No. 127177

IN THE SUPREME COURT OF ILLINOIS

WALWORTH INVESTMENTS-LG, LLC,

Plaintiff-Appellee,

v.

MU SIGMA, INC., and DHIRAJ C. RAJARAM,

Defendants-Appellants.

On Appeal from the Appellate Court of Illinois, First Judicial District
Appellate Court No. 1-19-1937
There Heard on Appeal from the Circuit Court of Cook County
Illinois County Department, Law Division
Trial Court No. 2016-L-2470
Judges: Hon. Daniel J. Kubasiak; Hon. John C. Griffin

BRIEF OF AMICUS CURIAE OF NORTHWESTERN UNIVERSITY PRITZKER SCHOOL OF LAW BLUHM LEGAL CLINIC COMPLEX CIVIL LITIGATION AND INVESTOR PROTECTION CENTER AND UNIVERSITY OF PITTSBURGH SCHOOL OF LAW SECURITIES ARBITRATION CLINIC IN SUPPORT OF PLAINTIFF-APPELLEE WALWORTH INVESTMENTS-LG, LLC

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INTEREST OF *AMICUS CURIAE*

Amicus Curiae Northwestern University Pritzker School of Law Bluhm Legal Clinic Complex Civil Litigation and Investor Protection Center represents low-income investors in contested securities litigation, mediations, and arbitrations. These services are typically unavailable to this clientele privately, especially if the amount in controversy is not substantial as many plaintiffs' attorneys work on a contingency fee basis. Beyond the cases filed, the Center has worked with FINRA, the SEC, and state administrative bodies to best protect investors and educate other attorneys and the public alike.

The University of Pittsburgh School of Law Securities Arbitration Clinic similarly represents low-income investors in FINRA arbitrations. The Clinic also educates the public about investment fraud, including vulnerable groups like the elderly.

The legal clinics are interested in this case as it presents a unique opportunity for the Court to protect defrauded investors whose claims may otherwise be unjustly barred by ambiguous anti-reliance language in financial contracts. The law in this area is very underdeveloped; therefore, every court ruling can have a large impact on protecting investors against fraud. This brief outlines the case's fact-specific reasons for finding the anti-reliance provision invalid before discussing the more general policy reasons for upholding the Appellate Court's determination.

ARGUMENT

I. The Appellate Court correctly determined that the contract language was too ambiguous and one-sided to bar any legal claims.

Per Delaware law, anti-reliance provisions are only enforceable when they are "a clear and unambiguous contractual provision in which the plaintiffs forthrightly affirm that they are not relying upon any representation or statement of fact not contained within

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the [] Agreement." *Kronenberg v. Katz*, 872 A.2d 568, 591 (Del. Ch. 2004). Provisions that use inconclusive terms like "understandings" between parties are not binding. *Id.* Another sign of ambiguity is whether the provision is "reasonably or fairly susceptible to different interpretations." *Universal Am. Corp. v. Partners Healthcare Sols. Holdings, L.P.*, 176 F. Supp. 3d 387, 402 (D. Del. 2016) (internal citations omitted).

Section 6(g) of the stock repurchase agreement (SRA) uses the term "understanding" twice. Furthermore, as the Appellate Court determined, the contract is unclear as to which party was denying responsibility for what reliance. *Walworth Invs.-LG, LLC v. Mu Sigma, Inc.*, 2021 IL App (1st) 191937, ¶ 35 (Mar. 30, 2021). Given both the actual language of the contract and the judicial analysis of the provision shows that it is neither clear nor unambiguous, the provision cannot be held to bar Plaintiff-Appellee's claims. The Appellate Court also emphasized the fact that because the provision led to two judges determining two different opinions as to its validity further proves this ambiguity. *Id.* at ¶ 36.

The SRA's anti-reliance provision only provides that Defendants-Appellants Mu Sigma did not rely on extracontractual information, it does not attach Plaintiff-Appellee to that same statement. SRA section 3(e). Nowhere in the contract does Plaintiff-Appellee make a similar statement or bind itself to Defendant-Appellee's statement. Without mutual acknowledgement of non-reliance, it is invalid and unenforceable against Plaintiff-Appellee.

The Defendants-Appellants seek to bar fraud claims despite the fact that they made false claims about their financial health and growth, induced Plaintiff-Appellee to

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sell based on this erroneous information, never directly disclosed the truth to Plaintiff-Appellee, and made significant profits at Plaintiff-Appellee's expense. *See id.* at ¶ 8–11.

In general, the caselaw in this area is limited, but at least one other state has taken an investor-friendly position. In Minnesota, "an anti-reliance provision does not bar a finding of reliance as a matter of law." *King v. Skolness (In re King)*, 624 B.R. 259, 294–95 (Bankr. N.D. Ga. 2020). This is true whether the provision's language is general or specific. *Id.* at 295. This position gives fraud victims the most access to justice.

II. Allowing inconclusive and unequal contract language to dismiss valid claims would have disastrous consequences for victims of fraud.

Allowing vague contract provisions to bar access to courts would seriously burden victims of fraud, who would find themselves unable to bring a civil suit against their fiduciary. This is not only an abhorrent misconstruction of Delaware law, but also incorrect. Delaware law states that "even an explicit anti-reliance clause does not bar fraud claims." *Kronenberg,* 872 A.2d at 589. Therefore, even if the provision language was clear and unambiguous, it would be unenforceable due to fraud. Reversing the decision of the Appellate Court would allow fiduciaries to defraud their clients without any consequences and victims would find themselves dismissed from court regardless of the severity of the crimes or money lost. This must not come about as it would be a strong miscarriage of justice for a vulnerable population.

Protecting investors against anti-reliance provisions would also bring this case in line with Illinois statutory law. The Illinois Securities of Law of 1953 is a very investor-friendly statute and is meant to be "liberally construed to better protect the public not just from fraud or dishonesty, but also from the incompetence, ignorance and irresponsibility of persons engaging in the business of disposing of securities to the public." *Martin v.*

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Orvis Bros. & Co., 25 Ill. App. 3d 238, 245 (1974). Investors are protected whether they are deemed to be "sophisticated" or not. *Mark v. McDonnell & Co.*, 447 F.2d 847, 849 (7th Cir. 1971). Ruling in favor of investors would harmonize common law with statutory law. It would also ensure that the Illinois Securities Law of 1953 can continue to be construed liberally and help defrauded investors receive justice.

CONCLUSION

The Court should affirm the Appellate Court's denial of both summary judgment and dismissal as the reliance language in the contract was too ambiguous to release Defendant-Appellee of liability. Any finding to the contrary would close the courts to victims of fraud and bar them from recovering their money.

Respectfully submitted this 3rd day of May, 2022.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 1,000 words.

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct and that the undersigned electronically filed the foregoing with the Clerk of the Supreme Court. I further certify that on this the 3rd day of May, 2022, I served an electronic copy of the Motion for Leave to File Amicus Brief, Proposed Order, and Amicus Brief via email:

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