2018 IL 122265

IN THE

SUPREME COURT

OF

THE STATE OF ILLINOIS

(Docket No. 122265)

PAMINDER S. PARMAR, Appellee, v.
LISA MADIGAN, Attorney General, *et al.*, Appellants.

Opinion filed May 24, 2018.

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

Chief Justice Karmeier and Justices Freeman, Thomas, Kilbride, Garman, and Burke concurred in the judgment and opinion.

OPINION

Plaintiff, Paminder S. Parmar, individually and as executor of the estate of Surinder K. Parmar, filed a complaint in the circuit court of Du Page County against defendants, the Attorney General and the Treasurer of the State of Illinois, challenging the application and constitutionality of an amendment to the Illinois Estate and Generation-Skipping Transfer Tax Act (Estate Tax Act) (35 ILCS 405/1 *et seq.* (West 2014)) and seeking a refund of all moneys paid to the Treasurer pursuant to the Estate Tax Act. The circuit court dismissed the complaint for lack of jurisdiction,

pursuant to the State Lawsuit Immunity Act (745 ILCS 5/0.01 *et seq.* (West 2014)). The appellate court reversed and remanded for further proceedings. 2017 IL App (2d) 160286.

We now reverse the judgment of the appellate court and affirm the judgment of the circuit court.

BACKGROUND

On January 9, 2011, Dr. Surinder Parmar, a resident of Du Page County, died, leaving an estate valued at more than $5 million. Her son, plaintiff here, was appointed executor of the estate. At the time of Dr. Parmar's death, the estate was not subject to taxation under the Estate Tax Act. Two days after Dr. Parmar's death, however, the General Assembly adopted a bill that revived the tax for the estates of persons who, like Dr. Parmar, died after December 31, 2010. On January 13, 2011, the Governor signed the bill, and the new law went into effect immediately. See Pub. Act 96-1496 (eff. Jan. 13, 2011).

In September 2012, plaintiff paid $400,000 to the Illinois Treasurer toward the estate's tax liability. The following month, plaintiff filed the estate's Illinois estate tax return and paid an additional sum of almost $160,000 to the Treasurer for late filing and late payment penalties, as well as interest. In April 2013, plaintiff requested a waiver of penalties, which the Illinois Attorney General granted in September 2013.

In July 2015, after a downward adjustment in the estate's federal tax liability, plaintiff filed an amended Illinois estate tax return. The "Certificate of Discharge and Determination of Tax" issued by the Attorney General on July 24, 2015, states that the estate's tax liability, including interest and penalties, had been paid and that the certificate was evidence of the complete release of all estate property from lien imposed by the Estate Tax Act and the discharge from personal liability of the executor for the estate tax, penalties, and interest.

Shortly thereafter, plaintiff filed another amended return, based on his belief that the amendment to the Estate Tax Act did not apply to his mother's estate and no tax was due. The disposition of this amended return is not evident in the record, but on October 1, 2015, plaintiff filed a complaint challenging the retroactivity and constitutionality of the Estate Tax Act.[1]

Plaintiff claimed that retroactive application of the statutory amendment to the estates of persons who, like his mother, died after December 31, 2010, but before January 13, 2011 (the effective date of the amendment), was contrary to section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)) and would violate the due process and takings clauses of the Illinois and United States Constitutions, as well as the *ex post*

[1] In addition to the Attorney General and the Treasurer, plaintiff named as defendants Constance Beard, as Director of the Illinois Department of Revenue, and Bruce Rauner, as Governor. Plaintiff voluntarily dismissed Beard and Rauner, and they are not a part of this appeal.

facto clause of the Illinois Constitution. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, §§ 2, 15, 16. Plaintiff also claimed that the amendment was adopted in violation of the three readings clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)) and that the vote on the amendment was invalid because the General Assembly was given inaccurate information about the estate tax scheme. Plaintiff requested a declaration that the Estate Tax Act applies only to the estates of persons who died on or after the effective date of the amendment or that the Estate Tax Act is unconstitutional for the reasons identified in his complaint. Plaintiff expressly stated that he brought his declaratory judgment action to "recover his payments" made pursuant to the Estate Tax Act and requested a full refund of all moneys he paid to the Treasurer, along with interest and "loss of use." Finally, plaintiff sought certification of a class of all similarly situated persons damaged by application of the Estate Tax Act.

Defendants filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). Defendants first argued that the complaint should be dismissed under section 2-619(a)(1) of the Code (*id.* § 2-619(a)(1)) because the circuit court lacked jurisdiction. Defendants maintained that, because the complaint seeks a money judgment against the State, it is barred under sovereign immunity principles embodied in the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2014)) and the complaint must be filed in the

Illinois Court of Claims. Defendants also argued that the complaint should be dismissed under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2014)) because the voluntary payment doctrine bars recovery. Finally, defendants argued that certain counts of the complaint should be dismissed pursuant to section 2-615 of the Code (*id.* § 2-615) for failure to state a claim upon which relief may be granted.

