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Supreme Court Watch

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When Can a Plaintiff Reinstate Strict Liability Claims Against an "Innocent Seller"?

Cassidy v. China Vitamins, LLC, No. 122873, 1st Dist. No. 1-16-0933

The plaintiff (Plaintiff) was injured when a bulk container ripped and a container that was sitting on top of that bulk container fell on him. *Cassidy v. China Vitamins, LLC*, 2017 IL App (1st) 160933, ¶ 1. Plaintiff filed a product liability action against the manufacturer of the bulk container (Manufacturer) and the company that distributed and sold the product stored in the bulk container (Seller). *Cassidy*, 2017 IL App (1st) 160933, ¶¶ 1, 2, 7. The circuit court dismissed without prejudice the strict liability claims against Seller pursuant to section 2-621(b) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-621). *Id*. ¶ 13. The circuit court also entered a default judgment against Manufacturer. *Id*. Plaintiff attempted to discover assets against Manufacturer but all citations were quashed for lack of proper service against a foreign resident or dismissed because the third parties did not hold Manufacturer's assets. *Id*. ¶ 14. Plaintiff moved to reinstate Seller pursuant to section 2-621(b)(3) and (4) of the Code. *Id*. ¶ 15. The circuit court denied the motion and ruled that the order was final and appealable. *Id*. The Plaintiff appealed.

The Illinois Appellate Court First District reviewed the case *de novo* and reversed and remanded the circuit court's order denying reinstatement of the Seller. *Id*. ¶¶ 25, 41. The First District first addressed the application of the "seller's exception" to strict liability product liability actions. Under section 2-621(b) of the Code, nonmanufacturer defendants may be dismissed when the only claim against them is that they distributed and/or sold the allegedly defective product. *Id*. ¶ 19. The purpose of this statute is to prevent the nonmanufacturer from incurring litigation expenses and to defer liability to the manufacturer. *Id*. However, section 2-621(b) also states that the nonmanufacturer can be reinstated as a defendant if "the manufacturer is unable to satisfy any judgment as determined by the court." *Id*; 735 ILCS 5/2-621(b)(4).

The First District next discussed how to interpret the language in section 2-621(b)(4). The First District noted that, in *Chraca v. U.S. Battery Manufacturing Co.*, 2014 IL App (1st) 132325, the court entered a default judgment against a Chinese company and plaintiff sought to reinstate the distributor under section 2-621(b)(4) because plaintiff could not collect on the default judgment. *Cassidy*, 2017 IL App (1st) 160933, ¶ 27. The court in *Chraca* held that plaintiff had not met its burden to show that the manufacturer is unable to satisfy any judgment because "[a]uthority indicates that in a section 2-621 proceeding, a company is deemed 'unable to satisfy any judgment' when it is bankrupt or nonexistent." *Chraca*, 2014 IL App (1st) 132325, ¶ 24. The First District disagreed with the analysis in *Chraca*. *Cassidy*, 2017 IL App (1st) 160933, ¶ 29.

The First District examined the three main cases that *Chraca* relied on—*Harleysville Lake States Insurance Co. v. Hilton Trading Corp.*, 2013 WL 3864244 (N.D. Ill. July 23, 2013), *Finke v. Hunter's View, Ltd.*, 596 F. Supp. 2d 1254 (D. Minn. 2009), and *Malone v. Schapun, Inc.*, 965 S.W.2d 177 (Mo. Ct. App. 1997)—and found that those cases did not hold that "unable to satisfy any judgment" must mean that the manufacturer was bankrupt or nonexistent. *Cassidy*, 2017

IL App (1st) 160933, ¶ 30. Rather, the First District stated that *Harleysville*, *Finke*, and *Malone* "actually considered the effect a manufacturer's judgment-proof status would have on the plaintiff's total recovery." *Id*. Moreover, the First District noted that section 2-621(b)(3) already allows for reinstatement if the manufacturer no longer exists. *Id*. Therefore, part of section 2-621(b)(3) would be redundant if section 2-621(b)(4) only applied if the manufacturer were bankrupt or nonexistent. *Id*.

