32. Accordingly, the Immunity Act applies in Parmar's case where it was not applicable in

Leetaru's, and so the appellate court's decision should be reversed, and the circuit court's judgment applying sovereign immunity in defendants' favor afirmed.

B. Section 15 Is Not a "Clear and Unequivocal" Waiver of Sovereign Immunity.

As noted, in response to the defendants' motion to dismiss, Parmar did not initially rely on the officer suit exception, but rather, on an argument that his suit was brought "pursuant to specific statutory authority," citing section 15 of the Act, 35 ILCS 405/15 (2016). R. C142. That provision provides in pertinent part:

> Sec. 15. Circuit court jurisdiction and venue.
>
> (a) Jurisdiction. Jurisdiction to hear and determine all disputes in relation to a tax arising under this Act shall be in the circuit court for the county having venue as determined under subsection (b) of this Section, and the circuit court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other circuit court.
>
> (b) Venue . . . Venue for disputes involving Illinois estate tax of a decedent who was a resident of Illinois at the time of death shall lie in the circuit court for the county in which the decedent resided at death.

He also cited section 13 of the Act, 35 ILCS 405/13 (2016), which creates a special fund used by the State Treasurer to make refund payments to taxpayers who file amended returns, as section 7 of the Act allows, 35 ILCS 405/7 (2016). R. C144. Parmar also relied on language in section 13 stating that "Moneys in the Estate Tax Refund Fund shall be expended exclusively for the purpose of paying refunds resulting from overpayment of tax liability

under this Act." 35 ILCS 405/13(c) (2016). He argued that his claims of "unconstitutional taxation" amounted to his claiming he had made such an "overpayment," as the entire amount that he tendered had not been authorized by law. R. C145.

Parmar's arguments are without merit because, though section 15 establishes that a litigant may bring suit in circuit court to resolve "all disputes in relation to a tax arising under this Act," 35 ILCS 405/15 (2016), it does not purport to waive the State's immunity for claims like Parmar's. Statutory provisions such as those contained in the Act and the Immunity Act must be read together and harmonized. *See Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25; *People v. Rinehart*, 2012 IL 111719, ¶ 26. As the appellate court has held, it is illogical to conclude that the State has implicitly consented to defending itself against a claim brought in its courts if it has expressly withheld, from those courts, subject-matter jurisdiction over the plaintiff's particular claim. *Brewer v. Bd. of Trustees of the Univ. of Ill.*, 339 Ill. App. 3d 1074, 1078 (4th Dist. 2003), *overruled on other grounds* by *Blount v. Stroud*, 232 Ill.2d 302, 328 (2009).

It follows that when section 15(a) refers to "all disputes in relation to a tax arising under this Act," the General Assembly is referring to those disputes that are otherwise properly raised in a circuit court proceeding, and not those that are otherwise barred by the Immunity Act. Authorized suits include, as

noted above, suits to prospectively enjoin a state official from taking some future unauthorized action. The statute also applies to claims brought pursuant to section 2a of the Protest Act, as discussed below, as well as to traditional equity suits that fall outside sovereign immunity — such as those that seek *mandamus* or *certiorari* relief. *See*, *e.g.*, *People ex rel. Little v. Collins*, 386 Ill. 83, 100 (1944) (*mandamus*); *City of Kankakee v. Dep't of Revenue*, 2013 IL App (3d) 120599, ¶¶ 13-14 (*certiorari*). Such suits also include collection suits brought by the State under 35 ILCS 405/10(d) (2016). But section 15 is plainly not a "clear and unequivocal" waiver of sovereign immunity for claims, like Parmar's, that ask the court to address past conduct and to award money damages from the State's treasury.

And sections 7 and 13 of the Act are of no more help to Parmar. These provisions merely establish that the Treasurer shall pay refunds where a federal tax liability has been lowered after an Illinois tax payment has been made. 35 ILCS 405/7 (2016). As section 7 expressly provides, payments from the Estate Tax special fund are authorized by the General Assembly only when "the [federal] tax credit is reduced after the filing of the Illinois transfer tax return." *Id*. These provisions thus have no relevance for claims brought by a taxpayer, like Parmar, who claims not that he is entitled to a refund because of a change in the estate's federal tax return, but that he tendered unauthorized taxes to the State, and that the Treasurer must return those funds to him.

That type of claim is plainly one brought against "the State," and is accordingly barred by sovereign immunity.

III. The Appellate Court Erred by Failing to Apply the Protest Act and the Voluntary Payment Doctrine.

The appellate court also erred by not applying the Protest Act or the Voluntary Payment Doctrine. These were both raised by defendants as "affirmative matter," each requiring Parmar's action to be dismissed. *See* 735 ILCS 5/2-619(a)(9) (2016).

A. The Protest Act Barred Parmar's Claims Because He Failed to Comply with the Requirements of Section 2a.

The appellate court decision should be reversed because it contravened the requirements of the Protest Act, 30 ILCS 230/2, 2a (2016). Contrary to the appellate court's determination, 2017 IL App (2d) 160286, ¶ 29, the Protest Act is not just a limitation on suits brought nominally against "the State," but applies to any claim made to challenge the lawfulness of a tax assessment, regardless of who is named as a defendant. *See, e.g., McGinley v. Madigan*, 366 Ill. App. 3d 974, 976 (1st Dist. 2006) (suit to recover money paid State under Protest Act naming, as here, Attorney General and Treasurer as defendants); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130 (naming Director of Department of Revenue and Treasurer); *NDC LLC v. Topinka*, 374 Ill. App. 3d 341 (2d Dist. 2007) (naming Treasurer and Secretary of State).

The Protest Act first imposes a requirement on state officers to accept

all payments, properly account for them, and deposit them into appropriate state accounts. 30 ILCS 230/2 (2016). The defendants' motion to dismiss, supported by the affidavit of John A. Flores, showed that defendants complied with these provisions by accepting Parmar's voluntary tax payments and depositing them. R. C85-130. If Parmar wanted to preserve his right to dispute his mother's estate tax obligation, potential penalties, and interest, all he had to do was tender the Estate's payments "under protest," pursuant to section 2a.1 of the Protest Act. 30 ILCS 230/2 (2016). That provision requires state officials receiving such payments to deposit the money into the State's special "protest fund." After doing so, Parmar could have sued and obtained, within 30 days, a temporary restraining order or preliminary injunction, segregating the tendered funds during the course of the dispute. 30 ILCS 230/2a (2016). In this way, Parmar could have preserved his right to litigate the disposition of those funds. But he failed to do so by paying the tax.