In response, plaintiff argued that his suit was properly brought in the circuit court because section 15 of the Estate Tax Act (35 ILCS 405/15 (West 2014)) vests jurisdiction in the circuit court to hear all tax disputes arising under the Estate Tax Act. Plaintiff also argued that he was not seeking payment from the State because his claim is not against the General Revenue Fund. Rather, his claim is against the Estate Tax Refund Fund, a special fund created under section 13 of the Estate Tax Act (*id.* § 13(c)). Plaintiff further argued that his complaint was not barred by the voluntary payment doctrine because he made the tax payments under "implied duress" created by the threat of penalties imposed by the Estate Tax Act. Plaintiff also defended the sufficiency of his constitutional claims.

The circuit court agreed with defendants that it lacked jurisdiction and dismissed the complaint without prejudice to refile in the Illinois Court of Claims. The court expressly ruled that section 15 of the Estate Tax Act "is not an explicit waiver of sovereign immunity."

The appellate court reversed and remanded for further proceedings. 2017 IL App (2d) 160286, ¶ 42. Relying principally on *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, the appellate court held that the officer suit exception to sovereign immunity applied and jurisdiction in the circuit court was proper. 2017 IL App (2d) 160286, ¶ 27. The appellate court also held that plaintiff's claims were not barred by the voluntary payment doctrine. *Id.* ¶ 40. The court agreed with plaintiff that the prospect of penalties, interest, and personal liability under the Estate Tax Act amounted to duress and, therefore, plaintiff's payment of taxes was not voluntary. *Id.* ¶ 35. Finally, the appellate court held that, because plaintiff paid the taxes involuntarily, he was not required to seek recovery under the State Officers and Employees Money Disposition Act (Protest Moneys Act) (30 ILCS 230/1 *et seq.* (West 2014)). 2017 IL App (2d) 160286, ¶ 40. Because the appellate court concluded that the circuit court erred in dismissing plaintiff's complaint on grounds of sovereign immunity, the appellate court did not consider whether the legislature waived immunity in section 15 of the Estate Tax Act (35 ILCS 405/15 (West 2014)). 2017 IL App (2d) 160286, ¶ 29.

We allowed defendants' petition for leave to appeal (Ill. S. Ct. R. 315 (eff. Mar. 15, 2016)) and allowed the Board of Trustees of the University of Illinois to file an *amicus curiae* brief in support of defendants (Ill. S. Ct. R. 345 (eff. Sept. 20, 2010)).

ANALYSIS

Defendants urge this court to reverse the appellate court and affirm the circuit court's dismissal of plaintiff's complaint, arguing that the officer suit exception to sovereign immunity does not apply in this case. Defendants argue in the alternative that even if sovereign immunity does not apply in this case, dismissal of plaintiff's complaint was proper under the voluntary payment doctrine because the mere threat of statutory penalties for nonpayment of taxes does not constitute duress. Defendants further argue that plaintiff had a simple and complete statutory remedy under the Protest Moneys Act and plaintiff's failure to follow this statutory procedure bars his claim.

Plaintiff argues that the appellate court correctly concluded that this case presents a "textbook instance of the officer-suit exception" to sovereign immunity (2017 IL App (2d) 160286, ¶ 27) but that, even if the exception does not apply, the General Assembly waived sovereign immunity in section 15 of the Estate Tax Act (35 ILCS 405/15 (West 2014)). Plaintiff also argues that neither the Protest Moneys Act nor the voluntary payment doctrine bars his complaint where his payment of estate taxes was made under duress and without knowledge of the facts upon which to frame a protest.

Because questions related to the circuit court's subject-matter jurisdiction and the interpretation of a statute both present issues of law, our review proceeds *de novo. J&J Ventures Gaming, LLC v. Wild, Inc.*, 2016

IL 119870, ¶ 25; see also *Leetaru*, 2015 IL 117485, ¶ 41 (circuit court's grant of a motion to dismiss for lack of jurisdiction under section 2-619(a)(1) is reviewed *de novo*).

Sovereign Immunity and the Officer Suit Exception

Under the Illinois Constitution of 1870, the State of Illinois enjoyed immunity from suits of any kind. See Ill. Const. 1870, art. IV, § 26 ("The state of Illinois shall never be made defendant in any court of law or equity."); see also *Coleman v. East Joliet Fire Protection District*, 2016 IL 117952, ¶¶ 24-28 (discussing the origins and development of the sovereign immunity doctrine). With the adoption of the Illinois Constitution of 1970, however, sovereign immunity was abolished in this State "[e]xcept as the General Assembly may provide by law." Ill. Const. 1970, art. XIII, § 4. In accordance with this constitutional grant of authority, the General Assembly adopted the State Lawsuit Immunity Act, reinstituting the doctrine of sovereign immunity. See Pub. Act 77-1776 (eff. Jan. 1, 1972); *Leetaru*, 2015 IL 117485, ¶ 42. This statute provides:

> "Except as provided in the Illinois Public Labor Relations Act, the Court of Claims Act, the State Officials and Employees Ethics Act, and Section 1.5 of this Act, the State of Illinois shall not be made a defendant or party in any court." 745 ILCS 5/1 (West 2014).

