CHICAGOLAWBULLETIN.COM

MONDAY, AUGUST 10, 2015

Chicago Daily Law Bulletin

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Volume 161, No. 153

Serving Chicago's legal community for 160 years

44 pages in 2 sections

Skin in the game: Tattoos and copyright law

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TRIAL NOTEBOOK

STEVEN P. GARMISA
Hoey & Farina

Request met deadline, but not exactly

Bentley v. Helfi

Obeying a supervisory order from the Illinois Supreme Court to answer a question of law that a trial judge certified for immediate appeal, the appellate court considered whether Randy W. Bentley satisfied the one-year deadline for a defamation claim against Marion Helfi when Bentley filed a motion, a day before the statute of limitations expired, requesting permission to supplement a pending complaint against Helfi with two counts for libel — but the motion wasn't granted until four weeks later.

Bentley started by suing Marion and Charles Helfi in Macoupin County, 250 miles southwest of Chicago, for refusing to pay $11,250 they allegedly owed on a construction contract. A few months after they were sued, Marion allegedly defamed Bentley in two letters that reportedly accused him of crooked and inept business practices.

A day before the one-year anniversary of the date Marion allegedly mailed the letters, Bentley filed a motion, under Section 2-609 of the Illinois Code of Civil Procedure, for permission to add libel claims. The proposed pleading was attached to the motion.

Section 2-609 says "supplemental pleadings, setting up matters which arise after the original pleadings are filed, may be filed within a reasonable time by either party by leave of court and upon terms."

After Bentley's motion was granted, Marion moved to dismiss the defamation counts as barred by the one-year limitations set by Section 13-201 of the code.

The trial judge denied Marion's motion, but he certified the dispute under Illinois Supreme Court Rule 308.

Marion's application for interlocutory review was denied. But the Supreme Court instructed the 4th District Appellate Court to answer the certified question of law.

Ruling against Bentley, the appellate court concluded: "a motion for leave to file a supplemental complaint — which by its very nature admits that the supplemental complaint is not yet filed — does not toll the statute of limitations."

The 4th District also noted Bentley "could have easily avoided this predicament" by paying an additional filing fee and "bringing his defamation claims in a freestanding, separate complaint." *Bentley v. Helfi*, 2015 IL App (4th) 140967 (June 2, 2015).

Here are highlights of Justice Robert J. Steigmann's opinion (with citations not noted in the text):

In his initial May 2012 complaint against defendants, plaintiff sought to recover approximately $11,250 from defendants under alternative theories of (1) breach of contract, (2) account stated and (3) unjust enrichment. The dispute concerned defendants' alleged failure to pay for construction services plaintiff's company performed on defendant's roof and deck in the summer of 2010.

On Aug. 29, 2012, Marion sent identical letters to two law offices in Carlinville, Illinois, describing the two-year "nightmare" she and Charles experienced since doing business with plaintiff's construction company.

According to her letter, Marion found plaintiff's operation so crooked and inept that she reported him to the Illinois Department of Financial and Professional Regulation, contacted the Illinois

NOTEBOOK, *Page 6*

IN THE NEWS

BY CHRISTINE M. PENATECH

With the skyline behind him, Joseph J. Siprut follows his tee shot at the Siprut Foundation's charity golf outing supporting PAWS Chicago on July 21 at the Harborside International Golf Center. Siprut is the managing partner of Siprut P.C. About 75 golfers participated in the event to raise funds for the Lincoln Park-based no-kill animal shelter. *Ralph Greenslade*

Michael P. Alvarado

Patrick C. Harrigan

Aharon S. Kaye

Patrick M. Smith

John P. Huang

IN THE LAW FIRMS

Davis, Friedman LLP promoted **Michael P. Alvarado** to partner.

Alvarado started as a law clerk at the firm in 2006 and became an associate in 2007. He practices family law matters.

* * * * *

Katten, Muchin, Rosenman LLP has elected 20 new partners firmwide, including eight in the Chicago office. The new Chicago-based partners are:

- **Patrick C. Harrigan, Aharon S. Kaye** and **Patrick M. Smith** in the litigation and dispute resolution practice
- **John P. Huang** and **Neil G. Shelton** in commercial finance
- **Thomas F. Lamprecht** and **Martin Q. Ruhaak** in the corporate practice
- **Brett A. Kiffkowski** in real estate

IN THE BAR GROUPS

The American Association for Justice appointed personal injury attorney **Antonio M. Romanucci**, founding partner and principal at Romanucci & Blandin LLC, as chair of its police misconduct litigation group effective July 12.

