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DEBT COLLECTION SERVICES OF INDEPENDENT CONTRACTOR ARE GOVERNED BY ILLINOIS COLLECTION AGENCY AND DECEPTIVE PRACTICES ACTS

In *People ex rel. Daley v. Datacom Systems Corp.*, 176 Ill. App. 3d 697, 531 N.E.2d 839 (1st Dist. 1988), the Illinois Appellate Court held that debt collection services provided by independent contractors are governed by the Illinois Collection Agency Act (Ill.Rev.Stat. ch. 111, pars. 2001-2040 (1987)), the Consumer Fraud and Deceptive Business Practices Act (Ill.Rev.Stat. ch. 121 1/2, pars. 261-272 (1987)), and the Uniform Deceptive Trade Practices Act (Ill.Rev.Stat. ch. 121 1/2, pars. 311-317 (1987)). In addition, the court held that the State's complaint sufficiently questioned whether home rule municipal powers extend to independent contractors.

Background

In 1985, the City of Chicago ("the City") contracted with Datacom Systems Corporation ("Datacom") to collect allegedly outstanding parking fines. Datacom received a debt collection license from the Illinois Department of Registration and Education ("the DRE"). The contract designated Datacom an independent contractor and not an agent of the City. Pursuant to the contract, Datacom mailed notices to delinquent ticket holders, collected the fines, and retained between 20% and 42% of the monies collected. The notices instructed the recipients to pay the "total amount due," which included an amount designated "fines and penalties" plus an additional amount for "court costs" and "mailing fees." The "fines and penalties," however, were greater than the original fines. In addition, the original fines had not included "court costs" or "mailing fees." Neither the City nor Datacom had obtained judicial approval to increase the parking fines, or to charge the delinquent ticket holders for court costs or mailing fees. Datacom deposited the checks, made payable to the Cook County circuit court clerk, directly into Datacom's bank account.

The Cook County State's Attorney ("the State") brought an action on behalf of the people of the State of Illinois against the City and Datacom seeking declaratory and equitable relief, including fines against Datacom and revocation of Datacom's license. The State alleged that Datacom's actions violated the Illinois Collection

Agency Act ("the Collection Act"), the Consumer Fraud and Deceptive Business Practices Act ("the Consumer Fraud Act"), and the Uniform Deceptive Trade Practices Act ("the Deceptive Practices Act"). The State also alleged that the actions of the City and Datacom exceeded their corporate authorities. The trial court held that Datacom's actions were within its corporate authority and not covered by any of the Acts. Therefore, the trial court dismissed the State's complaint for failure to state a claim upon which relief could be granted.

At the same time that the State filed its complaint in the trial court, the DRE initiated administrative action to suspend or revoke Datacom's collection license, alleging that Datacom violated the Collection Act. The trial court granted Datacom leave to file a third-party complaint against the DRE. In its complaint, Datacom sought a declaratory judgment that its activities were not governed by the Collection Act and an injunction against further administrative proceedings by the DRE. The trial court granted Datacom's request and thus enjoined the DRE from taking administrative action against Datacom. The State and the DRE appealed.

Collection of Parking Fines is Governed by Illinois Collection Agency Act

In the appellate court, the State again alleged that Datacom's actions violated the Collection Act. The Collection Act defines a collection agency as a corporation which "[e]ngages in ... collection for others of any account, bill or other indebtedness." Ill.Rev.Stat. ch. 111, par. 2006(a) (1987). Datacom claimed that because the Act does not apply to "public officers," and because Datacom acted at the direction of the City, its actions were exempted from the Collection Act. The State argued that an independent contractor may not benefit from the public officer exception to the Act. The appellate court held that because Datacom's contract with the City designated it an independent contractor, the trial court should not have dismissed the State's complaint based on the public officer exception. The appellate court remanded the issues of whether Datacom was an agent of the City or an independent contractor, and the legal significance of its status, to the trial court.

Datacom also argued that the Collection Act did not govern its actions because the parking tickets were not "debts" within the meaning of the Collection Act. In support of this argument,

Datacom cited cases which held that municipal fines are not debts under Illinois law. Although the Collection Act does not define “debts,” the Illinois Vehicle Code provides that a “parking violation... constitute[s] a debt due... the municipality.” Ill.Rev.Stat. ch. 95 1/2, par. 11-208.3(b)(5)(i) (1987)(emphasis added). Therefore, the court reasoned, the legislature clearly intended the term “debts” in the Collection Act to include parking ticket fines.

Consumer Fraud and Deceptive Business Practices Act Governs Collection of Debts Owed to City

The State also alleged that Datacom violated the Consumer Fraud Act. The Consumer Fraud Act defines “trade” and “commerce” to include the “sale... of any services... directly or indirectly affecting the people of this State.” Ill.Rev. Stat. ch. 121 1/2, par. 261(f) (1987). Datacom argued that although debt collection is generally “trade or commerce” under the Consumer Fraud Act, mailing notices to delinquent parking ticket holders was not a typical consumer transaction intended to be included in “trade or commerce.” The appellate court held that because the Consumer Fraud Act does not differentiate between consumer debts and other types of debts, the only relevant inquiry was whether the City had purchased any debt collection services. Because the debt collection services Datacom provided the City were similar to the debt collection services provided to other creditors, the court held that Datacom’s activities were “trade or commerce” within the scope of the Consumer Fraud Act.

