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NATURE OF THE CASE

This case arises out of the trial court's dismissal of Plaintiff, Paminder S. Parmar, individually and in his capacity as executor of his mother's estate's declaratory judgment action against the Defendants, the Illinois Treasurer and the Illinois Attorney General with respect to the constitutionality of the application of the Illinois' Estate and Generation-Skipping Transfer Tax Act, 35 ILCS 405/1 *et seq.* (2011) ("Estate Tax Act") and corresponding imposition of estate tax liability arising therefrom on Parmar's estate. The trial court dismissed the suit based on its perceived lack of subject matter jurisdiction due to state sovereign immunity; finding that the statutory grant of jurisdiction to the circuit court under Section 15(a) of the Estate Tax Act did operate as a waiver of state sovereign immunity protections and that the Court of Claims possessed jurisdiction over Parmar's suit.

Parmar appealed and the appellate court reversed the trial court's application of sovereign immunity as proper grounds for dismissal of Parmar's suit and remanded the case to the trial court. The appellate court found that sovereign immunity did not apply to Parmar's claims due to the officer-suit exception. The appellate court did not opine as to whether Section 15(a) of the Estate Tax Act grants the circuit court with jurisdiction to hear claims against the State of Illinois arising out of the Estate Tax Act. The appellate court also considered alternative grounds for upholding the dismissal of Parmar's complaint not addressed by the trial court but argued by Defendants; rejecting the voluntary-payment doctrine and the State Officers and Employees Money Disposition Act, 30 ILCS 230/1 *et seq.* (2014) ("Protest Act") as alternative grounds for dismissal of Parmar's suit. The appellate court found that the Estate Tax Act's penalties, interest and

potential personal liability therefor on Parmar in his individual capacity constituted sufficient duress such that Parmar's payments were not voluntary and the voluntary-payment doctrine did not apply. The appellate court did not address or rule on Parmar's alternate argument, which would have also defeated defendants' voluntary-payment doctrine and Protest Act arguments, that Parmar lacked sufficient information upon which to file a protest under the Protest Act at the time he paid the estate taxes.

The Illinois Attorney General and Illinois Treasurer sought review of this Court, raising questions related to sovereign immunity, the Protest Act and the voluntary-payment doctrine.

ISSUES PRESENTED FOR REVIEW

1. Whether the officer-suit exception to state sovereign immunity protection applies when a taxpayer challenges the constitutional application of an Illinois tax statute against the taxpayer's property and is suing state officers related to their enforcement of the statute's unconstitutional imposition of taxes.

2. Whether state sovereign immunity bars an action brought by a taxpayer against the State of Illinois related to the constitutionality of the retroactive application of the Estate Tax Act when jurisdiction to hear all claims arising out of the Estate Tax Act is specifically granted to the circuit court under the plain language of section 15(a) of the Estate Tax Act.

3. Whether the penalties, interest and potential personal liability on an estate representatives, like Parmar, expressly provided for under the Estate Tax Act constitutes sufficient duress such that Parmar's payments were involuntary in nature and the voluntary-payment doctrine does not apply; and alternatively, if the duress imposed through the Estate Tax Act alone is not enough, whether Parmar plead sufficient facts in his complaint related to the existence of duress and his lack of knowledge of facts upon which to protest the tax payment that questions of fact exist such that dismissal of the complaint would not be proper.

STATEMENT OF FACTS

Parmar agrees with the Statement of Facts contained in defendant's Opening Brief; except, however, Parmar believes that defendant's Statement of Facts omits one very important fact alleged in the complaint, namely, that Parmar plead that he made the estate tax payments to the State of Illinois "under duress." R. C27-28.

