

Real Property

The newsletter of the Illinois State Bar Association's Section on Real Estate Law

The Sword of Damocles and Artificial Intelligence in Law

BY DONALD HYUN KIOLBASSA AND EMILY HOLMES

TECHNOLOGY IS A TOOL, nothing more, nothing less. The purpose of new technology is to improve the human experience.

No technology has created more buzz in my lifetime than artificial intelligence. Over the past 19 years as a practicing Illinois attorney, I have represented thousands of clients.

I am bombarded by questions from my clients on ways I plan to implement artificial intelligence in my law practice. I certainly understand the sense of urgency.

The American consumer is getting crushed by rising costs due to inflation. Artificial intelligence promises to augment professionals, thereby creating a deflationary impact on labor costs, which should be passed on to consumers.

However, before we proceed, we should

take a step back and think this through.

We can look to the stock market as a history teacher. For every Apple computer that changed our lives, closing at \$244.60 on 2/14/25, there was a counter Blackberry Ltd. that closed at \$5.69 on 2/14/25.

Both were cell phone companies in the early 2000s, but one company went parabolic, and the other crashed. Surely, the same will happen with artificial intelligence. There will be winners and losers.

However, the practice of law is distinguishable from cell phones. We must march at a much slower pace to ensure that we adopt technology with the consumer in mind, without eroding our value proposition.

Remember, just because a child can

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CALL FOR ARTICLES!

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The Sword of Damocles

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eat sugar before bed does not mean they should be allowed to eat sugar before bed.

Let us discuss the story of the *Sword of Damocles* to draw a lesson.

There was once a man named Damocles who constantly praised his King Dionysius about his position as king. King Dionysius got sick of the flattery and offered to switch places with Damocles. Damocles was excited to accept.

Damocles immediately enjoyed the wealth and power that came with being king. However, one day Damocles noticed that there was a sharp sword that hung over the throne held only by a string.

Once Damocles knew of the sword, it did not matter about the wealth, the food, or the parties. His mind was fixated on the hanging sword. Once he realized that with the throne came constant danger and terror, he could no longer enjoy the throne and asked to leave.

The Sword of Damocles teaches us that with power comes responsibility.

Ladies and Gentlemen of the jury, I submit to you that artificial intelligence in law is similar to the story of the Sword of Damocles.

Artificial intelligence companies are frantically looking for practical application of their products and services. Investors have poured money into their companies, driving their stock prices to multiples that many historians would view as complete speculation.

I have empathy for the investor. They see a company's biggest expense (*i.e.*, labor costs) coupled with a labor shortage created by a demographic collapse (*i.e.*, the Baby Boomer Silver Tsunami), and a technology that will allegedly fix all of that.

I myself am guilty of holding an overweight position in certain artificial intelligence companies.

However, before we start blindly adopting this technology in law, let us think a few things through.

We as lawyers must take the position that artificial intelligence standing alone should be the unauthorized practice of law. Period. End of story.

Like the story of the Sword of Damocles, there is tremendous responsibility in practicing law. If you do not perform well, there are consequences. First, you can get sued for malpractice or lose your license. Second, your clients could leave you, and your business fails, or you get fired, and you do not then get paid. Third, the damage to your reputation has social impacts as well.

None of these responsibilities falls on a computer program. There is no sword hanging over a robot's head.

Artificial intelligence and robotics should be used only as an augmentation of the attorney. The attorney needs to have a metaphorical sword over his or her head.

I myself have been practicing for over 19 years. I have found the practice to become exponentially more risky. I have divested risk by downsizing my client base and moving upstream.

I expect that there will be someone who pushes down prices and moves downstream, creating a deflationary environment.

That is fine, and that is their market choice, however, we must ensure that the ever-hanging Sword of Damocles remains over a lawyer's head to act as a check and balance on bad practice.

I could foresee private equity firms or technology firms encroaching into the practice of law with no Sword of Damocles over their head and, therefore, no real sense of responsibility.

If that day comes, only the consumer will truly suffer over time.

In conclusion, I am not anti-technology. I am certainly not trying to get in the way of the automobile as I sit in a horse and carriage. Artificial intelligence is real and will probably have a greater impact on our lives than the smartphone.

However, I am saying that we need to proceed with caution and proactively create regulation.

Artificial intelligence standing alone has no idea what responsibility to the consumer is. Artificial intelligence has never had a sword hanging over its head while it sits on the throne. If it did, I am sure it would be smart enough to trade back places with us... ■

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Case Summary: *ZHY Inv., LLC v. Hsing*

BY LESLIE HAIRSTON

IN RE COUNTY TREASURER AND

Ex Officio Cty. Collector of DuPage County, 2024 IL App (3d) 220465 involves an appeal by ZHY Investments, LLC (ZHY), from the circuit court in the 18th Judicial Circuit, granting Victor Hsing's (Hsing) motion to vacate an order issuing a deed to ZHY for property located in Naperville, Illinois (property), owned by Hsing.

Hsing purchased the property in 1998 and contemporaneously with the purchase, listed himself on the deed as the taxpayer of record for the property. Further, handwritten next to Hsing's name was an additional address. The deed also listed Hsing's attorney in the property purchase, attorney Tony SHU (SHU), as the "mail to" recipient for the recorded deed.


In 2017, ZHY purchased the delinquent real estate taxes levied against the property for the years 2013, 2014, and 2016. When ZHY went to pay the 2015 taxes, the record reflected prior payment but no information on the payor's identity. ZHY then filed a petition for a tax deed for the property. In furtherance of the same, ZHY mailed, via certified mail, a notice to Hsing at both the property and the additional address. Notice was also mailed to the property addressed to the last known renters and "occupant."