Review of the Protest Act shows that it provides a simple, complete, and exclusive judicial remedy. Under section 2a.1, litigants must give the official responsible for collecting a disputed tax dated written notice that payment is being tendered to the State "under protest," 30 ILCS 230/2a.1 (2016), the effect of which, as noted, is to cause the official to divert the payment to the special protest fund, 30 ILCS 230/2a (2016). *See*, *e.g.*, *Agric. Transp. Ass'n v. Carpentier*, 2 Ill. 2d 19, 24-25 (1953). From that moment, the Protest Act, in

section 2a, gives the taxpayer 30 days to secure a court order to stop the funds from being automatically transferred out of the special fund and put to general government use, after which no litigation over the tax obligation is permitted. *Montgomery Ward & Co. v. Stratton*, 342 Ill. 472, 476-77 (1930).

In *Montgomery Ward*, for example, the circuit court dismissed a taxpayer suit seeking an order allowing the taxpayer to set off against a current tax obligation a prior tax payment that it alleged had been unlawfully collected by a state official. 342 Ill. at 476. The court declined to address the issue of whether the tax had, in fact, been unlawfully collected because the Protest Act afforded the plaintiff a "complete and adequate remedy," but its requirements had not been followed. *Id.* at 476. Had the plaintiff done so, its contentions could have been "fully and speedily determined." *Id.* at 476-77. Because the plaintiff did not comply with the requirements of the statute, dismissal of its suit was affirmed. *Id.* at 478.

Inconsistent with *Montgomery Ward*, the appellate court below treated the Protest Act as if it offered just one option for a taxpayer to preemptively challenge an unlawful tax, rather than the exclusive pre-enforcement method of doing so. Instead of having his tax protest "fully and speedily" determined by the circuit court under that law, Parmar delayed more than 20 months in bringing this case, well past the 30-day limitation imposed by section 2a, and and long after the money he had tendered to the State had been accounted for

and spent. The appellate court's decision to reinstate Parmar's action undermines the provisions of section 2a that protects state officers from having to defend against stale charges. Thus, even if the Immunity Act and the doctrine of sovereign immunity did not compel Parmar's action be dismissed (which they did, as explained above), his failure to comply with section 2a of the Protest Act should have led to the same result. For that reason, too, the circuit court's judgment should be affirmed, and the appellate court's opinion reversed.

B. Parmar's Payments Were Not Made "Under Duress."

Finally, the appellate court also erred by not applying the voluntary payment doctrine to bar Parmar's action. This common-law doctrine prevents taxes voluntarily paid from being recovered in court proceedings *"even if the taxes were imposed illegally*" — absent a proper statutory protest. *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill. 2d 389, 393 (1989) (emphasis added); *see also*, *Citibank, N.A. v. Ill. Dep't of Revenue*, 2017 IL 121634, ¶ 40 ("It has long been acknowledged that, in the absence of an authoritative statute, taxes voluntarily, though erroneously, paid cannot be recovered."); *Snyderman v. Isaacs*, 31 Ill. 2d 192, 194 (1964) (same). An exception is recognized only when (1) the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time they were paid, or (2) the taxpayer paid the taxes under duress. *King*, 215 Ill. 2d at 31. Neither of these was present in Parmar's case.

Here, the record shows that Parmar had knowledge of the facts surrounding his obligation to pay his mother's estate taxes and was not under any duress because he had enlisted both the assistance of an attorney and an accountant to help him determine the Estate's liability, *see* R. C112-13, and yet failed to invoke the Protest Act at the time he tendered payment. Thus, he can make out neither of the recognized exceptions to the voluntary payment doctrine.

In concluding that Parmar paid his mother's estate taxes under duress, the appellate court held that the mere threat of tax liability, penalties, or interest payments amounts to sufficient "duress" to trigger the second exception to the voluntary payment doctrine, even though there exists a statutory remedy provided by the General Assembly that would have allowed him to ultimately pay nothing on prevailing, and even to recover statutory interest. *See* 30 ILCS 230/2a (2016) ("Any authorized payment from the protest fund shall bear simple interest at a rate equal to the average of the weekly rates at issuance on 13-week U.S. Treasury Bills . . . ."). Thus, the appellate court held that the executor of a multi-million-dollar estate, having the benefit of both an attorney and an accountant, acted "under duress," even though the record showed that no one on behalf of the State ever demanded payment or had even contacted him. *See* R. C86. And this conclusion was reached on the same record showing that Parmar had been able to successfully

avoid penalties and lower his interest obligation by contacting the AGO and seeking an accommodation. R. C118.

If the voluntary payment doctrine (and the Protest Act) can be avoided in the tax context by pointing to a subjective fear of the *possibility* of incurring tax penalties and interest, then those limitations are eroded to the point of irrelevance. Litigation in the circuit court to recover prior tax payments always will involve a plaintiff's claim that his prior payment was made to avoid the prospect of tax liability.

Indeed, precisely the same argument was advanced by the taxpayer and rejected in *Richardson Lubricating Co. v. Kinney*, 337 Ill. 122, 126–27 (1929). There the court stated that "fear and belief of the complainant that, unless the tax was paid, the complainant, its officers, and agents, would be subjected to the penalties provided in the act" was not sufficient to establish duress sufficient to avoid the voluntary payment doctrine. *Id.* at 127. "One who makes payment of a legal demand cannot be said to have made such payment involuntarily merely because he does so in the fear and belief [that] unless such payment is made he will be subjected to the penalties of a valid act." *Id*. Otherwise, the court recognized, "all taxes could be said to be paid involuntarily." *Id.*

Contrary to the appellate court's holding, Parmar did not pay his mother's estate taxes "involuntarily" or "under duress." Section 2a of the

Protest Act provided him with a full and speedy way to challenge the imposition of tax, and the record shows that he had the advice of both an accountant and an attorney at the time he remitted payment to the AGO and Treasurer. If Parmar wished to challenge P.A. 96-1496, his remedy was to file a Protest Act claim. His failure to do so means that the voluntary payment doctrine barred his claim, and so the appellate court's judgment should be reversed.