The Court of Claims Act (705 ILCS 505/1 *et seq.* (West 2014)) creates a forum for actions against the

State. *Healy v. Vaupel*, 133 Ill. 2d 295, 307 (1990). With some limited exceptions, the Illinois Court of Claims "shall have exclusive jurisdiction to hear and determine * * * [a]ll claims against the State founded upon any law of the State of Illinois." 705 ILCS 505/8(a) (West 2014).

In the present case, plaintiff filed suit against Lisa Madigan, as Attorney General of the State of Illinois, and Michael Frerichs, as Treasurer of the State of Illinois. The complaint states that each defendant is sued in his or her "official capacity only." A suit against a State official in his or her official capacity is a suit against the official's office and is therefore no different than a suit against the State. *Magna Trust Co. v. Department of Transportation*, 234 Ill. App. 3d 1068, 1070 (1992) (citing *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989)); see also *Smith v. Jones*, 113 Ill. 2d 126, 131 (1986) ("'official acts of State officers are in effect acts of the State itself'" (quoting *Sass v. Kramer*, 72 Ill. 2d 485, 492 (1978))); *Schwing v. Miles*, 367 Ill. 436, 441 (1937) (suit against a governmental agency is a suit against the State). Thus, the bar of sovereign immunity would seemingly apply in this case.

This court, however, has long held that the determination of whether an action is one against the State depends upon the issues involved and the relief sought and not simply the formal identification of the parties. *Leetaru*, 2015 IL 117485, ¶¶ 44-45; *People v. Phillip Morris, Inc.*, 198 Ill. 2d 87, 97 (2001); *Smith*, 113 Ill. 2d at 131; *Sass*, 72 Ill. 2d at 490-91. Where, for example, a plaintiff alleges that the State officer's conduct violates

statutory or constitutional law or is in excess of his or her authority, such conduct is not regarded as the conduct of the State. The underlying principle is that conduct taken by a State officer without legal authority strips the officer of his or her official status. *Leetaru*, 2015 IL 117485, ¶¶ 45-46. Thus, a complaint seeking to prospectively enjoin such unlawful conduct may be brought in the circuit court without offending sovereign immunity principles. *Id.* ¶ 48; see also *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 395 (1984) (recognizing that if a plaintiff is not attempting to enforce a present claim, which has the potential to subject the State to liability, but instead "seeks to enjoin a State officer from taking future actions in excess of his delegated authority, then the immunity prohibition does not obtain"). This exception to sovereign immunity has been called the "prospective injunctive relief exception" (*Rockford Memorial Hospital v. Department of Human Rights*, 272 Ill. App. 3d 751, 755 (1995)), but it is most often referred to as the "officer suit exception" (*PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 260 (2005)).

Here, the appellate court, on the basis of our decision in *Leetaru*, held that plaintiff's suit against the Attorney General and the Treasurer fell within the officer suit exception and, therefore, the circuit court had jurisdiction over plaintiff's complaint. We agree with defendants that the appellate court misconstrued *Leetaru* and the officer suit exception does not apply in this case.

In *Leetaru*, the plaintiff sued the Board of Trustees of the University of Illinois and one of the university's associate vice chancellors seeking to enjoin them from proceeding with their investigation into alleged misconduct by the plaintiff with respect to his research as a graduate student. The plaintiff did not question the right of the defendants to investigate research misconduct. Rather, the plaintiff alleged that the defendants' conduct failed to comply with the university's rules and regulations governing discipline of students. We rejected the defendants' argument that, under principles of sovereign immunity, exclusive jurisdiction over the plaintiff's complaint lay in the Illinois Court of Claims. *Leetaru*, 2015 IL 114785, ¶ 49. We explained: "Because sovereign immunity affords no protection when agents of the State have acted in violation of statutory or constitutional law or in excess of their authority, which is precisely what [the plaintiff] has alleged, Illinois precedent compels the conclusion that he was entitled to proceed in circuit court." *Id.* ¶ 50. We did not end our analysis there. We noted that the plaintiff did "not seek redress for some past wrong." *Id.* ¶ 51. The plaintiff sought "only to prohibit future conduct (proceeding with the disciplinary process) undertaken by agents of the State in violation of statutory or constitutional law or in excess of their authority. Claims of this type are not claims against the State at all and do not threaten the State's sovereign immunity." *Id.*

