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Supreme Court Watch

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Illinois Supreme Court to Decide Whether Illinois Human Rights Act Extends to Private Organizations that Use Public Facilities?

In *M.U., a minor, by and through her parents, Kelly U. and Nick U. v. Team Illinois Hockey Club, Inc., an Illinois not-for-profit corporation, and the Amateur Hockey Association of Illinois, Inc., an Illinois not-for profit corporation*, the Illinois Supreme Court will consider if section 5 of the Illinois Human Rights Act ("the Act"), 775 ILCS 5/6-*101 et. seq.*, applies to otherwise private organizations that make use of places of public accommodation.

Section 5 of the Act provides that discrimination in the use and enjoyment of facilities, goods, and services of any "public place of accommodation" is unlawful. 775 ILCS 5/5-102(A).

The petitioners, Team Illinois Hockey Club, Inc. ("Team Illinois") and the Amateur Hockey Association of Illinois, Inc. ("AHAI") were granted a dismissal by the circuit court. *M.U., a minor, by and through her parents, Kelly U. and Nick U. v. Team Illinois Hockey Club, Inc., an Illinois not-for-profit corporation, and the Amateur Hockey Association of Illinois, Inc., an Illinois not-for profit corporation*, 2022 IL App (2nd) 210568. Subsequently, the Illinois Appellate Court, Second District reversed and remanded in favor of Plaintiffs, holding that the Act is applicable. *Id.* the Second District based much of their analysis on the United States Supreme Court opinion in *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001), where the Court held the definition of a "place of public accommodation" need not be available to the general public to be a place of public accommodation. *Id*. The Second District found both Team Illinois and AHAI to be in violation of the Act and remanded the case. *Id.* ¶ 5.

While a private organization, Team Illinois makes use of an ice arena that is a place of public accommodation. *Id.* ¶ 5. The ice arena, leased and operated by Team Illinois is otherwise open to the public for spectators. *Id.* ¶ 5.

Plaintiff *M.U.* participated in public tryouts and joined the youth hockey team for Team Illinois. *Id.* ¶ 4. Shortly after Plaintiff's disclosure of a mental health condition, Plaintiff was prohibited from participating in Team Illinois activities and from contact with other Team Illinois players, and advising other players and their parents not to have contact with the Plaintiff. *Id.* ¶ 8. These restrictions were removed after the Plaintiff's parents threatened litigation. *Id.* at ¶ 9. Following Plaintiff's reinstatement with the team, Plaintiff filed a charge of discrimination with the Illinois Department of Human Rights ("the Department"), that was subsequently dismissed for lack of substantial evidence. *Id.* ¶ 9. Following the dismissal by the Department, Plaintiff alleged discrimination under the Act and sought review of the Department's decision. *Id.* ¶ 11.

AHAI, a not-for-profit, that is an affiliate of USA Hockey, which regulates and controls youth hockey teams throughout Illinois, including co-petitioner, Team Illinois. *Id.* ¶ 4. A director and board member of AHAI subsequently reiterated the Plaintiff's suspension from Team Illinois activities and affirmed agreement with Team Illinois' suspension of the Plaintiff. *Id.* at ¶ 7.

In their motion to dismiss the circuit court complaint, the petitioners did not dispute that the ice arena was a place of public accommodation. *Id.* ¶ 13. The circuit court found that "[t]he leasing of a, or for a specific amount of time, and ice rink, does not convert a private organization into a place of public accommodation." *Id.* ¶ 14.

Petitioners claim the Second District's decision expands the scope of the Act beyond the Act's statutory language and cite a number of Illinois authorities where Illinois courts have not applied the Act to portions of a public facility used by a private party and that portion is not open to the general public. Petitioners further argue that unlike the statutory of the language of the Act itself, by applying the Act to Team Illinois, the Second District is making the Act applicable to clubs, organizations, teams, and events, where the statutory language is based upon physical locations. The Act prohibits discrimination at places of public accommodation including "a gymnasium, health spa, bowling alley, gold course, or other place of exercise or recreation." 775 ILCS 5/5-101(13). Petitioners also argue that Plaintiff, while prohibited from team activities by Team Illinois, was not prohibited the accommodations of the ice arena, and could make use of the public accommodations not related to playing for the private team, such as skating during open skate, viewing games, or eating at the restaurant.

Petitioners further argue that a long line of Illinois cases predating the United States Supreme Court decision in *Martin*, that directly interpret section 5 of the Act are applicable, beginning with the Illinois Supreme Court's interpretation of section 5 of the Act in, *Board of Trustees of Southern Illinois University v. Department of Human Rights et al.*, 159 Ill.2d 206, directing an interpretation based in doctrine of *ejusdem generis*. "Where general words follow an enumeration of two or more things, they apply only to persons or things, they apply only to persons or things of the same general kind or class specifically mentioned (*ejusdem generis*)." Antonin Scalia & Bryan A. Gardner, *Reading Law: The Interpretation of Legal Text*, 199 (2012). Section 5 of the Act is comprised of 13 distinct classes, each with multiple distinct locations. 775 ILCS 5/5-101(A).

Petitioners highlight the legislature's intention that some organizations that would otherwise be governed by the Act not be included, and that private clubs or other establishments not open to the public are exempt under the Act. 775 ILCS 5/5.

Defense attorneys should monitor the Court's decision as affirming the Second District's finding may greatly expand the potential pool of Plaintiffs bring forth actions under the Act.

About the Author

John C. Hanson, an Associate with *HeplerBroom LLC* in Edwardsville, focuses his practice on the defense of litigation involving personal injury, products liability, insurance law, governmental matters, and election law. Prior to joining HeplerBroom, Mr. Hanson served as a Madison County Assistant State's Attorney, with experience in both civil and criminal matters. In addition to his State's Attorney experience, he handled the defense of commercial and toxic tort litigation as an associate in a large St. Louis metro-area firm. Mr. Hanson earned his J.D. from Southern Illinois University School of Law, his M.A. from Eastern Illinois University, and a B.S. from Southern Illinois University – Edwardsville.

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