

**STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO**

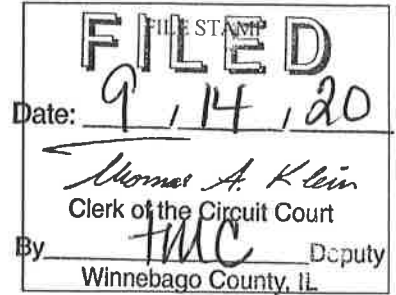
SANDRA ROJAS, LPN, formerly and also known as)
SANDRA MENDOZA,)

Plaintiff,)

vs.) No. 2016-L-160

DR. SANDRA MARTELL, Public Health Administrator)
of the Winnebago County Health Department, in her)
official capacity, JAMES POWERS, Chair of the)
Winnebago County Board of Health, in his official)
capacity, and WINNEBAGO COUNTY, ILLINOIS,)

Defendants.)



MEMORANDUM OPINION AND ORDER

This matter comes before the court on Plaintiff’s motion to strike Defendants’ Second Affirmative Defense. The issue presented is whether the Tort Immunity Act’s prohibition against punitive damage awards (745 ILCS 10/2-102) trumps the provision in the Health Care Right of Conscience Act (745 ILCS 70/1 *et seq.*, “Conscience Act”) allowing treble damages in a successful claim under that statute.

For the reasons stated below, the motion to strike the Second Affirmative Defense is granted.

Standard of Decision

A motion to strike an affirmative defense pursuant to Section 2–615 challenges the legal sufficiency of the affirmative defense. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20. When the legal sufficiency of a complaint or count is challenged, all well-pleaded facts are taken as true, as well as all reasonable inferences favorable to the plaintiff which may be drawn from those facts. *Salce v. Saracco*, 409 Ill.App.3d 977, 981, 949 N.E.2d 284, 288 (2d Dist. 2011). In reviewing the sufficiency of the pleading, the Court will disregard all conclusions of law or fact unsupported by specific factual allegations. *Id.* In ruling on a Section 2-615 motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered. *K. Miller Construction Co., Inc., v. McGinnis*, 238 Ill.2d 284, 291, 938 N.E.2d 471, 477 (2010).

Statutes at Issue

Effective January 1, 1998, the Conscience Act created a private right of action for violation of its terms, and it specified as follows concerning the damages recoverable in such an action:

Actions; damages. Any person, association, corporation, entity or health care facility injured by any public or private person, association, agency, entity or corporation by reason of any action prohibited by this Act may commence a suit therefor, and shall recover ***threefold the actual damages***, including pain and suffering, sustained by such person, association, corporation, entity or health care facility, the costs of the suit and reasonable attorney's fees; but in no case shall recovery be less than \$2,500 for each violation in addition to costs of the suit and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

745 ILCS 70/12 (emphasis added).

When the foregoing provision was adopted by the General Assembly, there was already a long-standing provision of the Tort Immunity Act which exempted “local public entities” from any award of punitive damages:

Notwithstanding any other provision of law, a local public entity is not liable to pay ***punitive or exemplary damages*** in any action brought directly or indirectly against it by the injured party or a third party. In addition, no public official is liable to pay ***punitive or exemplary damages*** in any action arising out of an act or omission made by the public official while serving in an official executive, legislative, quasi-legislative or quasi-judicial capacity, brought directly or indirectly against him by the injured party or a third party.

745 ILCS 10/2-102 (emphasis added).

Plaintiffs do not dispute that treble damages are a species of punitive damages; consequently, at least on the surface, the two statutes appear to be in conflict. One provides for treble damages, and the other forbids them. They both cannot apply to this case, so the task before the Court is how to reconcile the two provisions. As stated in this Court’s earlier decision on the cross-motions for summary judgment:

The cardinal rule in interpreting a statute is to give effect to the intent of the legislature, and the language of the statute is the best and most reliable indicator of the legislature's intent. *People v. Fort*, 2017 IL 118966, ¶20. Here, the parties disagree about the interaction between two different statutes. When an apparent conflict exists between statutes, courts must construe the statutes in harmony if possible. *Mermelstein v. Rothner*, 349 Ill. App. 3d 800, 803, 812 N.E.2d 461, 464 (1st Dist. 2004).

Defendants argue that *Paulson v. County of DeKalb*, 268 Ill.App.3d 78, 644 N.E.2d 37 (2d Dist. 1994), gives insight into how to approach this process. They note, in fact, that one of the statutes at issue in *Paulson* was the same one at issue here: the Tort Immunity Act's prohibition against punitive damage awards against local governmental entities. In reconciling that provision with a treble damages provision in the Nursing Home Care Act, 210 ILCS 45/3-602, the Appellate Court noted that that the superseding clause contained in the Tort Immunity Act provision was significant to its reconciliation of the two statutes:

Plaintiff's arguments ignore the phrase "notwithstanding any other provision of law" that appears in section 2-202 of the Tort Immunity Act. This prefatory phrase "was intended * * * to clarify the relationship between the Tort Immunity Act, which prohibits the assessment of punitive damages against a local public entity, and all other statutes or common law actions which may allow the assessment of punitive damages in certain circumstances."