In contrast to the facts in *Leetaru*, plaintiff here does not allege that defendants acted in excess of their authority. The Estate Tax Act, on its face, is applicable

to the estates of persons who, like Dr. Parmar, died after December 31, 2010. See 35 ILCS 405/2(b) (West 2014). And, as stated in the complaint, the Attorney General is responsible for administering and enforcing the Estate Tax Act, and the Treasurer is responsible for receiving and refunding moneys collected pursuant to the Estate Tax Act. See *id.* § 16(a) ("It is the duty of the Attorney General to exercise general supervision over the assessment and collection of the tax * * * ."); *id.* § 6(e)(3) (taxes "shall be paid directly to the State Treasurer"); *id.* § 13(c) ("Treasurer shall order payment of refunds resulting from overpayment of tax liability"). Plaintiff does not allege any conduct by defendants that was outside of or contrary to their authority under the Estate Tax Act.

Plaintiff does allege that defendants' conduct was unlawful because defendants acted pursuant to an unconstitutional statute. But unlike the plaintiff in *Leetaru* who sought to enjoin future conduct by the defendants that was contrary to law, plaintiff here seeks damages—a refund of all moneys paid under the Estate Tax Act, together with interest and loss of use—for a past wrong. *Leetaru* makes plain that a complaint seeking damages for a past wrong does not fall within the officer suit exception to sovereign immunity. *Leetaru*, 2015 IL 117485, ¶ 51.

The appellate court erred in holding that the officer suit exception to sovereign immunity applies in this case.

Jurisdiction and Venue Provisions in the Estate Tax Act

Plaintiff argues that his complaint may yet proceed in the circuit court because the General Assembly waived sovereign immunity in section 15 of the Estate Tax Act. Section 15 states, in relevant part:

> "(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.
>
> (1) 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." 35 ILCS 405/15 (West 2014).[2]

Plaintiff maintains that under the plain language of section 15, the circuit court possesses subject-matter jurisdiction over "all disputes" relating to a tax under the Estate Tax Act and, thus, the circuit court, and not the Illinois Court of Claims, has jurisdiction over his suit. Defendants counter that section 15 does not constitute a clear and unequivocal waiver of sovereign

[2] Subsection (b)(2) addresses venue for resident trusts, and subsection (b)(3) addresses venue relating to decedents who were not residents of Illinois at the time of death and nonresident trusts. 35 ILCS 405/15(b)(2), (3) (West 2014).

immunity and, therefore, does not aid plaintiff. We agree with defendants.

As already discussed, the General Assembly restored immunity to the State through the State Lawsuit Immunity Act. 745 ILCS 5/0.01 *et seq*. (West 2014). The State Lawsuit Immunity Act expressly states that except as provided in certain statutes identified therein—and the Estate Tax Act is not one of them—the "State of Illinois shall not be made a defendant or party in any court." *Id.* § 1. The General Assembly may, by statute, consent to liability of the State, but such consent must be clear and unequivocal. *In re Special Education of Walker*, 131 Ill. 2d 300, 303 (1989). The statute must explicitly indicate, in affirmative language, that the State waives sovereign immunity. *Id.* at 304. For example, the Illinois Educational Labor Relations Act, which is not one of the statutes referenced in the State Lawsuit Immunity Act, states in clear and unequivocal terms: "For purposes of this Act, the State of Illinois waives sovereign immunity." 115 ILCS 5/19 (West 2014).

In contrast, section 15 of the Estate Tax Act does not contain such a clear and unequivocal waiver of sovereign immunity. Although section 15 refers to "all disputes" relating to a tax arising under the Estate Tax Act, it does not reference the State or its immunity. Statutes that use only general terms without an expressed intent to subject the State to liability will not be construed to impair or negate the State's immunity from suit established in the State Lawsuit Immunity

Act. *City of Springfield v. Allphin*, 82 Ill. 2d 571, 578 (1980).

The absence of affirmative language in section 15 waiving the State's immunity from suit leads us to conclude that the General Assembly only intended to fix jurisdiction and venue for all disputes that do *not* implicate sovereign immunity. Although we need not, for purposes of this appeal, identify all of the causes of action that would fall into that category, we observe that a complaint that seeks to prospectively enjoin some conduct of the State defendants (as discussed above) is one such suit, as is a complaint for a writ of *mandamus*, which seeks to compel a public official to perform some purely ministerial, nondiscretionary act. *People ex rel. Berlin v. Bakalis*, 2018 IL 122435, ¶ 16. As will be discussed below, a complaint pursuant to the Protest Moneys Act (30 ILCS 230/1 *et seq.* (West 2014)) could also be filed in the circuit court. The jurisdiction and venue provisions of section 15 would further apply to enforcement actions filed by the Attorney General. See 35 ILCS 405/10(d) (West 2014) ("Attorney General shall have the right to sue for collection of the Illinois transfer tax"); *id.* § 16(a) (Attorney General "may institute and prosecute suits and proceedings as may be necessary and proper"); *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245 (where the Attorney General filed a complaint under the Estate Tax Act seeking additional tax, interest, and late filing penalties related to an adjustment in the estate's federal tax liability).