ARGUMENT

The appellate court correctly applied the officer-suit exception to the doctrine of sovereign immunity and reversed the trial court's ruling that state sovereign immunity barred Parmar's claims in the circuit court. The appellate court did not, however, address the trial court's ruling that state sovereign immunity protections were not waived through the express statutory grant of jurisdiction to the circuit court under the plain language of the section 15(a) of the Estate Tax Act. The appellate court correctly found that Estate Tax Act caused statutory duress on Parmar and that dismissal of Parmar's claims based on the voluntary-payment doctrine or the Protest Act would not be proper. For all of these reasons and other reasons contained herein, the appellate court's decision should be affirmed and the trial court's ruling reversed.

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

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

ex rel. Madigan v. Burge, 2014 IL 115635, ¶ 18; See *King v. First Capital Fin. Servs. Corp.*, 215 Ill. 2d 1, 12 (2005).

The circuit court did not rule on the defendants' alternative arguments that, even if dismissal were not proper under section 2-619(a)(1), it was proper under section 2-619(a)(9) because of other matters affirmatively appearing in the record. In this regard, defendants argued that Parmar's suit should have been dismissed because Parmar tendered payments voluntarily without complying with section 2a of the Protest Act. R. C88-89; 166-67.

The appellate court did, however, rule as to whether dismissal of Parmar's suit would have been proper under section 2-619(a)(9), finding that the other affirmative matters raised by defendants related to the Protest Act and the voluntary-payment doctrine did not act as alternative basis for dismissing Parmar's claims. 2017 IL App (2d) 160286, ¶ 40. The question of whether Parmar's action should have been dismissed pursuant to section 2-619(a)(9) presents a question of law that was fully raised and argued below. See *In re Estate of Boyar*, 2013 IL 113655, ¶ 27; See *Doe v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009).

II. The Appellate Court Correctly Found that the Circuit Court Possesses Jurisdiction Over Parmar's Claims Because Parmar's Claims Are Not Barred by Sovereign Immunity.

The trial court improperly dismissed Parmar's suit for the trial court's perceived lack of subject matter jurisdiction over Parmar's claims based on state sovereign immunity as codified in the Court of Claims Act, 705 ILCS 505/1 et seq. (2016) ("Court of Claims Act"), which the appellate court correctly rectified when it reversed the trial

court's dismissal of Parmar's suit and remanded the case back to the trial court with subject matter jurisdiction.

A. The Circuit Court has Jurisdiction Over Parmar's Claims Because the Officer-Suit Exception Applies and Operates to Prevent Sovereign Immunity From Barring Parmar's Claims.

The appellate court correctly reversed the trial court's ruling that state sovereign immunity barred Parmar's claims and, therefore, the circuit court possessed jurisdiction over Parmar's claims because Parmar sued the Illinois Attorney General and the Illinois Treasurer, and not the State of Illinois, which triggered the officer-suit exception to sovereign immunity protections. 2017 IL App (2d) 160286, ¶ 27. In reaching its decision, the appellate court relied on this Court's most recent exposition of the officer-suit exception in *Leetaru v. Board of Trustees of the University of Illinois*, 2015 IL 117485 wherein this Court held that 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 and, in those instances, an action may be brought in the circuit court." *Id.* ¶ 50. In further support of its determination that a suit may be maintained against the officer without running afoul of sovereign immunity principals, this Court stated "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 conduct of the State. *Id.* ¶¶ 44-47.

The defendants, the Illinois Attorney General and the Illinois Treasurer, not only imposed and collected taxes under the purported authority of an unconstitutional act, the Estate Tax Act, which is void *ab initio* because of procedural improprieties in the Act's passage and, at the very least the Estate Tax Act could not be constitutionally applied

retroactively to estates of persons who, like Parmar, passed away before the Act was signed into law.

Furthermore, under section 16 of the Estate Tax Act, “it is the duty of the Attorney General to exercise general supervision over the assessment and collection of the tax provided in this Act, and in the discharge of that duty, the Attorney General may prescribe rules and regulations as are deemed necessary and may institute and prosecute suits and proceedings as may be necessary and proper, appearing therein for that purpose.” 35 ILCS 405/16 (2016).