The First District then explored the plain and ordinary meaning of the words "unable to satisfy any judgment" in section 2-621(b)(4) by examining how they are defined in a dictionary. *Id*. ¶¶ 30-34. The First District further noted that the phrase and legal term of art "unable to satisfy any judgment" is synonymous with "judgment-proof" and "execution-proof." *Id*. ¶ 33. The First District found that the court in *Chraca* and the circuit court improperly focused on the word "unable" when those courts found that section 2-621(b)(4) did not apply if the manufacturer is only unwilling to pay the judgment. *Id*. According to the First District, the focus should be on the fact that the phrase "unable to satisfy any judgment" means "judgment-proof." *Id*. ¶ 34. Therefore, the First District held that "in order to reinstate a previously dismissed nonmanufacturer defendant, the plaintiff, in addition to showing that the manufacturer is insolvent or bankrupt, may also show that the manufacturer has no property or does not own enough property within the court's jurisdiction to satisfy the judgment." *Id*.

The First District went on to note that it would arrive at the same conclusion even if the words in section 2-621(b)(4) were ambiguous because the purpose of the statute is "to ensure that the burden of loss due to defective or dangerous products is not borne by the consumer but instead remains on the manufacturer, distributor, and retail defendants who placed the product in the stream of commerce. *Id*. ¶ 35. The First District found no evidence to suggest that the legislature intended injured consumers to spend resources chasing after foreign manufacturers while distributors and sellers, who profited from the defective product, were dismissed from the case. *Id*.

The First District next discussed what is needed to show that a manufacturer is judgment proof. The First District noted that Plaintiff made multiple efforts to discover assets to satisfy any portion of the default judgment, including hiring a company to identify assets, entering citations to discover assets, and opposing motions to quash. *Id*. ¶ 37. Moreover, the First District noted that Plaintiff is not required to exhaust all means of collection before the court may reinstate a nonmanufacturer defendant. *Id*. ¶ 38. Because it determined that the circuit court was in the best position to first address whether a plaintiff has expended sufficient effort to warrant reinstatement of a nonmanufacturer, the First District reversed the circuit court's order denying Plaintiff's motion to reinstate the action against Seller and remanded the case to the circuit court to determine whether Manufacturer is unable to satisfy any judgment pursuant to section 2-621(b)(4). *Id*. ¶¶ 38, 41.

Justice Rochford dissented from the majority's decision to remand to the circuit court for determination of whether Plaintiff has satisfied his burden to show that Manufacturer is judgment-proof. *Id*. ¶ 44. Justice Rochford noted that the majority stated Plaintiff may establish that Manufacturer is judgment-proof by presenting evidence of Plaintiff's unsuccessful efforts to collect on the judgment. *Id*. ¶ 47. According to Justice Rochford, the focus should be on Manufacture's ability to satisfy the judgment rather than Plaintiff's ability to enforce the judgment. *Id*. ¶ 48. This comports with the plain language of section 2-621(b)(4), which allows reinstatement if "the manufacturer is unable to satisfy the judgment." *Id*. ¶ 49. Justice Rochford also noted that despite the majority's disagreement with *Chraca*, the First District's decision in *Chraca* was correct insofar as it held that the statute requires the court to focus on the defendant's inability to satisfy a judgment rather than a plaintiff's inability to enforce a judgment. *Id*. ¶ 55.

Justice Rochford then disagreed with the majority's conclusion that the phrase "unable to satisfy any judgment" was a term of art meaning "judgment-proof." *Id*. ¶ 56. Justice Rochford stated that phrase could not have a settled legal meaning because the *Chraca* court reached a different interpretation of the phrase and the majority arrived at its definition by combining and extrapolating from numerous dictionary definitions. *Id*.

Justice Rochford further noted that the legislature could have included an avenue for reinstatement if the plaintiff could not enforce judgment against a manufacture. *Id*. ¶ 58. The Act was patterned after the Model Uniform Product Liability Act, which does in fact allow for reinstatement if "[t]he court determines that it is highly probable that a claimant would be unable to enforce a judgment." *Id*. ¶ 59; 44 Fed. Reg. 62714, at 62726 (1979). Justice Rochford stated that because section 2-621(b)(4) does not include this language, the legislature intended that the focus be on inability to satisfy as opposed to inability to enforce. *Id*. ¶ 59.

Finally, Justice Rochford noted that Illinois does recognize foreign judgments and provides a mechanism to enforce such foreign judgments. *Id*. ¶ 60. Therefore, the reinstatement should not hinge on whether a manufacturer has no assets or insufficient assets within the court's jurisdiction. *Id*.

