No. 112040

IN THE
SUPREME COURT OF ILLINOIS

DOWNTOWN DISPOSAL SERVICES, INC., a corporation,	)	
Petitioner-Appellee,	)	Appeal from the Appellate Court of Illinois, First District, No. 10-0598
v.	)	
CITY OF CHICAGO, a municipal corporation, CHICAGO DEPARTMENT OF TRANSPORTATION, and CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS,	)	On Appeal from the Circuit Court of Cook County, Illinois, Municipal Department, First District, Nos 08-MI-450748, 08-, MI-45749, 08-MI-45750, 08-MI-45751 (consolidated)
Respondents-Appellants.	)	

THE ILLINOIS STATE BAR ASSOCIATION'S AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENTS-APPELLANTS

John G. Locallo, President
Charles J. Northrup, General Counsel
Melinda J. Bentley, First Assistant Counsel
ILLINOIS STATE BAR ASSOCIATION
424 S. Second Street
Springfield, IL 62701
(800) 252-8908

POINTS AND AUTHORITIES

I. INTRODUCTION

The Illinois State Bar Association ("ISBA") has a longstanding history, and continuing practice, of involvement in the prevention and prosecution of the unauthorized practice of law. This history and practice is based on the ISBA's commitment to protect the public from the unauthorized practice of law as well as to ensure the continued integrity of the legal profession.

In *Downtown Disposal Services, Inc. v. Chicago, et al.*, the instant appeal before this Court, there is no question that the conduct at issue, a corporate president signing and filing several fill-in-the-blank complaints for administrative review on behalf of the corporation, was the unauthorized practice of law. *Downtown Disposal Services, Inc. v. Chicago, et al.*, 407 Ill.App.3d 822, 830, 943 N.E.2d 185, 193 (1st Dist. 2011) ("we do not question the trial court's determination that [the corporate president] engaged in the unauthorized practice of law when he filed in the blanks on the form complaint.") This appeal, however, involves the application of the "nullity rule" as the proper remedy for the corporate president's unauthorized practice of law. The nullity rule operates to void any pleadings filed by a non-lawyer, oftentimes resulting in the dismissal of the legal proceedings.

The nullity rule has long been an appropriate remedy when a non-lawyer engages in the unauthorized practice of law. Here, however, the First District Appellate Court did not apply the nullity rule to the corporate president's unauthorized practice of law. Rather, the appellate court

determined that the application of the nullity rule was discretionary with the court. The appellate court further determined that the exercise of that discretion should be based on an analysis of whether the purposes of the nullity rule are served in light of the particular facts of the case. In *Downtown Disposal*, the administrative review complaints were allowed to stand.

It is the contention of the ISBA that the appellate court's opinion: is contrary to good public policy; failed to address the important and longstanding prohibition on non-lawyers representing corporations; improperly reflected an analysis of factors unrelated to the purposes of the nullity rule; and exceeded existing authority of this Court.

II. ARGUMENT

1. Discretionary Application of the Nullity Rule in Unauthorized Practice of Law Matters is Contrary to Good Public Policy.

In Downtown Disposal, the appellate court created a new and sweeping standard to guide courts in applying the nullity rule in unauthorized practice of law matters. The court announced that: "courts must consider whether under the specific facts presented, application of the [nullity] rule would serve its purposes." *Downtown Disposal*, 943 N.E.2d at 197. The opinion went on to recite those well recognized purposes: (1) "to protect litigants from the mistakes of ignorant individuals and the schedules of the unscrupulous, as well as to protect the court in its proceedings from

individuals who lack the requisite skills; (2) "to ensure that corporations receive the benefit of professional legal counsel; and (3) to protect "'both the public and the integrity of the court system from actions of the unlicensed, and where no other alternative remedy is available.'" *Downtown Disposal*, 943 N.E.2d at 194-196 (internal citations omitted). Under this language, the application of the nullity rule is discretionary based upon an analysis of the specific facts of each case. This discretionary authority is contrary to good public policy.

