

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

John Thulis, James Webb)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 2019CH09581
)	
City of Chicago,)	
)	
Defendant.)	JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

The Plaintiffs, John Thulis and James Webb, bring this action against the Defendant, City of Chicago, as a Class Action for Count I, failing to comply with the Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS 1025/1 and the Revised Uniform Unclaimed Property Act, 765 ILCS 12026/15; Count II, for violation of 815 ILCS 205/2 (the Interest Act) for unreasonable and vexatious delay in paying uncashed checks, and Count III, for violation of the Illinois Consumer Fraud Act. 815 ILCS 505/2. In support, Plaintiffs allege:

INTRODUCTION

1. This is an action to recover damages against the Defendant, the City of Chicago, for knowingly concealing, or knowingly and improperly avoiding an obligation to report and transmit money or property to the State under the State’s unclaimed property act – 765 ILCS 1026; and for Interest per 815 ILCS 205/2 the Illinois Interest Act; and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act 815 ILCS 505/2.

2. These claims are based on the City’s failure to report and turn over to the Illinois State Treasurer money from issued checks that have gone uncashed for years. The underlying purpose of the Unclaimed Property Acts is twofold; first to enable persons owed money to have a

FILED DATE: 8/19/2019 5:28 PM 2019CH09581

way to learn of it and recover it, and secondarily, giving the State the benefit of cash float in the period before claimed rightfully. Here the City received an indefinite “float” and the payees have virtually no way to learn that they have money owed them.

3. The City has a policy of issuing checks in due course of City business. If the Payee/recipient of the check does not cash the check for whatever reason, the City just retains the cash on a “float” indefinitely. In practice, the “float” as to City-issued checks totals more than 22,000 checks, amounting to \$11 million dollars, some going back 20 years. Based upon this City practice, the City is required to, but simply omits to report and avoids turning over the amounts, which are presumed abandoned funds under Illinois law, to the Illinois State Treasurer, who would post them on the State’s icash or cashdash.net website, so that individuals would have a way to learn of money being held for them. Indeed, FOIA requests to a number of other Illinois municipalities show that the City of Chicago’s intentional omission of reporting these amounts is a deviation from the norm, rather than some justifiable exercise of the City’s home rule powers.

JURISDICTION AND VENUE

4. This Court has jurisdiction under 735 ILCS 5/2-101 and 103.

5. Venue is proper in this County under 735 ILCS 5/2-101 because the Defendant, the City of Chicago, is located in Cook County, and the transaction of reporting and complying with Illinois law for the checks at issue occurred in the City of Chicago, located in Cook County, Illinois.

PARTIES

6. Plaintiff John Thulis was issued a check from the City of Chicago on or about October 30, 2017 in the amount of \$12.73, and Relator James Webb was issued a check from the

City of Chicago on or about January 30, 2014 in the amount of \$330 – both checks are listed as uncashed checks in a list produced from a FOIA request by Plaintiffs’ Counsel. Ex. 1.

7. Defendant, the City of Chicago is a “holder” under the Act, subject to Revised Uniform Unclaimed Property Act (*infra*), and liable under the False Claims Act for concealing and improperly avoiding to report and pay or transmit funds to the State.

The Revised Uniform Unclaimed Property Act

8. The Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS 1025/1, *et seq.* (“Unclaimed Property Act”) (repealed and replaced, effective January 1, 2018, by the Revised Uniform Unclaimed Property Act, 765 ILCS 1026/15, *et seq.* (“Revised Unclaimed Property Act”)), provides the procedure to be followed with regard to abandoned property in the State of Illinois.

9. 765 ILCS1026/15-102 Defines:

(3) “Apparent owner” means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) “Business association” means a corporation, joint stock company, investment company, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(12) “Holder” means a person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this Act.

(21) “Owner”, unless the context otherwise requires, means a person that has a legal, beneficial, or equitable interest in property subject to this Act or the person’s legal representative when acting on behalf of the owner. The term includes: ...

(C) a creditor, claimant, or payee, for other property; and...

(23) "Person" means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity, whether or not for profit.

(24) "Property" means tangible property described in Section 15-201 [765 ILCS 1026/15-201] or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government, governmental subdivision, agency, or instrumentality. The term: ...

(B) includes property referred to as or evidenced by:

- (i) money, virtual currency, interest, or a dividend, check, draft, deposit, or payroll card;
- (ii) a credit balance, customer's overpayment, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance; ...
- (viii) any instrument on which a financial organization or business association is directly liable; ...

(26) "Record" means information that is inscribed n a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form...

10. 765 ILCS 1026/15-201 ARTICLE 2. PRESUMPTION OF ABANDONMENT

15-201. When property presumed abandoned. Subject to Section 15-210, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below: ...

- (3) any instrument on which a financial organization or business association is directly liable, 3 years after issuance.

11. The sums in uncashed checks issued by the City of Chicago are "Property" held by the City of Chicago and falls under section 12, which presumes property abandoned after

three years, “(12) property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, 3 years after the property becomes distributable.” 765 ILCS 1026/15-201(12)

12. ARTICLE 4. REPORT BY HOLDER, 765 ILCS 1026/15-401 states:

Sec. 15-401. Report required by holder.

(a) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property.