CONCLUSION

For the above reasons, Attorney General Lisa Madigan and State Treasurer Michael W. Frerichs request that this Court reverse the appellate court's judgment, and affirm the judgment of the circuit court.

December 5, 2017

Respectfully submitted,

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Attorney General
State of Illinois

DAVID L. FRANKLIN
Solicitor General

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(312) 814-3312

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this brief, excluding the pages containing the Rule 341(d) cover, 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 29 pages.

/s/ *Carl J. Elitz*
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APPENDIX

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12/5/2017 11:39 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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ORDER - BLANK 2116 (Rev. 6/13)

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STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Pominder S. Parmar

vs

Lisa Madigan, et al.

2015 MR 1412
CASE NUMBER

FILED
16 JAN 28 PM 4:19
CLERK OF THE 18TH JUDICIAL CIRCUIT DU PAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

(1) Plaintiff's oral motion to voluntarily dismiss defendants Constance Beard and ~~[illegible]~~ is granted. ~~[illegible]~~. Bruce Rauner is granted, each party to bear its own costs

(2) Plaintiff's complaint is dismissed for lack of subject matter jurisdiction (without prejudice to refiling in the court of claims).

CASE CLOSED
JUDGE'S INIT. [illegible]

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DuPage Attorney Number: 44000
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Telephone: (312) 814-6138
(Francis J Smith 1446)

ENTER:

Bonnie M Wheaton
Judge

Date: 1/28/16

ORDER - BLANK 2116 (Rev. 6/13)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Parmar

vs

Lisa Madigan, et al.

15 MR 1412
CASE NUMBER

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16 APR 13 PM 1:34
CHRIS KACHIROUBAS
CLERK OF THE
18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS
File Stamp Here

ORDER

This cause coming before the Court; the Court being fully advised in the premises, and having jurisdiction of the subject matter, **IT IS HEREBY ORDERED:**

(1) Plaintiff's oral motion to Amend the prayer for relief in the complaint to withdraw claims for attorneys fees and costs is granted.

(2) Plaintiff's motion to Reconsider the Courts January 28, 2016 order granting Defendant's Motion to Dismiss the complaint for lack of subject matter jurisdiction due to Sovereign immunity is denied

(3) This order is final and immediately appealable

Name: Nicholas Hoerr ☐ PRO SE
DuPage Attorney Number: 20939
Attorney for: Plaintiff
Address: 150 N. Michigan Ave, Suite 1230
City/State/Zip: Chicago IL 60601
Telephone: 312 236 8822

ENTER:

Bonnie M Wheaton
Judge

Date: 4/13/16

CHRIS KACHIROUBAS, CLERK OF THE 18th JUDICIAL CIRCUIT COURT ©
WHEATON, ILLINOIS 60187-0707

APPEAL TO THE APPELLATE COURT OF ILLINOIS, SECOND JUDICIAL CIRCUIT
IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS, CHANCERY DIVISION

Paminder S. Parmar, Individually and as Executor of the Estate of Surinder K. Parmar,	)	
Plaintiffs,	)	
v.	)	Case No. 2015 MR 1412
Lisa Madigan, as Attorney General of the State of Illinois, Michael Frerichs, as Treasurer of the State of Illinois, Constance Beard, as Director of the Illinois Department of Revenue and Bruce Rauner as Governor of the State of Illinois,	)	The Honorable Bonnie M. Wheaton, Presiding Judge
Defendants.	)	

NOTICE OF APPEAL

Pursuant to Illinois Supreme Court Rule 303(b), Plaintiff-Appellants Paminder S. Parmar, individually and as Executor of the Estate of Surinder K. Parmar, hereby appeal to the Appellate Court of Illinois, Second District from the January 28, 2016 Order of the Circuit Court (attached to this Notice of Appeal as Exhibit A) granting Defendant-Appellee's Motion to Dismiss the Complaint for lack of subject matter jurisdiction and from the April 13, 2016 Order of the Circuit Court (attached to this Notice of Appeal as Exhibit B) denying Plaintiff-Appellants' Motion to Reconsider the January 28, 2016 Order of Dismissal.

By this appeal, the Plaintiff-Appellants will ask the Appellate Court to (i) find that the circuit court has subject matter jurisdiction over Plaintiff-Appellants Complaint, (ii) reverse the granting of Defendant-Appellee's Motion to Dismiss the Complaint for lack of subject matter jurisdiction *Instanter*, (iii) remand to the Circuit Court for further proceedings, and (iv) grant any and all other appropriate relief.

Dated: April 15, 2016

/s/ Eric H. Jostock
One of the attorneys for Paminder S. Parmar, individually and as Executor of the Estate of Surinder K. Parmar

/s/ Nicholas P. Hoeft
One of the attorneys for Paminder S. Parmar, individually and as Executor of the Estate of Surinder K. Parmar

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Atty Name Nicholas P. Hoeft
Firm Name Jostock & Jostock, P.C.
Address 150 N. Michigan Ave., Suite 1230
City & Zip Chicago, IL 60601
Telephone (312) 236-8822
Atty No. 20939

ORDER - BLANK 2116 (Rev. 6/13)

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Pominder S. Parmar

vs

Lisa Madigan, et al.

2015 MR 1412
CASE NUMBER

File Stamp Here

ORDER

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(2) Plaintiff's complaint is dismissed for lack of subject matter jurisdiction (without prejudice to refiling in the court of claims).

Name: LISA MADIGAN ☐ PRO SE
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(Frances J Smith 1444)

ENTER:

Bonnie M Wheaton
Judge

Date: 11/28/16

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WHEATON, ILLINOIS 60187-0707

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ORDER - BLANK

2116 (Rev. 6/13)

STATE OF ILLINOIS **UNITED STATES OF AMERICA** **COUNTY OF DU PAGE**

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Parmar

vs

Lisa Madigan, et al.

15 MR 1412

CASE NUMBER

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ORDER

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(3) This order is final and immediately appealable

Name: Nicholas Hoeft ☐ PRO SE

DuPage Attorney Number: 20939

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Telephone: 312 236 8827

ENTER:

Judge

Date: 4/13/16

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WHEATON, ILLINOIS 60187-0707

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2017 IL App (2d) 160286
Appellate Court of Illinois,
Second District.