Uniform Deceptive Trade Practices Act Applies to Misrepresentations Made to Recipients of Debt Collection Notices

The State further alleged that Datacom’s actions violated the Deceptive Practices Act. Datacom argued that the Deceptive Practices Act was intended to grant relief to individuals for unfair competition. Accordingly, recipients of Datacom’s notices were not “person[s] likely to be damaged by a deceptive trade practice” of Datacom. Ill.Rev.Stat. ch. 121 1/2, par. 313 (1987). In support of this argument, Datacom relied upon *Chirikos v. Yellow Cab Co.*, 87 Ill. App. 3d 569, 410 N.E.2d 61 (1st Dist. 1980), and *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 371 N.E.2d 634 (1977).

In *Chirikos*, taxicab companies allegedly made misrepresentations to the City in order to obtain a fare increase. The *Chirikos* court held that because the misrepresentations were not made to taxicab riders, the plaintiff taxicab rider had not stated a claim for relief and the trial court had properly dismissed the complaint. Here, however, the alleged misrepresentations were included in Datacom’s notice, and therefore were made directly to the consumers.

In *Steinberg*, a medical school allegedly made misrepresentations to prospective students, including the plaintiff, about its admissions policies. The *Steinberg* court held that the statements were not covered by the Deceptive Practices Act because the plaintiff did not purchase educational services and thus could not be a “consumer.” The issue in *Steinberg*, however, was whether the plaintiff had standing to sue as a “consumer,” and not whether the cause of action fell within the scope of the Deceptive Practices Act. Here, the defendants did not dispute the State’s standing to sue on behalf of the people of Illinois.

Plaintiff Sufficiently Questioned Whether Home Rule Municipal Powers Extend to Independent Contractors

The State also brought a *quo warranto* (“by what authority”) action against the City and Datacom which alleged that the actions of the City and Datacom exceeded their respective authority. In such actions, the defendant has the burden of proving that it had the relevant legal authority for its actions. The appellate court held that the State’s complaint sufficiently questioned the extra-judicially increased fines, and Datacom’s ability to deposit checks made payable to the City in Datacom’s bank account. The City and Datacom argued that Datacom’s actions were ministerial exercises of the City’s home rule powers and therefore were proper. The appellate court held that neither the City nor Datacom had presented arguments sufficient to warrant dismissal of the State’s complaint. The City had no authority to raise the parking ticket fines because the municipal code empowered only a judge to increase the fines. Moreover, neither the City nor Datacom offered sufficient legal authority for allowing Datacom to cash checks made payable to the City.

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In sum, the appellate court held that the trial court erred in dismissing the State's action against Datacom and in enjoining the DRE's administrative action against Datacom. In addition, the trial court should have dismissed Data-

com's third-party complaint seeking declaratory relief against the DRE. The appellate court remanded the case to the trial court for further proceedings.

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NON-SUPPLYING CIGARETTE MANUFACTURERS, THEIR TRADE ASSOCIATION, AND PUBLIC RELATIONS GROUP MAY BE HELD LIABLE FOR WRONGFUL DEATH UNDER A THEORY OF CIVIL CONSPIRACY

In *I.D. Rogers v. R.J. Reynolds Tobacco Co.*, 761 S.W. 2d 788 (Tex. Ct. App. 1988), the Texas Court of Appeals held that non-supplying cigarette manufacturers, their trade association and their public relations organization were not entitled to summary judgment in a case involving a smoker's death. The court held that substantial issues of material fact existed as to whether plaintiffs' decedent wife and mother would have quit smoking if she had known of the dangers of smoking, and as to whether defendants were liable on the theory of civil conspiracy.

Background

From sometime in the early fifties until 1982, decedent, Marjorie Rogers, regularly smoked one pack of cigarettes or more per day. In the early sixties, as media publicity of the dangers of smoking increased, Mrs. Rogers began to realize that she should cut down on her smoking or try to quit. Apparently, Mrs. Rogers took comfort in the fact that cigarette warnings stated that smoking *may be* hazardous to one's health as opposed to stating that smoking *is* hazardous to one's health. Mrs. Rogers quit smoking in November of 1982 after being diagnosed as having lung cancer. She died of the disease on December 17, 1983.

Mrs. Roger's surviving husband and children brought a products liability suit against six major American tobacco industries ("the Big-6"), their trade association, the Tobacco Institute, Inc. ("the TI"), and their research and public relations organization, the Council for Tobacco

Research-U.S.A., Inc. ("the CTR"). In the mid-1950s, five of the Big-6 industries (the sixth subsequently joined) took the position that smoking cigarettes did not cause lung cancer. Shortly thereafter, the Big-6 formed what was originally known as the Tobacco Industry Research Committee, now known as the CTR, for the purposes of researching the relationship between tobacco smoking and health and providing factual information on smoking to the public. In 1958, the Big-6 formed the TI for the purpose of collecting and disseminating scientific and medical material relating to tobacco, its use, and health.

The Rogers brought this suit alleging that the defendants had entered into a civil conspiracy or concert of action with a twofold purpose: (1) to conceal and suppress scientific and medical information regarding tobacco use and health; and (2) to establish a vehicle by which the Big-6 were able to take a strong and pervasive stance that smoking-caused disease had not been proven. The Rogers' claims were based on alleged cigarette design and marketing defects, misrepresentations, negligence and fraud.

In the trial court, the Rogers' attempted to establish that the Big-6, the TI and the CTR had acted to suppress information which would have made the dangers of smoking apparent to Mrs. Rogers. They offered the affidavit of Dr. Richard I. Evans, a prominent social psychologist, in which he stated that, in his opinion, Mrs. Rogers would have stopped smoking in 1965 if she had fully understood the dangers of smoking at the time. Appellees moved for summary judgment pursuant to a Texas statute. Tex. R. Civ. P. Ann. r. 166a(c) (Vernon 1976). The statute provides for summary judgment as a matter of law when the court determines that there is no genuine issue as to any material fact. The trial court granted the motion based on its findings that the Rogers raised no genuine issues of fact under their various theories.