A. The Discretionary Application of the Nullity Rule does Not Protect the Public.

The discretionary application of the nullity rule does not protect the public from the harm associated with the unauthorized practice of law. This Court has long recognized that legal proceedings can be intricate and complex and the involvement of trained and skilled lawyers can prevent both incompetency and dishonesty. *People ex rel. Chicago Bar Ass'n. v. Goodman*, 366 Ill.346, 8 N.E.2d 941, 944 (1937). Oftentimes a legal consumer who has been the victim of the unauthorized practice of law will spend more time and resources remediating problems caused by the ineffective or bad advice given by a non-lawyer. Substantive legal rights may be lost by reliance on the advice of a non-lawyer. In addition, the protections afforded by the attorney-client relationship, including a number of fiduciary and confidential responsibilities, will be absent. *Goodman, 8 N.E. 2d at 947.* Unfortunately, many legal consumers continue to be prayed upon by unscrupulous

individuals purporting to offer legal advice. Today's modern technology, including the omnipresent internet, is creating more and more venues for this type of improper, and likely illegal, activity. In this type of environment, prevention of the unauthorized practice of law is critical to the protection of the public.

The discretionary application of the nullity rule in unauthorized practice of law matters, as suggested in the *Downtown Disposal* opinion, is a tacit recognition by the courts that it of law may be allowed under certain circumstances. Such recognition is completely opposite to existing Court precedent and would be counter productive in the prevention of the harm occasioned by the unauthorized practice of law. It would be a signal to unscrupulous individuals that they can continue to prey on the uninformed. It will encourage those engaged in the unauthorized practice of law to "forum shop" and seek out opportunities in those jurisdictions which may be more lenient with respect to unauthorized practice of law claims. It might even find its way into the marketing campaigns of non-lawyers.

The ISBA acknowledges, as have several courts, that the automatic application of the nullity rule may result in harsh consequences. A number of cases have found that the nullity rule should not apply in certain circumstances. However, the "exceptions" identified in these cases are extremely limited and involve the participation of lawyers at some level. E.g. *Applebaum v. Rush University Medical Center*, 231 Ill.2d 429, 899 N.E.2d

262 (2008)(Illinois attorney on inactive status). In *Downtown Disposal*, the dismissal of the administrative review complaints, nothing more than simple fill-in-the-blank forms, may seem harsh. However, this Court has recognized that in unauthorized practice of law matters, the simplicity of the improper act, or form, is not dispositive. In *Chicago Bar Association v. Quinlan and Tyson, Inc.*, 34 Ill.2d 116, 214 N.E.2d 771 (1966), where the Court found that the preparation of "simple" title documents by non-lawyers constituted the practice of law, the Court noted:

> Many aspects of law practice are conducted through the use of forms, and not all of the matters handled require extensive investigation of the law. But by his training the lawyer is equipped to recognize when this is and when it is not the case. Neither counsel nor amici have suggested any practicable way in which an exception to the general rule can be made where only the use of forms is involved, or where the transaction is a "simple" one. Mere simplicity cannot be the basis for drawing boundaries to the practice of a profession. ... And protection of the public requires a similar approach when the practice of law is involved. *Quinlan and Tyson*, 214 N.E.2d at 775.

Like the determination of what constitutes the practice of law in *Quinlan and Tyson*, to give full protection to the public a bright line test is required with respect to the remedy for the unauthorized practice of law.

B. The Discretionary Application of the Nullity Rule is an Impediment to the Effective Prosecution of the Unauthorized Practice of Law.

The discretionary application of the nullity rule by circuit courts, as suggested by the *Downtown Disposal* opinion, will result in the inconsistent