Therefore, it undeniable that it is the Attorney General’s responsibility to oversee the assessment and collection of estate taxes *and* to prescribe rules and regulations to carry out that purpose. The Attorney General’s office has yet to implement rules and regulations to carry out the assessment and collection of estate taxes which would potentially provide taxpayers and Attorney General’s Office with a clear means of determining whether the imposition of estate tax liability on taxpayers, like Parmar, would constitute an unconstitutional application of the Estate Tax Act and a more clear means for challenging or protesting Estate Tax Act liability.

This Court must affirm the appellate court’s correct ruling concerning the applicability of the officer-suit exception to the doctrine of sovereign immunity when, as the appellate so succinctly stated in its opinion, “this suit is a textbook instance of the officer-suit exception.” 2017 IL App (2d) 160286, ¶27.

B. The Circuit Court has Jurisdiction Over Parmar's Claims Because the Illinois Legislature Explicitly Granted the Circuit Court with Jurisdiction Through the Plain Language of Section 15(a) of the Act.

The trial court improperly dismissed Parmar's lawsuit, in part, because the trial court did not believe that the Illinois legislature waived state sovereign immunity through Section 15(a) of the Estate Tax Act and, therefore, the circuit court lacked subject matter jurisdiction over Parmar's claims. R. C171. In reversing the trial court's dismissal based upon different grounds, the appellate court did not address the trial court's finding that Section 15 of the Estate Tax Act did not provide the circuit court with jurisdiction and operate as a waiver of state sovereign immunity protections. The trial court's statutory interpretation was erroneous and must be reversed by this Court and remanded back to the trial court with confirmation of jurisdiction to proceed with Parmar's claims.

Section 15 of the Estate Tax Act provides in pertinent part:

Sec. 15. Circuit court jurisdiction and venue.

(a) Jurisdiction. Jurisdiction to hear and determine all disputes in relation to a tax arising under this Act shall be in the circuit court for the county having venue as determined under subsection (b) of this Section, and the circuit court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other circuit court.

(b) Venue . . . Venue for disputes involving Illinois estate tax of a decedent who was a resident of Illinois at the time of death shall lie in the circuit court for the county in which the decedent resided at death. 35 ILCS 405/15 (2016).

The Illinois legislature clearly and unmistakably granted the circuit court with jurisdiction over Parmar's claims under the plain language of the Act, which cannot be ignored. This Court has routinely applied the same legal standard for statutory construction, finding that the Court's primary objective is to ascertain and give effect to the intent of the legislature. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41; citing *Solon v. Midwest Medical Records Ass'n*, 236 Ill.2d 433, 440 (2010). The most reliable indicator of the legislative intent is the language of the statute, which should be given its plain and

ordinary meaning. *Id.* All provisions of a statute should be viewed as a whole. Accordingly, words and phrases should be interpreted in light of other relevant provisions of the statute and should not be construed in isolation. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41; citing *DeLuna v. Burciaga*, 223 Ill.2d 49, 60 (2006). The Court will presume, in interpreting the meaning of the statutory language, that the legislature did not intend absurdity, inconvenience, or injustice. *Id.*

Due to the clear and unambiguous language of section 15(a) of the Estate Tax Act, which specifically provides "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" there was no need for the trial court to engage in any sort of statutory construction as a means of determining whether the circuit court or Court of Claims possessed subject matter jurisdiction over Parmar's suit.

Even if there is any doubt as to whether the Illinois legislature intended to provide the circuit court with jurisdiction, that doubt should be resolved and the Estate Tax Act interpreted by this Court in favor of Parmar. Illinois case law is clear that '[S]tatutes imposing a tax are strictly construed against the government and in favor of the taxpayer.' *Brooker v. Madigan*, 388 Ill.App.3d 410, 416 (1st Dist. 2009); quoting *In re Consolidated Objections to Tax Levies of School District No. 205*, 193 Ill.2d 490, 496 (2000); *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, 30 (2nd Dist. 2012).