Romanucci also serves as officer-elect of the traumatic brain injury litigation group and was elected to a three-

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TURN INSIDE

LAWYERS' FORUM

Kennedy recognizes implicit bias

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> *"The accused infringer has significant incentive to use inter partes review proceedings to challenge any threatening patent."*

LAWYERS' FORUM, PAGE 4

Court upholds law covering lawyer-brokers

Statute prevents attorneys from playing 2 roles in one property sale

BY LAURAANN WOOD
Law Bulletin staff writer

A state law that prohibits real estate brokers who are also lawyers from acting in both capacities in one deal passes constitutional muster, the 1st District Appellate Court held.

The appellate opinion affirms a Cook County Circuit Court decision to dismiss Peter John Cariello's lawsuit, which alleged a section of the Real Estate License Act is unconstitutional. He contended that the law encroaches on Illinois Supreme Court powers and prohibits the conduct of one singled-out group of people.

Citing a potential for conflicts of interest, though, the appellate court ruled that the statute is constitutional because it addresses only one type of broker and treats them all fairly as such.

In 2013, the Department of Financial and Professional Regulation received a consumer complaint about Cariello, alleging that he acted as both a broker and attorney in one property sale.

Cariello said he e-mailed arbitration paperwork to the property's listing agent.

Cariello acted as the buyers' real estate agent in the property sale. His father, John Peter Cariello, represented the buyers in other legal matters. His father referred the buyers to his son to proceed in acquiring the property.

When Cariello e-mailed the listing agent, he didn't indicate that he was acting on behalf of his father. So, he said, the listing agent alleged he was acting as an attorney in the matter and violated the Real Estate License Act.

"Are the drafting of e-mails on behalf of another the practice of law? I would argue that they're not," Peter Cariello said.

After conducting an investigation, the department proposed a settlement: If he agreed to con-

STATUTE, *Page 6*

In panhandling lawsuit, panel reverses course

Springfield's policy violates free speech rights, court rules

BY ANDREW MALONEY
Law Bulletin staff writer

A federal appeals court has ruled a panhandling ordinance in the state capital violates the First Amendment.

Citing a recent U.S. Supreme Court decision that broadened the type of speech regulations subject to "strict scrutiny," the 7th U.S. Circuit Court of Appeals ordered an injunction against the ordinance that forbids people from asking others for money in downtown Springfield. The appeals court had originally upheld the ordinance last year.

A duo of Springfield panhandlers had argued that because the ordinance prohibits oral requests for immediate monetary donations but did not apply to requests for money at some point in the future, it was a content-based restriction and thus a free-speech violation.

Mark G. Weinberg, owner of the Law Offices of Mark G. Weinberg, and solo practitioner Adele D. Nicholas represented the panhandlers.

Weinberg said he is happy with the decision but surprised it took two years "because we thought it was a slam dunk."

He also said the case isn't done yet because another part of the panhandlers' suit alleges Springfield police are using a state law against soliciting in vehicle traffic to arrest panhandlers who are actually on public sidewalks throughout the city.

Steven C. Rahn, corporation counsel for the city of Springfield who argued in favor of the law, said the city could still try to make the case that the ordinance should survive strict scrutiny but called it "almost an insurmountable burden."

He said the city hasn't decided whether to appeal to the U.S. Supreme Court, but he said the remaining part of the case will begin to play out in a trial court.

Laws often don't survive strict-scrutiny challenges. That's because the government must prove the law serves a compelling government interest, is narrowly tailored and is the least restrictive means for achieving the government's goal.

PANHANDLING, *Page 6*

Justices tell death penalty fears, but executions go on

BY MARK SHERMAN
Associated Press writer

WASHINGTON — Whatever their summer travels have taken them, Supreme Court justices probably will weigh in over the next few days on Texas' plans to execute two death row inmates in the week ahead.

If past practice is any guide, the court is much more likely to allow the lethal-injection executions to proceed than to halt them.

Opponents of the death penalty took heart when Justices Stephen G. Breyer and Ruth Bader Ginsburg made the case against capital punishment in late June as arbitrary, prone to mistakes and time-consuming.

Even if death penalty opponents eventually succeed, the timeline for abolition probably will be measured in years, not months.