Paminder S. PARMAR, Individually
and as Executor of the Estate of
Surinder K. Parmar, Plaintiff-Appellant,
v.
Lisa MADIGAN, as Attorney General of the State
of Illinois, and Michael Frerichs, as Treasurer
of the State of Illinois, Defendants-Appellees.

No. 2-16-0286
|
Opinion filed April 13, 2017

Synopsis

Background: Taxpayer, individually and as executor of decedent's estate, brought action against the Attorney General and Treasurer of Illinois, seeking declaratory judgment as to scope of amendment to Illinois Estate and Generation-Skipping Transfer Tax Act and refund of amounts he paid to satisfy tax purportedly owed on estate. The Circuit Court, Du Page County, Bonnie M. Wheaton, J., granted the officials' motion to dismiss. Taxpayer appealed.

Holdings: The Appellate Court, Birkett, J., held that:

[1] taxpayer's allegations fell within officer-suit exception to state's sovereign immunity, and

[2] voluntary-payment doctrine did not apply because taxpayer paid estate tax under duress.

Reversed and remanded.

West Headnotes (11)

[1] Pretrial Procedure
Particular defenses

Statutory immunity is an affirmative defense, properly raised in a motion for involuntary dismissal based upon certain defects or defenses. 735 Ill. Comp. Stat. Ann. § 2-619.

Cases that cite this headnote

[2] States
Mode and Sufficiency of Consent

Waivers of sovereign immunity must be clear and unequivocal to be effective.

Cases that cite this headnote

[3] States
What are suits against state or state officers

The state's sovereign immunity cannot be evaded by naming an official or agent of the state as the nominal party defendant.

Cases that cite this headnote

[4] States
What are suits against state or state officers

"Officer-suit exception" to state's sovereign immunity applies when the state officer is alleged to have acted in violation of statutory or constitutional law or in excess of the officer's authority; the exception does not apply where the plaintiff alleges a simple breach of contract and nothing more or alleges that the officer exercised the authority delegated to him or her erroneously.

Cases that cite this headnote

[5] States
What are suits against state or state officers

Allegations by taxpayer, who acted as executor of decedent's estate, against state's Attorney General and Treasurer concerning enforcement of amendment to Illinois Estate and Generation-Skipping Transfer Tax Act fell within the officer-suit exception to state's sovereign immunity, where taxpayer alleged that because the amendment was void ab initio due to procedural improprieties, or

at the very least could not constitutionally be applied retroactively, the officials acted unlawfully by enforcing the amendment against the estate. 35 Ill. Comp. Stat. Ann. § 405/2(b); 745 Ill. Comp. Stat. Ann. § 5/1.

Cases that cite this headnote

[6] Taxation

Refunds of tax paid

Under the "voluntary-payment doctrine," a taxpayer may not recover taxes voluntarily paid, even if the taxing body assessed or imposed the taxes illegally; a taxpayer can only recover taxes voluntarily paid if such recovery is authorized by statute.

Cases that cite this headnote

[7] Taxation

Refunds of tax paid

For recovery of taxes paid involuntarily, a taxpayer need not use the Protest Fund Act or any other statutory mechanism. 30 Ill. Comp. Stat. Ann. § 230/1 et seq.

Cases that cite this headnote

[8] Taxation

Refunds of tax paid

A taxpayer has paid taxes involuntarily, and thus may recover illegally assessed or imposed taxes even without a statutory method of recovery, if: (1) the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time he or she paid the taxes, or (2) the taxpayer paid the taxes under duress.

Cases that cite this headnote

[9] Taxation

Refunds of tax paid

A tax was paid under duress, such that the tax would not be subject to the voluntarily-payment doctrine, where there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion.

Cases that cite this headnote

[10] Taxation

Recovery of tax paid

The issue of duress and compulsory payment of tax in context of the voluntary-payment doctrine generally is one of fact to be judged in light of all the circumstances surrounding a transaction; however, where the facts are not in dispute and only one valid inference concerning the existence of duress can be drawn from the facts, the issue can be decided as a matter of law, including on a motion to dismiss.

Cases that cite this headnote

[11] Taxation

Refunds of tax paid

Taxpayer, who acted as executor of decedent's estate, paid estate tax under duress, and thus his action challenging enforceability of amendment to Illinois Estate and Generation-Skipping Transfer Tax Act was not barred by the voluntary-payment doctrine; given that gross value of estate was $5 million, amount of statutory penalties and interest that would have been assessed under the Act if taxpayer failed to file an estate tax return could have been substantial, and taxpayer also faced the prospect of personal liability. 35 Ill. Comp. Stat. Ann. §§ 405/2(b), 405/8(a), 405/9, 405/10(c).

Cases that cite this headnote

***1065** Appeal from the Circuit Court of Du Page County. No. 15-MR-1412, Honorable Bonnie M. Wheaton, Judge, Presiding.

Attorneys and Law Firms

Nicholas P. Hoeft and Eric H. Jostock, of Jostock & Jostock, P.C., of Chicago, for appellant.

Lisa Madigan, Attorney General, of Chicago (David L. Franklin, Solicitor General, and Carl J. Elitz and Nadine J. Wichern, Assistant Attorneys General, of counsel), for appellees.

OPINION

JUSTICE BIRKETT delivered the judgment of the court, with opinion.

****552** ¶ 1 Plaintiff, Paminder S. Parmar, appeals the dismissal of his lawsuit seeking a declaratory judgment concerning an ***1066** ****553** amendment to the Illinois Estate and Generation-Skipping Transfer Tax Act (Estate Tax Act) (35 ILCS 405/1 *et seq.* (West 2014)). We agree with plaintiff that the trial court erred in dismissing his lawsuit as barred on grounds of sovereign immunity. We disagree with defendants, Attorney General Lisa Madigan and Treasurer Michael Frerichs, that the voluntary-payment doctrine provides an alternative ground for affirming the dismissal. Consequently, we reverse the dismissal of the complaint and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff's decedent, Dr. Surinder K. Parmar, passed away on January 9, 2011. Due to interplay between federal and Illinois law on taxation of estates, which we need not detail here, Parmar's estate was not subject to Illinois estate tax at the time of her death. In fact, since January 1, 2010, there was effectively no Illinois estate tax. See 35 ILCS 405/2(b) (West 2010). Public Act 96-1496, which was introduced as Senate Bill 2505 and became effective on January 13, 2011, revived the Illinois estate tax by amending section 2(b) of the Estate Tax Act (Pub. Act 96-1496 (eff. Jan. 13, 2011) (amending 35 ILCS 405/2(b))). By its terms, the amended section 2(b) applied retroactively to the estates of persons dying after December 31, 2010. 35 ILCS 405/2(b) (West 2014). This included Parmar's estate.