C. The Circuit Court has Jurisdiction Over Parmar's Claims Because Sovereign Immunity Does Not Apply to Suits by Taxpayers for Claims Related to Estate Tax Refunds Not Payable Out of the State's General Revenue Fund.

Parmar's lawsuit is not a claim against the State of Illinois which the Illinois legislature intended to bar through state sovereign immunity whereby subject matter

jurisdiction would shift from the circuit court to the Court of Claims. Based upon the nature of the constitutional question raised by Parmar's suit with respect to the imposition of estate taxes on Parmar's estate, any ruling by the trial court, or this Court for that matter, with respect to Parmar's constitutional claim would not result in a judgment against the State of Illinois ultimately payable out of the State's general revenue fund, which sovereign immunity was intended to prevent. At worst for the State, if liability under the Estate Tax Act was found not to retroactively apply to estates like Parmar's, any resulting amount owed would be in the nature of an estate tax refund.

In *Alvarez v. Papps*, this Court quoted the United States Supreme Court wherein it stated "there was no difference between a "refund of overpaid gift taxes" and a "claim for recovery of a tax overpayment." The Court noted that the statute applied to claims for refund of a tax "overpayment." According to the Court, the commonsense interpretation of "overpayment" is that "a tax is overpaid when a taxpayer pays more than is owed, for whatever reason or no reason at all." *Alvarez v. Pappas*, 229 Ill. 2d 217, 225–26 (2008); citing *United States v. Dalm*, 494 U.S. 596, 609, 110 S. Ct. 1361 (1990).

The entry of an order finding that the Estate Tax Act cannot be retroactively applied to Parmar's estate and, therefore, Parmar is owed a refund of estate taxes already paid would not qualify as a claim against the State of Illinois when the plain language of the Estate Tax Act establishes an Estate Tax Refund Fund for use in refunding estate tax overpayments. The Estate Tax Act specifically 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." 35 ILCS 405/1 (2014).

If Parmar's underlying constitutional challenge were successful, all estate taxes already paid by Parmar would constitute an overpayment which must be refunded out of the Estate Tax Refund Fund established under the Estate Tax Act and not out of the Illinois' general revenue fund that is shielded by state sovereign immunity protections.

D. The Circuit Court has Jurisdiction Over Parmar's Claims Because Parmar is Entitled to Due Process Protections Under the Illinois Constitution.

The Due Process clause of the Illinois Constitution protects Parmar's fundamental rights and require that Parmar's claims relating to the potential unconstitutional retroactive application of an Illinois tax statute be afforded full due process rights, including the right to have the constitutional question heard and determined by the judiciary. Article VI, section 9 of the Illinois Constitution provides that "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction." Ill. Const. 1970, art. VI, § 9.

The Due Process clause of Article I of the Illinois Constitution requires that the circuit court (e.g. judicial branch) possess subject matter jurisdiction over matters questioning or challenging the constitutionality of an Illinois statute, whether substantively or procedurally. Blindly protecting the State with unreasonably broad sovereign immunity protections and requiring claims of an Illinois resident relating to the constitutionality of the retroactive application of an Illinois tax statute to be adjudicated by the same legislative branch under which the complained of statute was created, rather than the judiciary, is in direct opposition with the fundamental beliefs upon which Article 6 of the Illinois Constitution and the Illinois government was founded.

E. The Circuit Court has Jurisdiction Over Parmar's Claims Because the Court of Claims Does Not Possess Exclusive Jurisdiction Over Constitutional Questions.