The Seller first argues that the issue in this case is identical to the issue in *Chraca* and the First District erred when it refused to follow *Chraca*. Seller explains that, in *Chraca*, the plaintiff injured his shoulder when the strap he used to carry a golf cart battery gave way. *Chraca*, 2014 IL App (1st) 132325, ¶ 2. The plaintiff sued the domestic battery company and Chinese manufacturer and a default judgment was entered against the manufacturer. *Id*. ¶ 9. The plaintiff moved to reinstate the distributor because he would be unable to collect against the manufacture. *Id*. ¶¶ 10-11. The trial court denied the motion to reinstate and plaintiff appealed. *Id*. ¶¶ 15-19.

Seller explains that the appellate court in *Chraca* held that plaintiff failed to show that the manufacture was "unable to satisfy any judgment" and cited with approval prior decisions holding that section 2-621(b)(4) applies when a manufacturer is bankrupt or nonexistent. *Id*. ¶¶ 24. The *Chraca* court also noted that the plaintiff presented no information about the manufacturer's financial viability, the record suggested that it was an ongoing business, and the fact that a Chinese court would not enforce an American state court order did not indicate that the manufacturer was bankrupt or no longer operating. *Id*. ¶ 25.

Seller argues that, as in *Chraca*, Plaintiff presented no evidence that Manufacturer is bankrupt and records show that it is still an ongoing business. Moreover, Plaintiff acknowledges that Manufacturer could voluntarily pay the damages. Therefore, Seller argues, as in *Chraca*, Plaintiff did not meet his burden of showing that Manufacturer is bankrupt and therefore unable to satisfy judgment.

Seller next takes issue with the First District's conclusion that part of section 2-621(b)(3) would be redundant if section 2-621(b)(4) only applied if the manufacturer were bankrupt or nonexistent. *Cassidy*, 2017 IL App (1st) 160933, ¶ 30. Seller argues that section 2-621(b)(3) applies when a manufacturer "no longer exists" or is not subject to jurisdiction at the time the action is brought, whereas section 2-621(b)(4) can apply to a manufacture that becomes insolvent or ceases to exist only after the action is brought.

Seller then reiterates many of the points in Justice Rochford's dissent. First, Seller argues that the majority's focus on Plaintiff's inability to enforce the judgment rather than the Manufacture's inability to satisfy the judgment is contrary to statutory interpretation. Second, Seller notes that, in light of laws that recognize and enforce foreign judgments, a defendant is not judgment proof simply because its assets are outside a court's jurisdiction. Third, Seller argues that the legislature could have, but did not, include "unable to enforce" language in section 2-621(b)(4). Finally, Seller argues

that the majority opinion is legislation by litigation because it rewrites section 2-621(b)(4) to include "unable to enforce" language.

Can Illinois Municipalities Bring Equitable Suits in Circuit Court to Redistribute Use Tax Revenue as Sales Tax Revenue?

City of Chicago v. City of Kankakee, No. 122878, 1st Dist. No. 1-15-3531

The plaintiffs, the City of Chicago and the Village of Skokie (Plaintiffs), brought unjust enrichment claims and sought the imposition of constructive trusts against two Illinois municipalities (Municipalities) and several brokers (Brokers). *City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 1. Plaintiffs sought leave to file an amended complaint to add similar claims against numerous internet retailers (Retailers). *City of Chicago*, 2017 IL App (1st) 153531, ¶ 12. Plaintiffs allege that Municipalities, with the aid of Brokers, entered into sales tax rebate agreements with Retailers whereby Municipalities would rebate a portion of their sales tax revenue to Retailers if Retailers would report to the State that sales, which took place outside of Illinois, took place within Municipalities. *Id*. ¶ 1. In Illinois, sales made by out-of-state retailers for use in Illinois are subject to a 6.25% "use tax." *Id*. ¶ 5. Five percent of that use tax is distributed to the state and 1.25% is deposited into a common fund, a portion of which is distributed to municipalities based on their proportionate share of the state population. *Id*. ¶ 6. Sales made by Illinois retailers are also subject to a 6.25% "sales tax." *Id*. ¶ 5. Like use tax, 5% of that sales tax is distributed to the state. *Id*. ¶ 6. However, the remaining 1.25% goes to the municipality and county where the sale occurred. *Id*. Therefore, Plaintiffs allege that Municipalities, Brokers, and Retailers were unjustly enriched by reporting taxable sales as subject to sales tax instead of use tax. *Id*. ¶ 31. The circuit court denied Plaintiffs' motion for leave to file their amended complaint and dismissed Plaintiffs' claims, finding that the Illinois Department of Revenue (IDOR) has exclusive jurisdiction over such claims. *Id*. ¶¶ 13-15. Plaintiffs appealed.