Limiting the jurisdiction and venue provision in section 15 of the Estate Tax Act to suits that do not

implicate sovereign immunity gives meaning to that provision, while also harmonizing it with the provisions of the State Lawsuit Immunity Act. See *People v. Rinehart*, 2012 IL 111719, ¶ 26 (statutes concerning the same subject must be considered together to produce a harmonious whole).

For these reasons, we reject plaintiff's argument that the General Assembly waived sovereign immunity in section 15 of the Estate Tax Act.

Estate Tax Refund Fund

Plaintiff maintains that even if section 15 of the Estate Tax Act does not constitute a waiver of sovereign immunity, a judgment in his favor would not result in a judgment against the State and, therefore, his complaint does not implicate sovereign immunity. Plaintiff posits that sovereign immunity is intended to prevent a judgment payable from public funds, *i.e.*, the State's General Revenue Fund, but a judgment in his favor would be payable from a special refund fund created under section 13(c) of the Estate Tax Act (35 ILCS 405/13(c) (West 2014)).

Defendants do not dispute that if a judgment could be satisfied by moneys in the refund fund, then plaintiff's complaint would not implicate principles of sovereign immunity. Rather, defendants contend that plaintiff's argument ignores other provisions of the Estate Tax Act governing the payment of refunds and that plaintiff does not fall within the class of taxpayers entitled to a refund pursuant to section 13(c).

Section 13(c) requires the Treasurer to deposit into the General Revenue Fund 94% of the taxes, interest, and penalties collected under the Estate Tax Act and to deposit the remaining 6% into the Estate Tax Refund Fund, a special fund created in the State treasury. *Id.* Section 13(c) further provides:

> "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, except that, whenever the State Treasurer determines that any such moneys in the Fund exceed the amount required for the purpose of paying refunds resulting from overpayment of tax liability under this Act, the State Treasurer may transfer any such excess amounts from the Estate Tax Refund Fund to the General Revenue Fund.
>
> The Treasurer shall order payment of refunds resulting from overpayment of tax liability under this Act from the Estate Tax Refund Fund only to the extent that amounts have been deposited and retained in the Fund.
>
> This amendatory Act of the 97th General Assembly shall constitute an irrevocable and continuing appropriation from the Estate Tax Refund Fund for the purpose of paying refunds upon the order of the Treasurer in accordance with the provisions of this Act * * * ." *Id.*

Section 13(c) makes plain that moneys from the Estate Tax Refund Fund are paid on the order of the Treasurer for the exclusive purpose of paying "refunds"

as provided in the Estate Tax Act. The subject of refunds, in turn, is addressed in section 7(b):

> "If the state tax credit[3] is reduced after the filing of the Illinois transfer tax return, the person who paid the Illinois transfer tax * * * shall file an amended Illinois transfer tax return and shall be entitled to a refund of tax or interest paid on the Illinois transfer tax.[4] No interest shall be paid on any amount refunded." *Id.* § 7(b).

Section 14 of the Estate Tax Act also addresses "claims for refund," providing that:

> "In case it appears that the amount paid with respect to any taxable transfer is more than the amount due under this Act, then the State Treasurer shall refund the excess to the person entitled to the refund, provided that no amount shall be refunded unless application for the refund is filed with the State Treasurer no later than one year after the last date allowable under the Internal Revenue Code for filing a claim for refund of any part of the related federal transfer tax or, if later,

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[3] For persons like Dr. Parmar, who died after December 31, 2010, "state tax credit" means "an amount equal to the full credit calculable under Section 2011 or 2604 of the Internal Revenue Code as the credit would have been computed and allowed under the Internal Revenue Code as in effect on December 31, 2001, without the reduction in the State Death Tax Credit as provided in Section 2011(b)(2) or the termination of the State Death Tax Credit as provided in Section 2011(f) as enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 but recognizing the exclusion amount of only (i) $2,000,000 for persons dying prior to January 1, 2014 * * * ." 35 ILCS 405/2(b) (West 2014).

[4] The "Illinois estate tax" is "the tax due to this State with respect to a taxable transfer." 35 ILCS 405/2 (West 2014).

> within one year after the date of final determination of the related federal transfer tax." *Id.* § 14.

The foregoing provisions not only set out the procedures that must be followed for obtaining a refund but also limit the circumstances under which an application for refund with the Treasurer can be made. Plaintiff's claim for refund, filed in the circuit court, does not fit within this statutory framework.