Only the notice mailed to the additional address was returned with a signature. While the name and address were illegible, the letter "V" and the numbers 2,7,7, were legible, and the street address appeared to begin with an "F". In 2018, ZHY filed a verified application for

a tax deed to the property, and notice was served by a process server and returned, marked "vacant". The application for the deed was granted by the court on January 3, 2018. The county clerk issued the deed to ZHY on February 5, 2018, and the deed was recorded on February 8, 2018.

On March 13, 2018, Hsing filed a petition to vacate the January 3, 2018, trial court order citing: (1) lack of due process in ZHY's failure to provide (adequate) notice, and (2) fraud by ZHY in his failure to conduct a diligent inquiry. ZHY filed a motion to dismiss Hsing's petition to vacate the issuance of the tax deed, and the motion was granted. Hsing appealed, and the 2nd District appellate court reversed and remanded the case to the trial court for further inquiry on notice.

On remand, ZHY's attorney's



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deposition was presented regarding the attorney's inquiry into the identity of interested parties requiring notice of ZHY's petition for the tax deed. She testified that she conducted a search of the tax bill on the clerk and treasurer's websites, as well as conducting a white pages search. She was unable to recall whether she had conducted an internet search but, notwithstanding, it was her custom and practice to do so.

Hsing filed a motion for summary judgment, reiterating his claims of lack of due process and fraud by ZHY and adding that his property purchase counsel, attorney SHU, was entitled to notice. ZHY filed a response and cross motion for summary judgment asserting no fraud and no due process violations, that he exercised due diligence in attempting to serve Hsing, and that attorney SHU was not entitled to notice.

In granting Hsing's motion for summary judgment, the court ruled that:

(a) Hsing's due process rights were violated when ZHY failed to conduct an online search for Victor Hsing; and (b) fraud was committed when the trial court did not have enough time to prepare for the prove-up hearing, misleading the court as to the efficacy and reasonableness in attempting to serve Hsing.

ZHY appealed the circuit court's ruling to the appellate court for the 3rd District alleging: (1) notice was sufficient to satisfy due process; and (2) there was no fraud committed on the tax deed application or at the prove-up hearing. The appellate court found that the facts were not in dispute and that they would review the grant of summary judgment *de novo*.

The appellate court held that Hsing's due process rights were not violated citing *Re Application of the County Collector*, 397 Ill App. 3d 535, 548 (2009). In support, the court stated that, when followed, the statutory requirements in the Property Tax Code are sufficient to meet due process

notice requirements. Further, the appellate court cited the U.S. Supreme Court decision in *Jones v. Flowers*, which emphasized that notice must be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Jones v. Flowers*, 547 U.S. 220 (2006) at 226, 236, (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Notice does not require additional steps such as searching for an address in a telephone book, tax rolls, or other governmental records. *Id.* at 236.

The appellate court emphasized that ZHY met all the notice requirements of the Property Tax Code as there was one notice returned with a signature and that although the signature was illegible, it was reasonable to believe that it belonged to Hsing because it began with the letter "V" and the numbers appeared to be the additional address that had been written

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on the deed. There was no need for ZHY to do anything further. In fact, the appellate court noted that Hsing had adequate notice that his taxes had been purchased when he paid the 2015 taxes and reflected that Hsing should have updated his address in the county records. 2024 IL App. (3d) 220465 ¶ 35.

In finding that due process does not require a tax buyer to conduct an internet search of an address other than that of the subject property, the testimony from ZHY's attorney only stated that she did not remember, but that it was her custom and practice. 2024 IL App. (3d) 220465 ¶34.

The appellate court then dispensed with Hsing's claims of fraud, holding that Hsing failed to prove by clear and convincing evidence that ZHY knew of facts, which he failed to provide to the trial court and, further, that if such facts had been disclosed, the trial court would have ruled differently. In holding that ZHY did not commit fraud, the appellate court pointed to the

trial court's review of ZHY's application and exhibits and its inquiry into the 2015 tax payment by Hsing. 2024 IL App (3d) 220465 ¶45. The court examined the receipts with Hsing's signature.

It further found that the circuit court's review of the tax deed application was erroneous and improper, noting ZHY's name search was not supported by the record. The circuit court should not have reevaluated the sufficiency of ZHY's efforts to locate and serve notice of the tax deed proceedings. *Id.* at ¶ 47.

The appellate court concluded that there were no questions of fact that existed and that ZHY was entitled to judgment as a matter of law. The judgment of the circuit court was reversed and remanded and further ordered to grant summary judgment to ZHY and reissue a tax deed for the property.

Justice McDade dissented in part stating that ZHY's notice was insufficient to meet due process requirements because he failed

to act on critical information that someone paid the 2015 taxes, which made him an interested party entitled to notice. He relied upon the fact that Hsing paid more than \$8,800.00 for the taxes. ZHY should have known that the unknown taxpayer had some interest entitling him/her to notice or, at least, make an inquiry. Justice McDade rejected the majority's analysis and stated, that ZHY undermined the steps "reasonably calculated" to notify all "interested parties." *Id.* at ¶60, ¶37 (quoting *Jones*, 547 U.S. at 226). Citing ZHY's attorneys' testimony, he stated that ZHY was put on notice before attempting to notify Hsing of the tax deed filing when he knew that the taxes had been paid and did nothing. *Id.* ¶ 23. He concluded that "Blind ignorance of readily available information about the existence of a party that is entitled to notice cannot justify lowering the bar for procedural due process by excusing ZHY's admitted failure to act on that highly relevant information." *Id.* ¶70. ■

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