



## Sovereign Immunity Extends to Formerly Private Entities Now Owned by the State

December 2, 2022

Posted in School & Education

*This post was written by HeplerBroom Summer Associate Sarah Jolley. A supervising partner also contributed to the post.*

In *Abo-Saif v. Bd. of Trustees of Univ. of Illinois*, 2022 IL App (1st) 211091, the Illinois Court of Appeals, First District affirmed the Circuit Court of Cook County's holding that sovereign immunity extends to contract disputes involving formerly private institutions that have since been purchased by the State.

### Case Background

Plaintiff Bishoy Abo-Saif, a disabled student at John Marshall Law School ("JMLS") was dismissed from his juris doctor program on academic grounds. *Abo-Saif v. Bd. of Trustees of Univ. of Illinois*, 2022 IL App (1st) 211091, ¶ 1. Plaintiff sued JMLS in the United States District Court for the Northern District of Illinois, alleging discrimination based on his disability, and reached a settlement that made his readmittance contingent upon his performance in a remedial summer program. *Id.* at ¶ 4. After the summer 2018 session concluded, plaintiff learned his performance was unsatisfactory and he would not be readmitted. *Id.*

In December 2018, the University of Illinois purchased JMLS, after which the formerly private institution became part of the public university and began operating as UIC-JMLS. *Id.* at ¶ 5. As part of this purchase, the University of Illinois assumed JMLS's liabilities. *Id.*

In May 2020, UIC-JMLS denied Plaintiff's request for readmission. *Id.* at ¶ 6. Plaintiff subsequently filed this action against the Defendant, the Board of Trustees of the University of Illinois, seeking money damages for breach of the settlement agreement and a declaratory judgment that he receive another opportunity to seek readmission to the juris doctor program. *Id.*

The Circuit Court of Cook County granted Defendant's motion to dismiss, agreeing that Plaintiff's suit was barred by the doctrine of sovereign immunity under the State Lawsuit Immunity Act. 745 ILCS 5/1 et seq. (West 2020). *Id.* at ¶¶ 9–10.

### Summary of Appellate Decision

On appeal, the First District addressed the issue of "whether a private entity that later becomes owned by the state is entitled to sovereign immunity for an alleged breach of a contract entered into while it was a privately-owned entity." *Id.* at ¶ 1.

According to the State Lawsuit Immunity Act, the State “shall not be made a defendant or party in any court except as provided in the Court of Claims Act.” 745 ILCS 5/1 (West 2020). The Court of Claims Act provides that the Court of Claims has exclusive jurisdiction over “[a]ll claims against the State founded upon any contract entered into with the State of Illinois.” 705 ILCS 505/8(b) (West 2020). Under the Court of Claims Act and the doctrine of sovereign immunity, the University of Illinois is treated as the State. See *Ellis v. Board of Governors of State Colleges & Universities*, 102 Ill. 2d 387, 393-94 (1984).

Plaintiff unsuccessfully argued that the State Lawsuit Immunity Act and Court of Claims Act did not apply because he entered into the disputed settlement agreement with JMLS while it was a private entity, and therefore his claims against the State were not “founded upon any contract entered into with the State of Illinois.” *Abo-Saif*, 2022 IL App (1st) at ¶ 11; 705 ILCS 505/8(b) (West 2020). Plaintiff also argued that the University of Illinois expressly consented to being sued under the settlement agreement when it assumed JMLS’s liabilities. *Id.* at ¶ 14. The First District disagreed, finding that the doctrine of sovereign immunity applied because, although Plaintiff entered into the settlement agreement with a private entity, he was now asserting claims against the State, and only the state legislature can issue a waiver of sovereign immunity. *Id.* at ¶¶ 15-17.

In the alternative, Plaintiff argued that the University of Illinois Act, the enabling legislation that created the Board of Trustees, allowed him to proceed in circuit court. *Id.* at ¶ 18. The University of Illinois Act provides that the Board has power to “contract and be contracted with, to sue and be sued, provided that any suit against the Board based upon a claim sounding in tort must be filed in the Court of Claims.” 110 ILCS 305/1 (West 2020). Plaintiff noted that the “sue or be sued” provision of the University of Illinois Act “constitutes an exception to the doctrine of sovereign immunity in non-tort actions that are not covered in the Court of Claims Act.” *Id.* at ¶ 20 (citing *City of Chicago v. Board of Trustees of the Univ. of Illinois*, 293 Ill. App. 3d 897, 903 (1997)). Plaintiff argued that his claims fell under an exception to the sovereign immunity doctrine and could be filed in the circuit court as opposed to the Court of Claims because he was suing the Board for breach of contract and declaratory judgment (non-tort claims).

The First District Court of Appeals held that Plaintiff could not avoid the sovereign immunity doctrine by seeking both equitable relief and monetary damages because “where a plaintiff sues the University of Illinois seeking money damages and therefore seeks to impose potential liability against the State, sovereign immunity applies, notwithstanding the provisions of the University of Illinois Act.” *Id.* at ¶ 21. Therefore, while Plaintiff could bring his breach of contract claim in the court of claims, Defendant was immune from Plaintiff’s suit in the circuit court. *Id.* at ¶ 22.

**Tags:** Illinois Appellate Court, Illinois Court of Claim, Sovereign Immunity and Formerly Private Entities