Plaintiff's claim is not predicated on a reduction of the "state tax credit," as provided in section 7(b) of the Estate Tax Act. Nor is plaintiff's claim based on an overpayment of taxes with respect to a "taxable transfer," as provided in section 14. Indeed, plaintiff's claim is predicated on the notion that no taxable transfer occurred. According to plaintiff, the statute under which he paid the taxes should not apply to his mother's estate, and he wants the Treasurer to return all the moneys he paid, with interest. In other words, this is not a case where a downward adjustment to the estate's tax liability has occurred, requiring the filing of an amended return under section 7(b), and the subsequent filing of an application for refund with the Treasurer, pursuant to section 14. Thus, plaintiff's claim does not fall within the limited refund provisions of the Estate Tax Act. Accordingly, the moneys in the Estate Tax Refund Fund are not available to satisfy any money judgment in this case.

We note that plaintiff conceded, at oral argument, that satisfaction of his claim for refund is not limited to the 6% of tax receipts that have been "deposited and

retained in the [Estate Tax Refund] Fund," as section 13(c) provides. *Id.* § 13(c). Plaintiff seeks a full refund of all the moneys he paid to the Treasurer and indicated that he would look to another source, the General Revenue Fund, to satisfy any shortfall in the Estate Tax Refund Fund. Additionally, plaintiff expressly requested in his complaint interest and loss of use on the moneys he paid to the Treasurer. The Estate Tax Act, however, makes no provision for payment of "loss of use" on moneys refunded, and section 7 expressly prohibits the payment of interest on any amount refunded (*id.* § 7(b)).

The damages that plaintiff seeks go beyond the exclusive purpose and limits of the Estate Tax Refund Fund and potentially subject the State to liability. Accordingly, we reject plaintiff's argument that his complaint does not implicate principles of sovereign immunity.

Protest Moneys Act

Plaintiff also argues that he has a constitutional right, pursuant to the due process clause of the Illinois Constitution, to have his claims considered by the circuit court. Plaintiff, however, cites no case law or other authority for the proposition that due process requires that his complaint proceed in the circuit court notwithstanding the bar of sovereign immunity. Plaintiff's lack of authority aside, we note our agreement with defendants that plaintiff could have litigated his claims in the circuit court had he followed the procedures for

paying taxes under protest pursuant to the Protest Moneys Act (30 ILCS 230/1 *et seq.* (West 2014)).

The Protest Moneys Act requires various State officers, who are authorized to receive moneys for and on behalf of the State, to keep detailed books and records of all such moneys received and, unless otherwise provided by law, to deposit such moneys into the State treasury. *Id.* §§ 1, 2(a). Relevant here, the statute makes express provision for the "[p]ayment of money under protest." *Id.* § 2a.1. Where money is received under protest, the officer receiving the money must notify the Treasurer, who then places the money in a special fund known as the "protest fund." *Id.* § 2a. The person who has paid the money under protest has 30 days in which to obtain a temporary restraining order or a preliminary injunction restraining the transfer of the money into the State treasury or other fund into which the money would have been transferred absent the protest. If the restraining order issues, the money is held in the protest fund until the final order or judgment of the court. *Id.* If the taxpayer does not prevail, the money held in the protest fund becomes the property of the State. *People v. Roth, Inc.*, 412 Ill. 446, 451 (1952). The Protest Moneys Act "affords a complete and adequate remedy in a court of equity where all questions can be fully and speedily determined." *Montgomery Ward & Co. v. Stratton*, 342 Ill. 472, 477 (1930). Although a complaint filed in accordance with the Protest Moneys Act would name State officers and or agencies as defendants, the statutory remedy—determination of questions related to the "proper disposition

of the moneys paid under protest" (30 ILCS 230/2a (West 2014))—would not constitute a claim against the State and would operate outside of the bar of sovereign immunity.

This statutory procedure has been utilized to challenge the retroactive application and constitutionality of an amendment to the Estate Tax Act (*McGinley v. Madigan*, 366 Ill. App. 3d 974 (2006)) and to challenge the construction of an amendment to the Estate Tax Act (*Brooker v. Madigan*, 388 Ill. App. 3d 410 (2009)). Plaintiff could have availed himself of this statutory procedure and pursued his constitutional claims in the circuit court but failed to do so. Plaintiff cannot now complain that due process requires that his complaint proceed in the circuit court.

Plaintiff makes the related argument that the Illinois Court of Claims does not possess exclusive jurisdiction under the Court of Claims Act to rule on the constitutionality of a statute and jurisdiction must lie in the circuit court. Plaintiff's argument appears to be that unless his complaint is allowed to proceed in the circuit court, he will be without a remedy.

The Illinois Constitution provides that "[e]very person shall find a certain remedy in the laws for all injuries and wrongs." Ill. Const. 1970, art. I, § 12. This provision, however, expresses an aspirational goal. It "does not mandate a certain remedy be provided in any specific form." *Schoeberlein v. Purdue University*, 129 Ill. 2d 372, 379 (1989). Limiting plaintiff's available

remedies does not run afoul of this constitutional provision. *Id.*

For all of these reasons, we reject plaintiff's argument that his complaint must be allowed to proceed in the circuit court.