It would be unconstitutional for the Court of Claims to retain exclusive jurisdiction over challenges to the constitutionality of Illinois statutes when the Court of Claims, like the challenged Estate Tax Act, is a creature of the Illinois legislature. As the Appellate Court noted in *Reyes v. Court of Claims of State of Ill.*, "Because the Court of Claims is a purely statutory creation, possessing no inherent or common law power, the Court of Claims can only assume jurisdiction in the manner prescribed by the Court of Claims Act, which empowers it. *Reyes v. Court of Claims of State of Ill.*, 299 Ill. App. 3d 1097, 1101 (1st Dist. 1998); See *Klopper v. Court of Claims*, 286 Ill. App. 3d 499, 505 (1st Dist. 1997). The Appellate Court further noted that "the Court of Claims is not a "court" within the meaning of article VI of the Illinois Constitution of 1970." *Reyes*, 299 Ill. App. 3d at 101; See *Rossetti Contracting Co., Inc. v. Court of Claims*, 109 Ill. 2d 72 (1985).

If the Court of Claims is allowed to exercise exclusive jurisdiction over a lawsuit related to the constitutionality of the retroactive application of a taxing statute also created by the same Illinois legislature that created the Court of Claims then there would be no checks and balances on the actions of the legislative branch related to the Estate Tax Act. Simply stated, the State Lawsuit Immunity Act, 745 ILCS 5/1, *et seq.* (2011) and Court of Claims Act, 705 ILCS 505/1, *et seq.* (1984) were not enacted by the Illinois legislature as universal trump cards to defeat any and all lawsuits which name the State as a defendant.

In *Healy v. Vaupel*, this Court noted, "Whether an action is in fact one against the State, and hence one that must be brought in the Court of Claims, depends not on the formal identification of the parties but rather on the issues involved and the relief sought. *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990); See *Herget Nat. Bank of Pekin v. Kenney*, 105 Ill. 2d 405, 408 (1985). The trial court must look beyond the formal identification of the parties and address the nature of the relief sought, namely, a determination as to the constitutionality of the retroactive application of the Estate Tax Act. When a state statute, like the Estate Tax Act, is being challenged on grounds that it is unconstitutional as applied to a taxpayer then the action must be brought in the circuit court. Constitutional questions such as those complained of by Parmar must not be shielded from judicial review through self-policed legislative review.

III. The Appellate Court Correctly Ruled that the Protest Act and the voluntary-payment doctrine Did Not Apply to Parmar's Claims and Operate as Affirmative Matters Under Which the Trial Court Could Have Dismissed Parmar's Claims.

Although the State continues to assert that other "affirmative matters" not addressed by the trial court in its dismissal of Parmar's claims, such as the Protest Act and the voluntary-payment doctrine, constitute proper grounds upon which to affirm the trial court's dismissal based on section 2-619(a)(9) affirmative matters, the appellate court was correct in finding that Parmar's payment was not voluntary due to duress and the defendants' other affirmative matter arguments are not persuasive.

A. The Protect Act Does Not Apply to Parmar's Claims and Estate Tax Payment When Parmar's Payment Was Made Without Knowledge of the Facts Upon Which to Protest Which is an Exception to the voluntary-payment doctrine.

This Court previously stated, “Although payment under protest is the typical means by which a taxpayer signifies his contention that a tax or charge was improper, the absence of such a protest does not, without more, require application of the voluntary-payment doctrine. It must also be shown that the taxpayer plaintiff had knowledge of the facts upon which to frame a protest and also that the payments were not made under duress or compulsion.” *Getto v. City of Chicago*, 86 Ill. 2d 39, 49 (1981).

Although not addressed by the appellate court in its ruling that the voluntary-payment doctrine did not apply to Parmar’s payment of estate taxes and bar a claim for refund due to the duress imposed upon Parmar by the Estate Tax Act, Parmar also argued that the Protest Act was not applicable because he lacked knowledge of the facts upon which to frame a protest to the payment of the estate taxes pursuant to Protest Act at the time the tax was paid.

The reasoning behind Parmar’s lack of knowledge upon which to frame a protest argument arises out of the nature of Parmar’s “protest” and that fact that it does not arise out of a statutorily granted right to a refund, inclusion of an asset in the taxable estate, the right to a certain tax credit or deduction or other questions arising under the plain language of the Estate Tax Act, but rather, because Estate Tax Act liability should never applied to Parmar’s estate due to procedural unconstitutionality and, therefore, no tax should have been due or paid by Parmar.