The Illinois Appellate Court First District first examined whether IDOR has exclusive subject-matter jurisdiction over Plaintiffs claims. *Id*. ¶¶ 21-22. Because the scope of a circuit court's jurisdiction and questions of statutory interpretation are questions of law, the First District reviewed this issue *de novo*. *Id*. The First District noted that Municipalities and Brokers relied on the Illinois Supreme Court's decision in *J&J Ventures* to argue that IDOR has exclusive jurisdiction over the issues in this case. *Id*. ¶ 23. In *J&J Ventures*, the First District explained, the Illinois Supreme Court addressed whether the Illinois Gaming Board had exclusive jurisdiction to determine the validity of agreements regarding placing video gaming terminals in licensed establishments. *Id*. ¶ 24 (*citing J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶ 25). Plaintiffs in *J&J Ventures* argued that there was no exclusive jurisdiction because the legislature did not explicitly divest the circuit court of jurisdiction. *Id*. (*citing J&J Ventures*, 2016 IL 119870, ¶ 24). The Supreme Court disagreed and found that Illinois Gaming Board had exclusive jurisdiction. *Id*. (*citing J&J Ventures*, 2016 IL 119870, ¶ 40). In its decision, the Supreme Court outlined how to evaluate whether an administrative agency has exclusive subject-matter jurisdiction. *City of Chicago*, 2017 IL App (1st) 153531, ¶ 24. A court must consider the statutory framework as a whole and may consider the reason for the law, the problems sought to be remediated, the purposes to be achieved, and the consequences of construing the statute in one way or another. *J&J Ventures*, 2016 IL

119870, ¶ 25. The Supreme Court found that the legislature enacted a comprehensive statutory scheme that created gambling rights with no counterpart in law or equity. *J&J Ventures*, 2016 IL 119870, ¶ 32. The Supreme Court also found that giving the circuit court jurisdiction would produce unusual results because the court could uphold but not enforce a placement agreement and the Gaming Board would be bound by a court order despite the fact that, under the statute, the Gaming Board had the authority to decide questions related to placement of video gaming terminals. *Id*. ¶ 40.

The First District then applied the guidance in *J&J Ventures* to the facts of the case. The First District first noted that the legislature vested in IDOR the authority to levy, assess, and collect sales and use tax. *City of Chicago*, 2017 IL App (1st) 153531, ¶ 25. Moreover, IDOR has the power to administer and enforce all the rights, powers, and duties related to sales and use tax. *Id*. (citing 20 ILCS 2505/2505-25, 20 ILCS 2505/2505-90). Additionally, IDOR has the power to make rules and regulations necessary to enforce sales and use tax and is responsible for distributing the sales and use tax revenue it collects. *Id*. ¶¶ 25, 28. (citing 20 ILCS 2505-2505-795). IDOR also has the authority to examine and correct tax returns, conduct investigations and hearings, and make corrections in records and disbursements. *Id*. ¶ 29. In light of these facts, the First District found that the legislature clearly "enacted a comprehensive statutory scheme that vests IDOR with exclusive jurisdiction to levy, collect, and distribute sales tax and use tax revenue." *Id*. ¶ 30.

Despite this comprehensive statutory scheme, the First District found "Plaintiffs' equitable claims are not within the contemplation of the statutory scheme devised by the legislature and are, therefore, neither preempted by nor overlap with IDOR's exclusive authority to assess, collect, remit, or distribute sales tax or use tax." *Id*. ¶ 31. The First District noted that Plaintiffs were not seeking to re-tax the Municipalities or redistribute the previously distributed tax revenue. *Id*. Rather, Plaintiffs sought from Municipalities an amount of money equal to the use tax revenue that Plaintiffs would have received if the sales had been properly reported. *Id*. Therefore, according to the First District, Plaintiffs were not attempting to usurp IDOR's authority or requesting that IDOR make adjustments to future tax liabilities. *Id*.