Voluntary Payment Doctrine

As a final matter, we turn our focus to the voluntary payment doctrine. The appellate court, after holding that plaintiff's suit fell within the officer suit exception to sovereign immunity, rejected defendants' alternative argument that dismissal of plaintiff's complaint was proper pursuant to the voluntary payment doctrine. 2017 IL App (2d) 160286, ¶¶ 32-40. Under this common law doctrine, "a taxpayer may not recover taxes voluntarily paid, even if the taxing body assessed or imposed the taxes illegally" unless "such recovery is authorized by statute." *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill. 2d 389, 393 (1989). Taxes are not voluntarily paid where (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 v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 31 (2005) (discussing *Geary*).

With respect to the concept of "duress," this court has explained that:

> "Illinois law does not require a showing that the taxpayer was actually threatened by anyone. Implied duress will suffice. *Geary*, 129 Ill. 2d at

> 402-03. Such duress exists where the taxpayer's refusal to pay the tax would result in loss of reasonable access to a good or service considered essential. *Geary*, 129 Ill. 2d at 396-400. Goods or services deemed to be necessities have included telephone and electrical service * * * ." *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23-24 (2004).

The appellate court in the instant case took an expansive view of duress, agreeing with plaintiff that the prospect of penalties, interest, and personal liability under the Estate Tax Act amounted to duress, thus making plaintiff's payment of taxes involuntary. 2017 IL App (2d) 160286, ¶ 35. Defendants argue that the appellate court's view of duress is contrary to case law from this court and, if the voluntary payment doctrine can be avoided by pointing to a subjective fear of the mere possibility of incurring penalties and interest, then the doctrine is eroded to the point of irrelevance.

Resolution of any tension between the appellate court's view of duress and our case law, however, must wait for another day. "It is axiomatic that this court will not consider issues where they are not essential to the disposition of the cause or where the result will not be affected regardless of how the issues are decided." *Leetaru*, 2015 IL 117485, ¶ 56. Even if we concluded, as the appellate court did, that plaintiff paid the taxes involuntarily, such conclusion would not allow plaintiff to avoid the jurisdictional bar of sovereign immunity. In other words, where sovereign immunity applies, as it does here, the manner in which plaintiff paid the taxes is irrelevant.

CONCLUSION

For the reasons set forth above, we reverse the judgment of the appellate court and affirm the judgment of the circuit court dismissing plaintiff's complaint for lack of jurisdiction.

Appellate court judgment reversed.

Circuit court judgment affirmed.

Illinois Official Reports

Appellate Court

***Parmar v. Madigan*, 2017 IL App (2d) 160286**

Appellate Court Caption	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.
District & No.	Second District Docket No. 2-16-0286
Filed	April 13, 2017
Decision Under Review	Appeal from the Circuit Court of Du Page County, No. 15-MR-1412; the Hon. Bonnie M. Wheaton, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	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.

Panel

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

Justices Zenoff and Schostok concurred in the judgment and opinion.

OPINION

Plaintiff, Paminder S. Parmar, appeals the dismissal of his lawsuit seeking a declaratory judgment concerning an 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.

I. BACKGROUND

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, Palmar'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.

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 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 laws of the State of Illinois which includes [*sic*] the [Estate Tax Act]." Plaintiff later voluntarily dismissed Beard and Rauner from the lawsuit.

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. Coast. 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.

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).

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

Plaintiff alleged that he incurred "penalties and interest" on the tax he purported owed on Parmar 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.

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.

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 to gross value of Parmar's estate at $5 million.

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.

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 an determine all disputes in relation to a tax arising under [the] Act." 35 ILCS 405/15(a) (West 2014).

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.

Plaintiff filed this timely appeal.

II. ANALYSIS

A. General Principles

Plaintiff's complaint was dismissed pursuant to section 2-619 of the Code. A motion to dismiss under section 2-619 "admits he 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. 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 (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 references that may reasonably be drawn in the plaintiff's favor. *Sandholm*, 2012 IL 111443, ¶ 55. The question on appeal is "'whether the existence of a genuine issue of material facts 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 (1993)). Our review *is de novo. Id.*

B. Sovereign Immunity

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 on 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).

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 (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 officer or agency. See *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485, ¶ 43 (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 agency of the State as the nominal party defendant." *Smith v. Jones*, 113 Ill. 2d 126, 131 (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 *PHL, Inc. v. Pullman Bank & Trust Co.*, 216 Ill. 2d 250, 261 (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.

The supreme court's most recent exposition of the officer-suit exception was *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. [Citations.] 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.* [Citations.]

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.]" (Emphasis added and internal quotation marks omitted.) *Leetaru*, 2015 IL 117485, ¶¶ 44-47.

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.

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.

In *CGE Ford Heights, L.L.C. v. Miller*, 306 Ill. App. 3d 431 (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.