Reasonable inquiry as to whether Parmar’s estate was subject to the imposition of estate taxes under the Estate Tax Act and, therefore, whether Parmar needed to make an estate tax payment to the State would not have led Parmar to initially make a payment of the estate taxes under protest. Only a highly-trained professional in the area of both estate

taxation and constitutional law would have been able to ascertain and identify the need for and nature of a protest at the time when the estate tax was paid. Reasonable investigation by the estate representative is not and should not be expected to include a comprehensive examination as to the constitutionality of a State statute or the potential constitutionality of the application of the Estate Tax Act on the decedent's estate.

B. The voluntary-payment doctrine Does Not Bar Parmar's Claims Because the Statutory Imposition of Taxes and Interest under Sections 8(a) and 9 of the Estate Tax Act in Addition to Potential Personal Liability on Parmar in his Individual Capacity under Section 10(c) of the Estate Tax Act Constitutes Duress Which is an Exception to the voluntary-payment doctrine.

The voluntary-payment doctrine does not bar Parmar's claims and lawsuit when Parmar has plead that the estate taxes were paid under duress and the Court can assess whether duress is statutorily imposed on an estate representative, like Parmar, through the potential personal liability for estate taxes, interest and penalties imposed under the Estate Tax Act on estate representatives.

The appellate court was correct in finding that Parmar's payment of estate taxes to the State was not voluntary when making the estate tax payment was mandated of Parmar, individually and as estate representative, under the plain language of section 10(c) of the Estate Tax Act. Illinois case law is clear that "where money is paid under pressure of severe statutory penalties... it is held that the payment is involuntary and that the money may be recovered. *People ex rel. Carpentier v. Treloar Trucking Co.*, 13 Ill. 2d 596, 599-600 (1958); citing *Gaar, Scott & Co. v. Shannon*, 223 U.S. 468 (1912).

In *Geary v. Dominick's Finer Foods*, this Court relied on its prior holdings in *Getto v. City of Chicago* when this Court found that under the voluntary-payment doctrine, a taxpayer may not recover taxes voluntarily paid, even if the taxing body

assessed or imposed the taxes illegally. A taxpayer can only recover taxes voluntarily paid if such recovery is authorized by statute. A taxpayer, however, 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. *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389, 393 (2005); citing *Getto*, 86 Ill.2d at 48–49.

This Court in *Getto* explained the voluntary-payment doctrine:

“[M]oney voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary; that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion.”

“Though payment under protest is the typical means by which a taxpayer signifies his contention that a tax or charge was improper, the absence of such a protest does not, without more, require application of the voluntary-payment doctrine. It must also be shown that the taxpayer plaintiff had knowledge of the facts upon which to frame a protest and also that the payments were not made under duress or compulsion.”

Getto, 86 Ill.2d at 48–49; Quoting *Illinois Glass Co. v. Chicago Telephone Co.*, 234 Ill. 535, 541 (1908).

In *Goldstein Oil Co. v. Cook Cty.*, the appellate court held that virtual or moral duress is sufficient to prevent a payment made under its influence from being voluntary, supporting that position by citing this Court's ruling in *Benzoline Motor Fuel Co. v. Bollinger* which stated:

“Where such duress is exerted under circumstances not justified by law it need only be sufficient to influence the apprehensions and conduct of a prudent business man. If the duress is exerted by one clothed with official authority or who is exercising a public employment, less evidence of

compulsion or pressure is required.” *Benzoline Motor Fuel Co. v. Bollinger*, 353 Ill. 600, 607 (1933).

Goldstein Oil Co. v. Cook Cty., 156 Ill. App. 3d 180, 182 (1st Dist. 1987).

