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Property tax exemption for charitable organizations remains gray area

In *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, the plaintiff foundation sought exemption of four parcels from real estate taxation. Until the 2004 tax year, the Illinois Revenue Department classified these parcels as exempt because of charitable use under Section 15-65 of the Property Tax Code. 35 ILCS 200/15-65.

The parcels, located in Urbana, had improvements, including a hospital, a day care center (which serves the families of plaintiff's employees and others) and a power plant that services the parcels.

For the 2004 and 2005 tax years, local assessment officials, and then the revenue department, denied the foundation's exemption requests and the parcels were assessed at their full value. The parcels continued to be assessed at full value thereafter.

In 2007, the foundation filed suit against the revenue department and the local governmental entities that levy property taxes against the subject parcels. In this suit, the foundation sought judgment that the parcels were exempt under Section 15-65 of the Property Tax Code, which exempts property used for charitable or beneficent purposes.

While the action remained pending, in June 2012, the legislature established a new charitable use exemption, Section 15-86 of the code, which specifically addresses hospitals, and permits exemption when hospital services or subsidies are equal in value or otherwise exceed the estimated property tax liability. 35 ILCS 200/15-86.

The statute was enacted in response to the Supreme Court's decision in *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368 (2010), and to otherwise address what had become an unclear area of law.

The foundation moved for summary judgment, arguing the new

law applied retroactively. The trial court agreed, declaring that the new law, Section 15-86 of the code, applied retroactively to the parcels at issue, rather than the more general, charitable use exemption contained in Section 15-65 of the code.

The trial court's ruling only addressed which law applied, not whether the parcels qualified for an exemption under Section 15-86. Some of the defendants appealed the order, and, in its January 2016 decision, the 4th District Appellate Court reversed the lower court's ruling, and held that Section 15-86 of the code was unconstitutional. *Carle Foundation v. Cunningham Township*, 2016 IL App (4th) 140795, ¶12.

As set forth in the Illinois Constitution, the legislature has the exclusive power to raise revenue by law, and the constitution confers on the legislature a limited power to establish property tax exemptions: "[t]he General Assembly by law may exempt from taxation only the property of the state, units of local government and school districts and property used exclusively for agricultural

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and horticultural societies and for school, religious, cemetery and charitable purposes." Ill. Const. 1970, art. IX, Sections 1, 6.

Finding that Section 15-86 "purports to grant a charitable exemption on the basis of an unconstitutional criterion, i.e., providing services or subsidies equal in value to the estimated property tax liability ..., without requiring that the subject property be 'used exclusively ... for charitable purposes,'" the appellate court held

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that the law was unenforceable from its inception and remanded the case for further proceedings. 2016 IL App (4th) 140795 ¶¶164, 166. The plaintiff and certain defendants appealed the appellate court's decision to the Supreme Court.

Those involved in the taxing question, including attorneys, tax consultants and units of local government, eagerly awaited the Supreme Court's decision, but were decidedly disappointed, when, in March, rather than addressing the issue of the statute's constitutionality, the Supreme

to its order granting plaintiff's motion for summary judgment a Rule 304(a) finding. And the appellate court, en route to declaring Section 15-86 unconstitutional, determined that the trial court's Rule 304(a) finding was proper, and thus established jurisdiction.

In contrast to the trial court and the appellate court, in its analysis of Rule 304(a) precedent, the Supreme Court recognized a "clear distinction between judgments that dispose of 'separate, unrelated claims,' which are immediately appealable under Rule 304(a), and orders that dispose only of 'separate issues relating to the same claim,' which are not immediately appealable under Rule 304(a)." 2017 IL 120427, ¶15.

The Supreme Court held that the trial court's order merely resolved an "issue" and not a "claim." *Id.* at ¶23. The plaintiff sought a declaration as to what law — either Section 15-65 or 15-86 of the Property Tax Code — governed its remaining claims for relief and, ultimately, whether the parcels are exempt.

The declaration sought was not distinct and separate from the remaining claims; rather, the Supreme Court reasoned, the pleading of a claim and the determination of what law governs that claim are so interrelated that they are part of a single claim.

Thus, the court held that trial court's order, which the appellate court subsequently reversed, was not appealable under Rule 304(a), and the appellate court lacked jurisdiction to review it. *Id.*

The practical effect of the Supreme Court's decision is that nonprofit hospitals, even those that are not used exclusively for charitable purposes, may continue to find property tax relief in the form of an exemption under Section 15-86.

However, whether this exemption is constitutional as written remains an open question.

Court vacated the appellate court's decision on the grounds that it lacked jurisdiction.

Supreme Court Rule 304(a) permits an appeal of a final judgment that does not dispose of an entire proceeding involving multiple parties or multiple claims "only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a).

Here, the trial court appended