¶ 4 In October 2015, plaintiff, as executor of Parmar's estate, filed his "Complaint for a Declaration of the Constitutionality of the Retroactive Application of the New Illinois Estate and Generation-Skipping Transfer Tax Act under the Illinois Constitution and the United States Constitution." In addition to Attorney General Madigan and Treasurer Frerichs, plaintiff named Constance Beard, Director of the Illinois Department of Revenue, and Governor Bruce Rauner. Plaintiff identified Madigan as "responsible for administering and enforcing [the Estate Tax Act]," Frerichs as "responsible for receiving and refunding monies collected pursuant to [the Estate Tax Act]," Beard as "responsible for maximizing collections of revenues for the State of Illinois in a manner that promotes fair and consistent enforcement of state laws," and Rauner as "responsible for enforcing the laws of the State of Illinois which includes [*sic*] the [Estate Tax Act]." Plaintiff later voluntarily dismissed Beard and Rauner from the lawsuit.

¶ 5 Plaintiff's complaint contained nine counts. Counts I and IX alleged improprieties in the passage of Public Act 96-1496. Specifically, count I alleged that Senate Bill 2505 was not read by title on three different days in each legislative house, in violation of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8). Count IX alleged that one of the promoters of Senate Bill 2505 misrepresented its substance on the floor of the House of Representatives. Citing no authority, plaintiff alleged that the legislator's misrepresentations invalidated the vote on Senate Bill 2505.

¶ 6 Counts II through VII concerned the substance of the amended section 2(b) of the Estate Tax Act. Count II alleged that, under the interpretive dictates of the Statute on Statutes (5 ILCS 70/0.01 *et seq.* (West 2014)) and case law, the amended section 2(b) must be given prospective effect only. Counts III through VII alleged that, if given retroactive application, the amended section 2(b) would violate the due process and takings clauses of the Illinois and federal constitutions (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §§ 2, 15) and the *ex post facto* clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 16).

¶ 7 Finally, count VIII alleged that, since the amended section 2(b) could not ***1067** ****554** lawfully be applied retroactively, all administrative rules issued by Attorney General Madigan that assumed the permissibility of retroactive application were invalid and ineffective.

¶ 8 Plaintiff alleged that he incurred "penalties and interest" on the tax he purportedly owed on Parmar's estate. Plaintiff paid the tax, penalties, and interest "[u]nder duress in order to avoid additional penalties and

interest." As relief, plaintiff sought both a declaratory judgment as to the lawful scope of the amended section 2(b) and a refund of amounts paid.

¶ 9 Defendants filed a joint motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)), which permits a party to combine a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2014)) with a section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2014)). For their section 2-619 motion to dismiss, defendants raised two affirmative defenses. See *id.* (providing for involuntary dismissal based upon "certain defects or defenses"). First, they asserted that section 1 of the State Lawsuit Immunity Act (Immunity Act) (745 ILCS 5/1 (West 2014)) barred the proceeding in circuit court, leaving plaintiff with recourse only in the Court of Claims. Second, they claimed that the suit was barred under the voluntary-payment doctrine because, without duress, plaintiff had already paid the estate tax as well as statutory interest.

¶ 10 To support the voluntary-payment defense, defendants submitted an affidavit from John Flores, an assistant Attorney General with the Revenue Litigation Bureau. Flores averred that, in September and October 2012, plaintiff paid the State a total of $559,973 in tax on the Parmar estate. Also in October 2012, plaintiff filed an estate tax return, acknowledging liability for $397,144 in tax, $99,286 in late filing penalties, $23,829 in late payment penalties, and $39,714 in interest (a total of $559,973). Flores noted that plaintiff paid these amounts before the Attorney General had opened a file on Parmar's estate, had asserted any liability, or had made any payment demands. According to Flores, plaintiff later applied for and received a waiver of penalties. After further adjustments, plaintiff was calculated to owe $388,068 in tax and $35,357 in interest. Flores supported his averments with attached documentation, including an estate tax return filed by plaintiff. The return reported the gross value of Parmar's estate at $5 million.

¶ 11 In addition to stating these two affirmative defenses, defendants claimed that several counts in plaintiff's complaint failed to state a claim upon which relief could be granted.

¶ 12 In his response, plaintiff claimed that the legislature clearly waived sovereign immunity for lawsuits like the present one by enacting section 15(a) of the Estate Tax Act, which authorizes a circuit court "to hear and determine all disputes in relation to a tax arising under [the] Act." 35 ILCS 405/15(a) (West 2014).

¶ 13 At a hearing on the motion to dismiss, the trial court determined that section 15(a) was "not an explicit waiver of sovereign immunity" and that "proper jurisdiction is with the [C]ourt of [C]laims." The court dismissed the suit without prejudice to plaintiff refiling it in the Court of Claims.

¶ 14 Plaintiff filed this timely appeal.

¶ 15 II. ANALYSIS

¶ 16 A. General Principles

[1] ¶ 17 Plaintiff's complaint was dismissed pursuant to section 2-619 of the Code. A motion to dismiss under ***1068 **555** section 2-619 "admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55, 356 Ill.Dec. 733, 962 N.E.2d 418. Statutory immunity is an affirmative defense, properly raised in a section 2-619 motion. *Wilson v. City of Decatur*, 389 Ill.App.3d 555, 558, 329 Ill.Dec. 597, 906 N.E.2d 795 (2009). When ruling on a section 2-619 motion, the court should construe the pleadings and supporting documents in the light most favorable to the plaintiff, the nonmoving party. *Id.* The court must accept as true all well-pleaded facts in the plaintiff's complaint and all inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm*, 2012 IL 111443, ¶ 55, 356 Ill.Dec. 733, 962 N.E.2d 418. The question on appeal is " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Id.* (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill.2d 112, 116-17, 189 Ill.Dec. 31, 619 N.E.2d 732 (1993)). Our review is *de novo*. *Id.*

¶ 18 B. Sovereign Immunity

¶ 19 The Illinois Constitution of 1970 abolished the doctrine of sovereign immunity "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art.