The plain language of the Estate Tax Act and Illinois case law has left no uncertainty that estate representatives, such as Parmar, are subject to potential personal liability for failure to file and pay Illinois estate taxes. In *People ex rel. Madigan v. Kole*, the appellate court stated that after setting forth (in section 6(c)) the federal filer's duty to file all returns and pay all estate taxes, the Act then provides in section 10(c): “If the Illinois transfer tax is not paid when due,” then the federal filer “shall be personally liable for the Illinois transfer tax.” 35 ILCS 405/10(c) (2002). Given that section 6(c) clarifies the duty and instructs that the federal filer must file *all* returns and pay *all* estate taxes, section 10(c), we believe, unambiguously, and without the need to again state that the foregoing terms include supplemental returns and additional taxes, imposes personal liability on the federal filer for the failure to file *any* return and/or pay *any* estate tax. *People ex rel. Madigan v. Kole*, 2012 IL App (2d) 110245, 32 (2nd Dist. 2012).

The personal liability under the Estate Tax Act extends to taxes, interest and penalties and amounts to duress on the personal representative to pay the estate taxes to the State regardless of whether the State sends notices or correspondence to an estate representative related to the collection of same as neither communications is required of the State under the Estate Tax Act in order to have jurisdiction or the right to collect estate taxes from taxpayers like Parmar.

As has always been the case in Illinois, knowledge, or more accurately, ignorance of the law is not an excuse for compliance or failure to comply with Illinois laws and would not have been an acceptable excuse to the State had Parmar not paid any estate

taxes. The estate tax payments made by Parmar to the State were made under the duress expressly created through the plain language of the Estate Tax Act and, therefore, the voluntary-payment doctrine does not bar Parmar's suit for recovery of estate taxes paid.

C. This Court Cannot Affirm the Trial Court's Dismissal of Parmar's Claims on Affirmative Matters Not Addressed by the Trial Court When Parmar Plead Duress and Lack of Knowledge to File Protest in the Complaint and this Court Must Accept the Same as True and Draw all Reasonable Inferences Therefrom in Parmar's Favor With Respect to the Existence of Material Facts Which Would Preclude Dismissal.

When ruling on a motion to dismiss, the Court must construe the pleadings and any supporting documents in a light most favorable to the nonmoving party. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. The Court must accept as true all well-pleaded facts presented in the complaint and any inferences that may be drawn from those facts. *Id* at ¶ 55. On appeal from the dismissal of a complaint, the Court must consider whether there is a genuine issue of material fact that should have precluded dismissal of the complaint, or, in the absence of an issue of fact, whether dismissal of the complaint was proper as a matter of law. *Id* at ¶ 55.

Accepting the facts plead by Parmar in the complaint related to his making payments under duress in the light most favorable to Parmar, as the non-moving party, and affording Parmar all reasonable well-drawn inferences arising therefrom, it would be improper for this Court to affirm the trial court's dismissal based on other "affirmative matters" in the nature of the voluntary-payment doctrine and the Protest Act when (1) Parmar's complaint plead that he paid the estate taxes under duress and he lacked knowledge upon which to form a protest at the time the estate taxes were paid and (2)

when the existence of duress or the absence of knowledge upon which to file a protest are issues of material fact that must be decided by the trier of fact.

CONCLUSION

For the reasons above, Paminder S. Parmar, individually and as executor of the Estate of Surrinder K. Parmar respectfully request that this Court affirm the appellate court's judgment, and reverse the judgment of the circuit court.

February 14, 2018

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 315(d) and Rule 341(a). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the petition under Rule 342(a), is 21 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 14, 2018, I electronically filed the foregoing **Brief of Plaintiffs-Appellees** with the Clerk of the Supreme Court of Illinois by using the i2file.net e-file system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the i2file.net e-file system, and thus was served by transmitting a copy through the i2file.net e-file system on February 14, 2018.

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I further certify that I will cause one copy of the above named filing to be served upon the below listed counsel by email and by US Mail, delivery prepaid, by delivering the filing to the US Mail depository located at 150 N. Michigan Avenue, Chicago, Illinois, on February 14, 2018.

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

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