Two cases finding the officer-suit exception not applicable are *Healy v. Vaupel*, 133 Ill. 2d 295 (1990), and *Smith*, 113 Ill. 2d 126. 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.

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." *Smith*, 113 Ill. 2d at 132. Accordingly, sovereign immunity applied. *Id.*

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.

Defendants point to the State Officers and Employees Money Disposition Act (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

(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).

According to defendants, section 15(a) of the Estate Tax Law "makes no affirmative waiver of 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.

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

C. Voluntary-Payment Doctrine

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.

"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 (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 (the plaintiffs' challenge to a municipal retail tax on female hygiene products did not need to proceed under the Protest Fund Act because the plaintiffs' allegations establish that they paid the taxes 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. 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 (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. "The issue of duress and compulsory payment generally is one fact to be judged in light of all circumstances surrounding a transaction." *Harris v. ChartOne*, 362 Ill. App. 3d 878, 883 (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 issues can be decided as a matter of law, including on a motion to dismiss." *Id*.

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 of Parmar's estate. Plaintiff did not dispute Flores's averments, but claimed that duress was established by the Estate Tax Act's provision for penalties, interest, and person 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.

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 (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 "provide civil penalties and fines for failure to pay the tax." *Id*. at 688.

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 of $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 plaintiff's payment of the estate tax was not voluntary.

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.

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 (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.

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 (citing *Edward P. Allison Co. v. Village of Dolton*, 24 Ill. 2d 233, 236 (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 (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.")

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.

III. CONCLUSION

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

Reversed and remanded.

UNITED STATES OF AMERICA

STATE OF ILLINOIS COUNTY OF DU PAGE

IN THE CIRCUIT OF THE EIGHTEENTH JUDICIAL CIRCUIT

Paminder S. Parmar vs. Lisa Madigan, et al.	2015 MR 1412 **CASE NUMBER**

ORDER

(Filed Jan. 28, 2016)

This cause coming before the Court; the Court being dully 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 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. BMW

ENTER:

/s/ Bonnie M. Wheaton
Judge

Date: 1/28/16

Name: Lisa Madigan ☐ PRO SE
DuPage Attorney Number: 99000
Attorney for: State Defendants
Address: 100 W. Randolph St. B-205
City/State/Zip: Chicago, IL 60601
Telephone: (312) 814-6138
(Frances J. Smith, AAG)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THE CASE

Sec. 1. Fourteenth Amendment to the U.S. Constitution

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

35 ILCS 405/15

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.

(1) 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.

(2) Venue for disputes involving Illinois generation-skipping tax for a resident trust shall lie in the circuit court for the county in which a person required to file the return is resident or, if none, in either Sangamon County or Cook County.

(3) Venue for disputes involving Illinois estate tax of a decedent who was not a resident of Illinois at the time of death or for disputes involving Illinois generation-skipping tax of a non-resident trust shall lie in the circuit court for any Illinois county in which transferred property is situated.

30 ILCS 230/2a

Sec. 2a. Every officer, board, commission, commissioner, department, institute, arm, or agency to whom or to which this Act applies is to notify the State Treasurer as to money paid to him, her, or it under protest as provided in Section 2a.1, and the Treasurer is to place the money in a special fund to be known as the protest fund. At the expiration of 30 days from the date of payment, the money is to be transferred from the protest fund to the appropriate fund in which it would have been placed had there been payment without protest unless the party making that payment under protest has filed a complaint and secured within that 30 days a temporary restraining order or a preliminary injunction, restraining the making of that transfer and unless, in addition, within that 30 days, a copy of the temporary restraining order or preliminary injunction has been served upon the State Treasurer and also

upon the officer, board, commission, commissioner, department, institute, arm, or agency to whom or to which the payment under protest was made, in which case the payment and such other payments as are subsequently made under notice of protest, as provided in Section 2a.1, by the same person, the transfer of which payments is restrained by such temporary restraining order or preliminary injunction, are to be held in the protest fund until the final order or judgment of the court. The judicial remedy herein provided, however, relates only to questions which must be decided by the court in determining the proper disposition of the moneys paid under protest. 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 from the date of deposit into the protest fund to the date of disbursement from the protest fund.

* * *

It is unlawful for the Clerk of a court, a bank or any person other than the State Treasurer to be appointed as trustee with respect to any purported payment under protest, or otherwise to be authorized by a court to hold any purported payment under protest, during the pendency of the litigation involving such purported payment under protest, it being the expressed intention of the General Assembly that no one is to act as custodian of any such purported payment under protest except the State Treasurer.

No payment under protest within the meaning of this Act has been made unless paid to an officer, board, commission, commissioner, department, institute, arm or agency brought within this Act by Section 1 an unless made in the form specified by Section 2a.1. No payment into court or to a circuit clerk or other court-appointed trustee is a payment under protest within the meaning of this Act.