XIII, § 4. In response, the General Assembly enacted the Immunity Act, section 1 of which states that, except as provided in several statutory provisions—namely, section 1.5 of the Immunity Act (745 ILCS 5/1.5 (West 2014)) (concerning State employees), the Illinois Public Labor Relations Act (5 ILCS 315/1 *et seq.* (West 2014)), the Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2014)), and the State Officials and Employees Ethics Act (5 ILCS 430/1-1 *et seq.* (West 2014))—"the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2014). For its part, the Court of Claims Act states that the Court of Claims has exclusive jurisdiction to hear "[a]ll claims against the State founded upon any law of the State of Illinois or upon any regulation adopted thereunder by an executive or administrative officer or agency." 705 ILCS 505/8(a) (West 2014).

[2] **[3]** ¶ 20 The trial court agreed with defendants that section 15(a) of the Estate Tax Act is not a waiver of sovereign immunity. There is a high bar for such waivers: they must be "clear and unequivocal" to be effective. (Internal quotation marks omitted.) *In re Special Education of Walker*, 131 Ill.2d 300, 303, 137 Ill.Dec. 575, 546 N.E.2d 520 (1989). As plaintiff points out, however, sovereign immunity applies in the first instance only where the State is actually made a party in the case. The Immunity Act provides that "the State of Illinois" shall not be "made a defendant or party." 745 ILCS 5/1 (West 2014). There is considerable case law on whether sovereign immunity applies where a suit names not "the State as such" but rather a State officer or agency. See *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 43, 392 Ill.Dec. 275, 32 N.E.3d 583 (suit named not the State of Illinois *per se* but the board of trustees of the University of Illinois and one of its associate vice chancellors). As one might expect, sovereign immunity is not circumvented by simple party designation. "[T]he State's immunity cannot be evaded by naming an official or agent of the State as the nominal party defendant." *Smith v. Jones*, 113 Ill.2d 126, 131, 100 Ill.Dec. 560, 497 N.E.2d 738 (1986). However, under what the supreme court has termed the "officer-suit" exception, a suit against a State officer or agency might not be tantamount to a suit against the State. See ***1069** ****556** *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill.2d 250, 261, 296 Ill.Dec. 828, 836 N.E.2d 351 (2005). At oral argument, we asked the parties if they were prepared to discuss the officer-suit exception. Neither party felt adequately prepared to address it. We proposed the possibility of additional briefing on the subject. We have since decided against that course. Plaintiff cited the officer-suit exception in his brief. Although his remarks were rather cursory, they were sufficient to raise the issue for our consideration. Defendants had the opportunity to respond, but did not. We see no need to offer the parties a second pass on the issue.

¶ 21 The supreme court's most recent exposition of the officer-suit exception was in *Leetaru*:

> "In determining whether sovereign immunity applies to a particular case, substance takes precedence over form. [Citation.] That an action is nominally one against the servants or agents of the State does not mean that it will not be considered as one against the State itself. [Citation.] By the same token, the fact that the named defendant is an agency or department of the State does not mean that the bar of sovereign immunity automatically applies. In appropriate circumstances, plaintiffs may obtain relief in circuit court even where the defendant they have identified in their pleadings is a state board, agency or department. [Citations.]
>
> Whether an action is in fact one against the State and hence one that must be brought in the Court of Claims depends on the issues involved and the relief sought. [Citation.] The prohibition against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested. [Citation.] *The doctrine of sovereign immunity affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court.* [Citation.] * * *
>
> This exception is premised on the principle that while legal official acts of state officers are regarded as acts of the State itself, illegal acts performed by the officers are not. In effect, actions of a state officer undertaken without legal authority strip the officer of his official status. *Accordingly, when a state officer performs illegally or purports to act under an unconstitutional act or under authority which he does not have, the officer's conduct is not regarded as the conduct of the State.* [Citation.] A suit may therefore be maintained against

> the officer without running afoul of sovereign immunity principles. [Citations.]
>
> Of course, not every legal wrong committed by an officer of the State will trigger this exception. For example, where the challenged conduct amounts to simple breach of contract and nothing more, the exception is inapplicable. [Citation.] Similarly, a state official's actions will not be considered *ultra vires* for purposes of the doctrine merely because the official has exercised the authority delegated to him or her erroneously. *The exception is aimed, instead, at situations where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids.* [Citation.]" (Emphases added and internal quotation marks omitted.) *Leetaru*, 2015 IL 117485, ¶¶ 44-47, 392 Ill.Dec. 275, 32 N.E.3d 583.

[4] ***1070** ****557** ¶ 22 Thus, the officer-suit exception applies when the state officer is alleged to "have acted in violation of statutory or constitutional law or in excess of [the officer's] authority." *Id.* ¶ 50. The exception does *not* apply where the plaintiff alleges a "simple breach of contract and nothing more" or alleges that the officer "exercised the authority delegated to him or her erroneously." *Id.* ¶ 47.

¶ 23 This distinction is illustrated by comparing some cases. In *Leetaru*, the plaintiff, a graduate student at the University of Illinois, sued state agents affiliated with the University. The plaintiff alleged that the defendants' investigation of potential research misconduct by the plaintiff violated his due process rights as established by the University's internal rules and regulations. The supreme court held that the officer-suit exception applied:

> "Defendants' alleged acts and omissions * * * involve far more than a mere difference of opinion over how the rules and regulations should be interpreted or applied and are not simply the result of some inadvertent oversight or a *de minimis* technical violation. Rather, according to [the plaintiff], they constitute a fundamental disregard for core provisions governing academic discipline at the University, thereby exceeding defendants' authority and violating [the plaintiff's] constitutional rights to due process." *Id.* ¶ 49.

Thus, the court construed the complaint as alleging that the defendants "acted in violation of statutory or constitutional law or in excess of their authority" (*id.* ¶ 50), and therefore the court held that sovereign immunity did not apply.