application of the nullity rule from circuit to circuit. This is problematic for those engaged in civil or criminal unauthorized practice of law prosecution. First, it is inconsistent with the longstanding and existing state-wide prohibition on unauthorized practice of law as exhibited by this Court's precedent but also statute. See Section II.2. below. The deterrent effect of the existing statutes or case law prohibiting unauthorized practice of law will be greatly diminished by piecemeal application. Second, it will inhibit the establishment of state-wide precedent and interpretations of what is sanctionable conduct for the unauthorized practice of law. Third, the fact that some level of the unauthorized practice of law may be allowed in some jurisdictions, but not others, might be used as potentially persuasive due process or vagueness defenses to prosecutions. Fourth, the fact that some jurisdictions treat instances of unauthorized practice of law more leniently may be viewed as a signal to local prosecutors that the unauthorized practice of law is not an action worth pursuing. Given the already hard-pressed resources of state prosecutors and others engaged in unauthorized practice of law prosecutions, this might be an effective end to these types of prosecutions. Fifth, even for those inclined to bring unauthorized practice of law prosecutions, the discretionary application of what one jurisdiction views as the permissible unauthorized practice of law may complicate the pre-litigation analysis of the merits of individual cases depending on where those cases might be filed successfully.

C. **The Administration of Justice is Prejudiced by the Discretionary Application of the Nullity Rule.**

The discretionary application of the nullity rule prejudices the administration of justice. The efficient administration of justice is vitally important to the public's positive perception of the courts. In part, the efficient administration of justice requires the expeditious consideration and disposal of cases as well as the minimization of additional proceedings or delay. *In re Smith*, 168 Ill.2d 269, 287, 659 N.E.2d 896, 904 (1995("the administration of justice requires lawyers engaged in litigation to aide the court in the expeditious consideration and disposal of cases"); *In the Matter of Grammer*, 04-SH-119 (Hearing Board, August 25, 2005) *approved and confirmed*, M.R. 20521 (January 13, 2006)(the administration of justice is prejudiced by "causing additional proceedings or delaying the resolution of the case.").

The discretionary application of the nullity rule in unauthorized practice of law cases will necessarily cause additional proceedings and delay. When confronted with pleadings filed by a non-lawyer, parties likely will continue to bring motions seeking to dismiss them. Where the application of the nullity rule is automatic, necessity and pursuit of additional proceedings in the circuit court are minimized. Under the standard announced in *Downtown Disposal*, extensive proceedings might be required to determine whether the purposes of the nullity rule are met in individual cases. As envisioned in the appellate court's opinion, this may require an examination

of, and perhaps testimony on, the non-lawyer's state of mind, the diligence of the moving parties conduct in raising the issue, harm to the non-lawyer, and the availability of any potential cure. Examination of these factors will likely result in additional proceedings and expense for the litigants and the court. These additional proceedings and cost can be avoided by the application of the nullity rule as currently interpreted by the Court.

2. If the Appellate Court has the Discretion to Engage in a Case-by-Case Analysis of the Application of the Nullity Rule, the Court in this Matter Failed to Consider the Longstanding Statutory Prohibition, Interpreted by Case Law, on Non-Lawyers Representing Corporations.

The Corporate Practice of Law Prohibition Act provides that "[i]t shall be unlawful for a corporation to ... appear as an attorney at law for any reason in any court in this state or before judicial body." 705 Ill. Comp. Stat. 220/1 (West 2010). The Attorney Act provides that "[n]o person shall be permitted to practice as an attorney or counselor at law within this State without having previously obtained a license for that purpose from the Supreme Court of this State." 705 Ill. Comp. Stat. 205/1 (West 2010). These two statutory provisions have been interpreted through Illinois case law to address issues relating to the representation of corporations by non-lawyers.

In *Midwest Home Savings & Loan Association v. Ridgewood, Inc.*, 123 Ill. App. 3d 1001, 1005, 463 N.E.2d 909, 79 Ill.Dec. 355 (5th Dist. App. 1984), the appellate court held that a notice of appeal signed by the secretary of a corporation was a nullity, and the document was voided by the Fifth District