The First District next turned to Municipalities and Broker's argument that allowing Plaintiffs' case to proceed would lead to "tax vigilantism." *Id*. ¶ 33. The First District did not find this argument persuasive because Plaintiffs were merely seeking to recover an amount equal to what they should have been paid if the sales were properly reported. *Id*. The First District wrote, "[i]f anything, finding circuit court jurisdiction over unjust enrichment claims similar to those at issue here allows an adversely affected municipality an equitable remedy to recoup monies that were wrongly diverted through a deliberate scheme to missource retail sales and possible serve as a deterrent going forward." *Id*.

The First District also rejected Municipalities and Broker's argument that computing damages would require special IDOR expertise that is unavailable to the circuit court. *Id*. ¶ 34. The First District noted that damages would require "mere arithmetic calculations derived from competent foundational testimony." *Id*.

After finding that the circuit court had subject-matter jurisdiction, the First District reviewed whether the circuit court erred by dismissing the unjust enrichment claims (*de novo* review) and whether the circuit court abused its discretion by denying leave to file an amended complaint (abuse of discretion review). *Id*. ¶ 35. The First District noted that a claim for unjust enrichment is recognized where the defendant procured a benefit from a third party thought some type of wrongful conduct. *Id*. ¶ 36. The First District found that the complaint stated a claim for unjust enrichment against Municipalities and Brokers and the amended complaint stated a claim for unjust enrichment against Retailers because Plaintiffs allege that these defendants received benefits from IDOR by wrongfully reporting the situs of retail sales. *Id*. ¶ 37 Therefore, the First District reversed the orders dismissing the complaint and denying the motion for leave to file an amended complaint and ordered the circuit court to permit Plaintiffs to file the unjust enrichment and constructive trust claims in the amended petition. *Id*. ¶ 44. Municipalities and Brokers appealed.

Municipalities and Brokers argue that the First District's decision improperly puts form above substance by identifying the relief Plaintiffs seek as disgorgement, which would fall under the circuit court's jurisdiction, instead of redistribution, which would fall under IDOR's exclusive jurisdiction. *See Healy v. Vaupel*, 133 Ill. 2d 295 (1990) (noting that subject-matter jurisdiction "depends not on the formal identification of the parties but rather on the issues involved and the relief sought"); *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶¶ 44, 50 (noting that although plaintiffs characterize their complaint as a suit for compensatory damages, it was in substance a suit for reparations and therefore came within the Commerce Commission's exclusive jurisdiction); *J&J Ventures*, 2016 IL 119870, ¶ 33 (holding that claims fell within the Gaming Board's jurisdiction not because of how the claims were labeled but because the resolution of the claims would require a determination of whether the contracts are valid use agreements, which falls within the exclusive province of the Board).

Here, even if Plaintiffs are seeking disgorgement, Municipalities and Brokers argue, the circuit court will have to determine the proper site of the relevant sales for tax purposes, conduct an audit, determine the amount of money that Plaintiffs were entitled to receive, and order Municipalities to remit tax revenues to Plaintiffs. These tasks, the Municipalities and Brokers argue, all fall under the IDOR's exclusive jurisdiction. Municipalities and Brokers further argue that the First District's opinion ensures that plaintiffs need only add unjust enrichment claims in order to plead around an agency's exclusive jurisdiction.

Municipalities and Brokers next argue that the First District's ruling contradicts the doctrine that statutory remedies are exclusive when paired with statutory rights. For example, courts have rejected attempts to use common-law remedies to enforce a person's statutory objection not to wrongfully cause another person's death or an insurer's statutory objection to act in good faith. Here, Municipalities and Brokers argue, Plaintiffs are entitled to receive use tax revenue because of Illinois' revenue statutes. Without these statutes, there would be no right to receive money and an unjust enrichment claim would fail. Moreover, under 65 ILCS 5/8-11-16, IDOR can adjust tax disbursements to municipalities to "offset any misallocation of previous disbursements." Therefore, Illinois tax statutes create both an entitlement to use tax revenue and an exclusive remedy to enforce that entitlement.

Finally, Municipalities and Brokers argue that the First District's decision contradicts the doctrine that home rule units may act only on matters of local concern. Under the Illinois Constitution, home rule units have authority over matters "pertaining to [their] government and affairs" and they lack authority to address problems more competently solved by the state. Ill. Const. Art. VII, § 6(a); *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 19. Here, collection and distribution of state sales and use taxes are matters of statewide concern. Because Plaintiffs seek to redistribute tax revenues already distributed to Municipalities, Plaintiffs overstep their home rule authority.

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