¶ 24 In *CGE Ford Heights, L.L.C. v. Miller*, 306 Ill.App.3d 431, 239 Ill.Dec. 477, 714 N.E.2d 35 (1999), several private companies and a municipality brought two multi-count complaints against the Illinois Governor, members of the Illinois Commerce Commission, and the Director of the Illinois Department of Revenue. The counts all centered on Public Act 89-448 (eff. Mar. 14, 1998), which abolished subsidies for tire burning plants. Some of the counts alleged breach of contract. The appellate court held that these counts did not state a cause of action. The remaining counts alleged that Public Act 89-448 was unconstitutional on various grounds. The appellate court held that some of these counts failed as well, but not on grounds of sovereign immunity, as the allegations that the defendants applied an unconstitutional provision brought the counts within the officer-suit exception. *Miller*, 306 Ill.App.3d at 436, 439-40, 239 Ill.Dec. 477, 714 N.E.2d 35.

¶ 25 Two cases finding the officer-suit exception not applicable are *Healy v. Vaupel*, 133 Ill.2d 295, 140 Ill.Dec. 368, 549 N.E.2d 1240 (1990), and *Smith*, 113 Ill.2d 126, 100 Ill.Dec. 560, 497 N.E.2d 738. In *Healy*, the plaintiff sued several employees of Northern Illinois University for injuries she suffered while participating as a member of the University's gymnastics team. The plaintiff alleged that her injuries were caused by the defendants' negligent performance of their duties. Since the plaintiff did not allege that the defendants "acted outside the scope of their authority or in violation of law," the officer-suit exception did not apply. *Healy*, 133 Ill.2d at 310-11, 140 Ill.Dec. 368, 549 N.E.2d 1240.

¶ 26 In *Smith*, the plaintiffs sued the Illinois State Lottery and its director. They claimed that the defendants misrepresented the prize pool for one of the state lotteries. The plaintiffs' claims, however, were strictly breach-of-contract claims. They did not allege that the defendants "appl[ied] an unconstitutional statute * * * [or] violated a law of Illinois." ***1071** ****558** *Smith*, 113 Ill.2d at 132, 100 Ill.Dec. 560, 497 N.E.2d 738. Accordingly, sovereign immunity applied. *Id.*

[5] ¶ 27 Plaintiff's allegations here fall within the officer-suit exception. Plaintiff alleged that (1) the amendment to section 2(b) of the Estate Tax Act was void *ab*

initio because of procedural improprieties and (2) at the very least, the amendment could not constitutionally be applied retroactively to the estates of persons who, like Parmar, passed away before its effective date. Thus, according to plaintiff, in enforcing the amended section 2(b) against Parmar's estate, defendants *a fortiori* acted unlawfully. This suit is a textbook instance of the officer-suit exception.

¶ 28 Defendants point to the State Officers and Employees Money Disposition Act (the Protest Fund Act) (30 ILCS 230/1 *et seq.* (West 2014)). The Protest Fund Act, as the supreme court has noted, "allows taxpayers to recover voluntary tax payments if certain procedures are followed." *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 25, 284 Ill.Dec. 294, 809 N.E.2d 1240 (2004). The process under the statute begins with the taxpayer remitting payment, under protest, to the relevant state entity. Once that payment has been placed into a special fund known as the protest fund, the taxpayer has 30 days to file a complaint and obtain a temporary restraining order or preliminary injunction to bar the treasurer from transferring the funds from the protest fund. If the taxpayer wins his challenge, the funds are returned to him. If he loses, the funds are given to whatever governmental fund they would have gone to if the taxpayer had not made the protest. 30 ILCS 230/2a (West 2014).

¶ 29 According to defendants, section 15(a) of the Estate Tax Law "makes no affirmative waiver of the Immunity Act" but, rather, "merely recognizes that tax disputes under [the Estate Tax Law] may be bought pursuant to [the Protest Fund Act]." Defendants contend that the Protest Fund Act is the only waiver of sovereign immunity for tax challenges and that, since plaintiff has not followed its procedures, his suit is barred. Defendants fail to recognize, however, that if a suit is not actually against the State, there is no need for a waiver of sovereign immunity. As noted, plaintiff's allegations bring his action within the officer-suit exception and, therefore, sovereign immunity is not implicated. Below (*infra* ¶ 33), we discuss the impact of the Protest Fund Act on the voluntary-payment doctrine, which defendants cite here as an alternative ground for affirming the dismissal.

¶ 30 For the foregoing reasons, we hold that the trial court erred in dismissing this action on grounds of sovereign immunity.

¶ 31 C. Voluntary-Payment Doctrine

¶ 32 Defendants ask us to affirm the dismissal on the alternative ground that the voluntary-payment doctrine applies. Defendants raised the defense below but the trial court did not address it, finding a sufficient ground for dismissal in the doctrine of sovereign immunity.

[6] [7] [8] [9] [10] ¶ 33 "Under the voluntary-payment doctrine, a taxpayer may not recover taxes voluntarily paid, even if the taxing body assessed or imposed the taxes illegally." *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill.2d 389, 393, 135 Ill.Dec. 848, 544 N.E.2d 344 (1989). "A taxpayer can only recover taxes voluntarily paid if such recovery is authorized by statute." *Id.* The Protest Fund Act, discussed previously (*supra* ¶¶ 28-29), is one such means for recovery of taxes voluntarily paid. See 30 ILCS 230/1 *et seq.* (West 2014). For recovery of taxes paid *in* voluntarily, a taxpayer need not use the Protest Fund Act or any other statutory mechanism. *Geary*, 129 Ill.2d at 395, 408, 135 Ill.Dec. 848, 544 N.E.2d 344 (the plaintiffs' challenge to a ***1072 **559** municipal retail tax on female hygiene products did not need to proceed under the Protest Fund Act, because the plaintiffs' allegations established that they paid the tax under duress). "A taxpayer * * * has paid the taxes involuntarily if (1) the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time he or she paid the taxes, or (2) the taxpayer paid the taxes under duress." (Emphasis omitted.) *Id.* at 393, 135 Ill.Dec. 848, 544 N.E.2d 344. The disjunctive in the foregoing indicates that *either* a lack of knowledge *or* the existence of duress will establish the payment as involuntary. *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill.App.3d 836, 858, 329 Ill.Dec. 553, 906 N.E.2d 751 (2009). A tax was paid under duress where "there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion." (Internal quotation marks omitted.) *Geary*, 129 Ill.2d at 393, 135 Ill.Dec. 848, 544 N.E.2d 344. "The issue of duress and compulsory payment generally is one of fact to be judged in light of all the circumstances surrounding a transaction." *Harris v. ChartOne*, 362 Ill.App.3d 878, 883, 299 Ill.Dec. 296, 841 N.E.2d 1028 (2005). "However, where the facts are not in dispute and only one valid inference concerning the existence of duress can be drawn from the facts, the issue can be decided as a matter of law, including on a motion to dismiss." *Id.*