When read in a vacuum, section 3-602 authorizes the assessment of treble damages against county-operated nursing homes. However, it is clear that the legislature intended section 2-102 of the Tort Immunity Act to impact upon provisions of law such as section 3-602 which otherwise would allow punitive damages to be assessed against a local public entity. There is nothing in the Nursing Home Care Act indicating that the legislature intended that section 3-602 of the Nursing Home Care Act should remain unaffected by the Tort Immunity Act. To adopt plaintiff's interpretation of the provisions at issue would render meaningless the phrase "notwithstanding any other provision of law." This is a result that we must avoid.

Paulson, 268 Ill. App. 3d at 82-83, 644 N.E.2d at 40 (citations omitted).

In other words, the exact section of the Tort Immunity Act which prohibits punitive damages had its own superseding clause (Section 2-102, "Notwithstanding any other provision of law"). Conversely, the Nursing Home Care Act did not have any such superseding clause, and its provision allowing treble damages was only a general one; it did not specifically refer to treble damages *against public entities*. 210 ILCS 45/3-602. To be sure, the Act *in general* was applicable to public nursing homes, but the legislature did not specifically state that the treble damages provision was. *Paulson* made clear that the touchstone of its analysis was the need to discern the intention of the legislature, and there was nothing in the treble damages provision of the Nursing Home Care Act "indicating that the legislature intended that [it] should remain unaffected by the Tort Immunity Act." *Paulson*, 268 Ill.App.3d at 82-83, 644 N.E.2d at 40.

It is difficult to reach the same conclusion as to the legislature's intent when considering the treble damages provision of the Conscience Act:

Actions; damages. Any person, association, corporation, entity or health care facility injured by any *public* or private *person, association, agency, entity* or corporation by reason of any action prohibited by this Act may commence a suit therefor, and shall recover threefold the actual damages, including pain and

suffering, sustained by such person, association, corporation, entity or health care facility, the costs of the suit and reasonable attorney's fees; but in no case shall recovery be less than \$2,500 for each violation in addition to costs of the suit and reasonable attorney's fees. These damage remedies shall be cumulative, and not exclusive of other remedies afforded under any other state or federal law.

745 ILCS 70/12 (emphasis added).

While *Paulson* concluded that the legislature did not intend that the treble damages provision of the Nursing Home Care Act would override the Tort Immunity Act's prohibition against punitive damages, that is a much more difficult conclusion to draw with respect to Section 12 of the Conscience Act. The latter applies itself specifically to "public" entities. In other words, regardless of the well-established "public policy against imposing punitive damages liability on local taxpayers," *Paulson*, 268 Ill. App. 3d at 83, 644 N.E.2d at 40, the legislature explicitly provided for exactly that in Section 12 of the Conscience Act. *Paulson* reminds us of the ultimate goal of statutory construction – ascertaining the intention of the legislature – but it does not direct the outcome here.

There are other maxims of statutory construction to consider. For example, the Tort Immunity Act applies to *all types* of claims against local governmental bodies: automobile negligence, employment law, premises liability, and so forth. The Conscience Act, however, applies only to the narrower category of claims brought pursuant to that statute. This rule of construction would suggest that the Conscience Act provision should be given precedence. *In re Marriage of Ross & Pruitt*, 2015 IL App (2d) 130961, ¶23.

There is also the matter of the competing superseding clauses. As in *Paulson*, Section 2-102 of the Tort Immunity Act contains an introductory clause that suggests that this section is to be given precedence over any other conflicting statute: "Notwithstanding any other provision of law..." Unlike *Paulson*, however, the competing statute here – Section 14 of the Conscience Act – has its own superseding clause. It provides that the Conscience Act "shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act." Clearly, both superseding clauses cannot be given effect; how do we discern the legislature's intention in this situation? As noted in the Court's earlier decision, another rule of construction guiding statutory interpretation is that, when conflict is present, the more recent statute should be favored over the older one. *Gillespie Cmty. Unit Sch. Dist. No. 7, Macoupin County v. Wight & Co.*, 2014 IL 115330, ¶41. Here, this rule of construction favors the Conscience Act.

The resolution to the conflict is that the Conscience Act's treble damages provision must be given effect. Failing to do so ignores the fact that the legislature made this specific provision applicable to public entities. Additionally, as the narrower and most recent of the competing statutes, it is the one which should be given effect.¹

¹ The issue presented here is subtly different, and more difficult, than the one addressed in connection with the cross-motions for summary judgment. The Court previously had to reconcile the Tort Immunity Act's "[e]xcept as otherwise provided" clause with the Conscience Act's "shall supersede all other Acts" clause. The former is not a superseding clause at all; consequently, the two statutes dovetail on priority, rather than conflict.

Conclusion

For the reasons stated above, Plaintiff's motion to strike Defendants' Second Affirmative Defense is granted.

9/14/20

Date

A handwritten signature in black ink, appearing to read "Eugene G. Doherty", followed by the number "18". The signature is written above a horizontal line.

Hon. Eugene G. Doherty, Circuit Judge