Appellate Court. Interpreting the Corporate Practice of Law Prohibition Act, that court stated, "[i]t is our conclusion that the defendant may not file a valid notice of appeal in its own behalf without the advice and services of an attorney. An opposite conclusion would condone the unauthorized practice of law by a corporate litigant through layman agents, which was condemned in cases interpreting section 1 of the ... Act." Id. at 1004. That court went on to state that "Illinois cases have held that where the proceedings in a suit are instituted by a person not entitled to practice law, such proceedings are a nullity." Id. at 1005. This case is directly on point to the case at hand, where a notice of appeal is being filed by a corporate officer. Rather than relying on a case where documents were filed by an inactive attorney, as was done in *Applebaum* (the case relied upon extensively by the appellate court in *Downtown Disposal*), we urge the Court to look to matters where corporate officers have purported to act as their own attorneys in violation to the Corporate Practice of Law Prohibition Act, such as in *Midwest Home Savings & Loan Assoc.* (See also *Johnson v. Pistakee Highlands Community Association,* 72 Ill. App. 3d 402, 403, 390 N.E.2d 640, 28 Ill. Dec. 473 (2d Dist. App. 1979), citing *Tom Edwards Chevrolet, Inc. v. Air-Cel, Inc.,* 13 Ill. App. 3d 378, 300 N.E.2d 312 (1973). "[i]t is clear that a corporation may not engage in the practice of law on behalf of others nor may it appear in court except through a duly licensed attorney.")

Similarly, the First District Appellate Court explored the issue of a lay person filing a lien on behalf of a municipal corporation. In that matter, it explored provisions of the Illinois Attorney Act by stating that "[it] is well settled that ...[the Act] which allows parties litigant to prosecute and defend their actions 'in their proper persons,' in no way authorizes a corporation to appear in any proceeding in any court through an agent who is not a licensed attorney." *Housing Authority of Cook County v. Tonsul*, 115 Ill. App. 3d 739, 740, 450 N.E.2d 1248, 71 Ill. Dec. 369 (1st Dist. App. 1983). It goes on to state that "[w]here a cause is prosecuted by a layman acting on behalf of a corporation, any proceedings in the case are a nullity and any judgment rendered therein is void. This strict rule operates to void the judgment even where the lay agent merely files the complaint over his own signature, and all subsequent court appearances are made by a duly licensed attorney." Id. (internal citations omitted). This case is an example where courts have ruled pleadings filed by non-lawyers purporting to represent corporations should be nullified.

The Corporate Practice of Law Prohibition Act has been law in Illinois in substantially the same form since 1917 (Ill. Laws p. 309, §1 (1917)), as has the Attorney Act since 1874 (Ill. R.S. p. 169, § 1 (1874)). The Appellate Court failed to consider these long long-standing statutory policies in Illinois, which have been interpreted by case law, to require that corporations be represented by counsel, and that pleadings must be filed by lawyers, not

corporate officers. Additionally, the nullity rule should be applied uniformly to pleadings filed by non-lawyers on behalf of corporate entities due to these long-standing statutory policies and subsequent case law. These long-standing statutory policies should not be interpreted to provide discretion for courts to apply them on a case-by-case basis.

3. If the Appellate Court has the Discretion to Engage in a Case-by-Case Analysis of the Application of the Nullity Rule, the Court in this Matter Improperly Considered Factors Unrelated to the Purposes of the Nullity Rule.

After announcing its new and broad nullity rule standard and the importance of reviewing the nullity rule's purposes as a measure of its applicability, the First District failed to analyze these articulated purposes in light of the facts presented. Rather, the appellate court relied on a completely different set of factors.

First, the appellate court placed great significance on its determination that the corporate president was acting reasonably when he filled out the administrative review complaint forms. *Downtown Disposal*, 943 N.E.2d at 197 (noting that it was "reasonable for [the corporate president] to believe that *he* personally had the right to file a complaint for administrative review" because the DOAH said to him, "*you* do have the right to appeal" (emphasis by the court)). The court's focus of the nonlawyer's subjective belief that he was doing nothing wrong, particularly in a corporate context, undermines years of well settled Illinois law, which includes the Corporate Practice of

Law Prohibition Act, 705 Ill. Comp. Stat. 220/1, the Attorney Act, 705 Ill. Comp. Stat. 205/1, and case law. See Section II.2. above.