That's because Breyer, joined by Ginsburg, was writing in dissent in a case involving death row inmates in Oklahoma, and five sitting justices believe "it is settled that capital punishment is constitutional," as Justice Samuel A. Alito Jr. wrote in his opinion for the court in that same case.

Texas has scheduled back-to-back executions Wednesday and Thursday for Daniel Lee Lopez and Tracy Lane Beatty.

Lopez was convicted of running over a Texas police officer with his car during a car chase. Lopez's lawyer already has asked the court to stop the execution.

Beatty strangled his 62-year-old mother, then stole her car and drained her bank accounts. He has an appeal pending in lower courts and could also end up at the Supreme Court.

The justices rarely issue last-minute reprieves to death-row inmates. Even after Breyer's opinion calling for a re-examination of capital punishment by the Supreme Court, no justice publicly backed a Missouri inmate's plea to halt his execution to allow the court to take up the constitutionality of the death penalty.

Similarly, the three Oklahoma inmates who lost their high court case now face execution in September and October. They want the justices to reconsider the decision from June in light of Breyer's dissent. The court almost never does that.

The heightened attention on the death penalty comes amid declining use of capital punishment in the United States, and a sharp drop in the number of death penalty prosecutions.

The 18 executions that have taken place so far this year have been carried out in just five states — Texas, Missouri, Georgia, Florida and Oklahoma. Nine of those were in Texas. Twelve states with the death penalty have not had an execution in more than five years. That list includes California and Pennsylvania, which between them have more than 900 death row inmates.

The relatively small number of states that actively seek to carry out death sentences underscores what Ginsburg characterized in late July as "the luck of the draw."

"If you happen to commit a crime in one county in Louisiana, the chances you will get the death penalty are very high. On the other hand, if you commit the same deed in Minnesota, the chances are almost nil," she said at a Duke University law school event in Washington.

Texas is far and away the leader in carrying out executions, but it too has seen a drop in the number of new inmates on its death row. No new death sentences have been imposed in Texas this year, said Robert Dunham, executive director of the Death Penalty Information Center.

Geographic disparity was among several defects Breyer and Ginsburg identified in June. Another is the length of time many inmates spend living under a sentence of death, which Breyer had previously suggested also might be a violation of the constitutional ban on cruel and unusual punishment.

Six of the 18 men who have been executed in 2015 spent at least 20 years on death row, including one who served 31 years before his execution.

Yet for all the systemic problems opponents of capital punishment can cite, they also have to reckon with what death penalty opponent Michael Meltsner called the "worst of brutality and the awful capacity of people to commit vicious crimes."

One example: The Justice Department, which has otherwise advocated for criminal justice reforms during the Obama administration, won a death sentence in the case of convicted Boston Marathon bomber Dzhokhar Tsarnaev.

"When awful things happen, people don't think about the costs and benefits. They react to circumstances. There is an ambivalence that has tracked the death penalty debate for many years," said Meltsner, a Northeastern University law professor and experienced civil rights lawyer.

Among the questions surround-

LETHAL, *Page 6*

Judge: County's puppy mill ordinance is constitutional

BY PATRICIA MANSON
Law Bulletin staff writer

A federal judge has again dismissed a lawsuit challenging a Cook County ordinance that bars suburban pet stores from obtaining dogs, cats or rabbits from large breeders.

The additional arguments the plaintiffs raised didn't make a whisker's bit of difference when it came to U.S. District Judge Matthew F. Kennelly's ruling that the "puppy mill" ordinance passes muster under the U.S. and Illinois constitutions.

But while declining to strike down the ordinance, Kennelly held it does not apply to one of the three pet stores that challenged it — Petland's store in Chicago Ridge.

Chicago Ridge has its own ordinance governing the sale of commercially bred pets, Kennelly wrote, and that ordinance conflicts with Cook County's.

Under the Illinois Constitution's home-rule provision, he continued, a municipality's ordinance governs if there is a conflict.

Chicago Ridge's ordinance does not restrict the sources of pet stores' stock. But it requires stores to make certain disclosures to the public concerning the source of the animals they sell.

The lead attorney for the plaintiffs, David J. Fish of The Fish Law Firm, P.C. in Naperville, declared partial victory.

He said Cook County's ordinance also does not apply to another client, Happiness is Pets in Arlington Heights.

The village of Arlington Heights passed its own ordinance while Kennelly was considering the case, Fish said, and that ordinance also conflicts with Cook County's.

"I think the case is a great ex-

PETS, *Page 6*