[11] ¶ 34 There are no factual disputes pertaining to the existence of duress. Defendants submitted an affidavit from Flores describing plaintiff's payment of tax and interest on Parmar's estate. Plaintiff did not dispute Flores' averments, but claimed that duress was established by the Estate Tax Act's provision for penalties, interest, and personal liability. Under section 8(a) of the Estate Tax Act (35 ILCS 405/8(a) (West 2014)), an unreasonable failure to file a required tax return results in a monthly penalty of 5% of the tax to be reported, not to exceed 25%. Under section 8(b) (35 ILCS 405/8(b) (West 2014)), an unreasonable failure to pay the tax due results in a monthly penalty of 0.5% of the unpaid tax owed, not to exceed 25%. Section 9 (35 ILCS 405/9 (West 2014)) imposes interest at the rate of 9% per annum for the unpaid tax owed. Finally, section 10(c) (35 ILCS 405/10(c) (West 2014)) provides that the individual required to file the tax return, here plaintiff as executor of Parmar's estate, is personally liable for the tax to the extent of the transferred property.

¶ 35 We agree with plaintiff that the prospect of penalties, interest, and personal liability amounted to duress. Plaintiff's predicament was analogous to that of the plaintiffs in *Ball v. Village of Streamwood*, 281 Ill.App.3d 679, 216 Ill.Dec. 251, 665 N.E.2d 311 (1996), who brought a constitutional challenge to the defendant municipality's real estate transfer tax. The defendant raised the voluntary-payment doctrine as a defense, noting that the plaintiffs had already paid the tax on their real estate transfer. The trial court certified to the appellate court the question of whether the voluntary-payment doctrine applied under the facts. The appellate court held that the doctrine did not apply, because the defendant's municipal code "provided civil penalties and fines for failure to pay the tax." *Id.* at 688, 216 Ill.Dec. 251, 665 N.E.2d 311.

¶ 36 The court in *Ball* did not indicate the severity of the potential penalties and fines. Here, plaintiff reported the gross value of Parmar's estate at $5 million. Statutory penalties and interest computed on such an amount could be substantial (indeed, plaintiff was found to owe interest in the amount of $35,357, though penalties were waived). Plaintiff also faced the prospect of personal liability. We hold that ***1073 **560** plaintiff's payment of the estate tax was not voluntary.

¶ 37 Defendants, however, claim that it is significant that plaintiff paid the tax, penalties, and interest "without any communication from the State regarding [Parmar's] tax liability." Defendants do not elaborate. We see no indication in the Estate Tax Act that such "communication" is a prerequisite under the Estate Tax Act for penalties, interest, or personal liability.

¶ 38 Defendants further assert that "even if [plaintiff] had received demand letters from the State or threats of litigation asserting an incorrect tax liability, those would not have constituted legal 'duress' sufficient to warrant an exception to the voluntary payment doctrine." For this assertion defendants cite *Goldstein Oil Co. v. County of Cook*, 156 Ill.App.3d 180, 108 Ill.Dec. 842, 509 N.E.2d 538 (1987). In that case, the plaintiffs, partners in a gasoline supply company, sued to recoup gasoline taxes paid to Cook County. The plaintiffs named Cook County itself, as well as its auditor and its collector. The plaintiffs alleged that their company was not the party responsible for the tax. They claimed that they paid the tax because of the auditor's statements to the plaintiffs that, if the tax were not paid, the auditor would refer the matter to the State's Attorney for litigation and seek to shut down the plaintiffs' storage facility. The trial court dismissed the suit, finding that the voluntary-payment doctrine applied. The appellate court agreed. The court determined that the plaintiffs' allegations of duress were insufficient because (1) the threat of litigation was evidently made in good faith and (2) the threat to close down the storage facility was made 10 months before the plaintiffs paid the tax and the defendants took no action in the intervening time. *Id.* at 183-85, 108 Ill.Dec. 842, 509 N.E.2d 538.

¶ 39 The facts of *Goldstein* are not comparable to the facts here. There was no mention in *Goldstein* of any penalties, interest, or other such sanction that the plaintiffs faced for failing to pay the gasoline tax. In fact, *Goldstein* distinguished cases in which parties faced "immediate economic threat," such as severe monetary penalties, for failure to pay a tax or fee. *Id.* at 184, 108 Ill.Dec. 842, 509 N.E.2d 538 (citing *Edward P. Allison Co. v. Village of Dolton*, 24 Ill.2d 233, 236, 181 N.E.2d 151 (1962) (the plaintiff risked stoppage of its business and "severe penalties" if it failed to pay the defendant village an electrical contractor license fee)); see also *People ex rel. Carpentier v. Treloar Trucking Co.*, 13 Ill.2d 596, 599, 150 N.E.2d 624 (1958) ("[W]here money is paid under pressure of severe statutory penalties or disastrous effect

to business, it is held that the payment is involuntary and that the money may be recovered.").

¶ 40 The pleadings and undisputed facts establish that plaintiff paid the estate tax under duress and, hence, involuntarily. Accordingly, plaintiff was not required to seek recovery under the Protest Fund Act, and the voluntary-payment doctrine is not an alternative basis for affirming the dismissal of plaintiff's complaint.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we reverse the dismissal of plaintiff's complaint and remand for further proceedings.

¶ 43 Reversed and remanded.

Justices Zenoff and Schostok concurred in the judgment and opinion.

All Citations

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 5, 2017, I electronically filed the foregoing **Brief of Defendants-Appellants** with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and thus was served by transmitting a copy from my e-mail address to all primary and secondary e-mail addresses of record designated by that participant on December 5, 2017.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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