Second, the *Downtown Disposal* court noted that the City of Chicago did not notice for six months that the administrative review complaints were not signed by an attorney, thereby indicating that "...the City was not suffering from the schemes of the unscrupulous or the mistakes of the ignorant." *Downtown Disposal* at 197. Of course, the City was prejudiced in that it was required to respond to administrative review complaints improperly filed. More importantly, the failure of an opposing party to notice that a court proceeding is being handled by a non-lawyer has no bearing on whether harm is being caused by the unauthorized practice of law. In fact, the "client" is harmed because its legal rights may be negatively affected by the potentially bad or incomplete advice of the non-lawyer. The courts are harmed because they must accommodate additional proceedings. In addition, a number of other harms, those identified above in section II.1. are potentially present.

Third, the *Downtown Disposal* opinion further notes that the trial court did not indicate that the proceedings had been corrupted in any way. *Downtown Disposal*, 943 N.E.2d at 198. Unfortunately, the court did not explain what it meant by "corrupted." In many respects, the proceedings were corrupted from the beginning because they were invalid due to the corporate president's acknowledged unauthorized practice of law. In

addition, the harm of additional proceedings noted above in Section II.1.C. were present. Perhaps more generally, this Court should not condone a standard of review that allows the unauthorized practice of law because it did not result in any corruption of (or harm to) the proceedings. A "no harm, no foul" standard seems misplaced given this Court's, and the General Assembly's, prior announcements with respect to the unauthorized practice of law.

Finally, the court said that the improperly filed administrative review complaints could have been easily "cured" if the nullity rule was not applied in that a lawyer could amend the complaints to indicate the corporation was represented by counsel. *Downtown disposal, 943 N.E. 2d at 198.* The concept of a "do-over" or a "mulligan" in judicial proceedings seems unjustified in this matter. Finality and defined procedural process exist for good and valid reasons. Rules, such as the requirement that corporations be represented by lawyers, are codified for many reasons; one being that written down and well recognized rules level the playing field for all who need to access the justice system. Consistency with precedent and evenly applied rules, they establish expectations, obligations, responsibilities, and ensure a measure of fairness that is central to the legitimacy of the administration of justice. In this case, the consideration that the unauthorized practice of law could be easily cured completely disregards these fundamental judicial concepts.

4. **The First District Appellate Court's Opinion Establishes a New Standard in Applying the Nullity Rule That Is Not Supported By Existing Authority.**

The ISBA also strongly believes that the First District Appellate Court's opinion is contrary to existing authority of the Court. The ISBA believes that prior to the *Downtown Disposal* decision, the law with respect to the near automatic application of the nullity rule as a remedy for the unauthorized practice of law was clear and well established. E.g., *Ford Motor Credit Co. v. Sperry*, 214 Ill.2d 371, 827 N.E.2d 422 (2005)("the effect of a person's unauthorized practice [of law] on behalf of a party is to require dismissal of the cause or to treat the particular actions taken by the representative as a nullity"). The ISBA believes that this clarity is a reasonable reflection of the seriousness by which the Court views its responsibility to regulate the practice of law, including the prevention of the unauthorized practice of law, and to protect the public from those "mistakes of ignorant individuals and the schemes of the unscrupulous." *Janiczek v. Dover Management*, 134 Ill.App.3d 543, 546, 481 N.E.2d 25 (1st Dist. 1985). Mindful of its role as an amicus, however, the ISBA believes that this argument will be fully addressed by the parties and therefore does not repeat it here.

III. CONCLUSION

This ruling will abrogate the nullity rule in cases involving corporations purportedly represented by its non-lawyer officers. As noted

above, this is a clear departure from existing and longstanding precedent. In addition, the *Downtown Disposal* opinion, if allowed to stand, will have a much larger effect on the prevention and prosecution of unauthorized practice of law in general.

WHEREFORE, for the above stated reasons, the ISBA suggests that this Court reverse the judgment below.

DATED: August 3, 2011

Respectfully submitted,

_____

Charles J. Northrup
Attorney for Amicus Curiae
Illinois State Bar Association

John G. Locallo, President
Charles J. Northrup, General Counsel
Melinda J. Bentley, First Assistant Counsel
ILLINOIS STATE BAR ASSOCIATION
424 S. Second Street
Springfield, IL 62701
(217) 525-1760