13. 765 ILCS 1026/15-603, Payment or delivery of property to administrator, states:

(a) Except as otherwise provided in this Section, on filing a report under Section 15-401, the holder shall pay or deliver to the administrator the property described in the report.

FACTUAL ALLEGATIONS

14. On or about November 8, 2018 per undersigned counsel’s FOIA request, the City of Chicago produced Exhibit 1, which lists uncashed checks issued by the City of Chicago from mid-1988 (one listed in 1987) to June 29, 2018.

15. There are 22,231 uncashed checks listed, whose total unpaid balance was \$11,403,473.81 for outstanding checks at June 30, 2018.

16. The City knew or should have known that after a certain time the issued stale checks would no longer be cashed, and so just used the “float” as its own. Under the statute these known “float” checks are, after three years, presumed abandoned, subject to reporting and delivery to the State, to be posted on the State Treasurer’s website, and held in the State Pensions Fund, until claimed by the owner

17. After three years, when the checks were certainly stale, they became “presumed”

abandoned,” under the revised Act. “(3) any instrument on which a financial organization or business association is directly liable, 3 years after issuance.” 765 ILCS 1026/15-201; “(12) property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, 3 years after the property becomes distributable.” 765 ILCS 1026/15-201(12)

18. The City had an obligation under the Revised Unclaimed Property Act to report any property that it held which became “abandoned”. 765 ILCS 1026/15-401 Report required by holder states:

“(a) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property.” 765 ILCS 1026/15-401

19. “Except as otherwise provided in this Section, on filing a report under Section 15-401 [765 ILCS 1026/15-401], the holder shall pay or deliver to the administrator the property described in the report.” 765 ILCS 1026/15-60

20. The City did not comply with the statute, has not reported the uncashed checks as abandoned, has not turned over the funds to the Illinois State Treasurer, and not provided any way for the payees to learn that money is being held for them.

21. The City’s failure to report and deliver, and its intentional policy rather to hold the “float”, in some cases years and decades after it should have been reported and turned over to the Illinois State Treasurer, means it has captured the money for itself. The City of Chicago has deprived the State the transfer of such funds to the Illinois State Treasurer, and ultimately to the payees the right to then have a means to identify and recover the sums.

22. Remarkably, the Illinois Attorney General has known about this practice for more

than a decade, but permitted the City to continue violating the law without any accountability. Indeed, in 2008, when the issue last came to public notice, the City and State indicated that it was being corrected. But, nothing was actually done.

23. The turnover of presumably abandoned property to the State is important because the State Treasurer's webpage informs the public of such moneys being held by the State, and assists in its return. *See*, <https://icash.illinoistreasurer.gov/> ("the Illinois State Treasurer's Unclaimed Property Page). The State Treasurer is currently holding approximately \$2.9 billion dollars in unclaimed funds for Illinoisans. The State holds these lost funds until they are claimed by either the original owner or their heirs. Turning the money over to the State makes it possible for payees to easily ascertain if money is held for them and to obtain its return. *See* <http://icash.illinoistreasurer.gov>.

24. Held by the State, the Property is easily learned of, and returned at no cost with the proper identification. Concealment by the City deprives the rightful recipient of any reasonable way to learn of the money and obtain its return

25. And while the State might tolerate the City's retention as an accommodation to the City's cashflow, the practice is demonstrably unfair here, because, the City provides no vehicle for a person to ascertain if money is being held for them by the City; essentially, reserving this money forever in the City's concealed wrongful retention.

26. The City's retained balance of uncashed checks and use of the indefinite "float" of money that otherwise would be presumed abandoned under the Revised Unclaimed Property Act (effective Jan. 1, 2018) with the intention of avoiding the duty to report and turn over the abandoned property, illegally evades its obligation to transmit money to the State and effectively converts the money for itself.

27. There are over 22,000 instances since 1998 to June, 2018, for which the City should be ordered to turn over all such accounts to the State under the Revised Unclaimed Property Act.

COUNT I

Illinois Uniform Disposition of Unclaimed Property Act, 765 ILCS 1025/1 and the Revised Uniform Unclaimed Property Act, 765 ILCS 12026/15

28. The Plaintiffs for themselves and the Class reallege and incorporate by reference Paragraphs 1-27 as though set forth herein.

29. The City of Chicago has a statutory obligation under the Unclaimed Property Act (and the Revised Unclaimed Property Act, effective Jan. 1, 2018), to report abandoned property.

30. When the City of Chicago failed to report or turn over uncashed checks held in the “float”, the City acted with actual knowledge, deliberate ignorance, or reckless disregard of the fact that the sums of the checks had become abandoned under 765 ILCS 1026/15-201, 401, 603 and/or (765 ILCS 1025/2(a)).

31. By the forgoing conduct, the Defendant knowingly concealed or knowingly and improperly avoided an obligation to transmit money or property to the State.

32. By the concealment and avoidance of the obligation to report and turn over the abandoned sums, the Plaintiffs and the Class suffered substantial monetary damages and therefore are entitled notice, damages, and interest under the Act.

COUNT II

Violation of 815 ILCS 205/2 for unreasonable and vexatious delay in payment of withheld money.

33. The Relators/Plaintiffs for themselves and the Class, reallege and incorporate by reference Paragraphs 1 through 32 of this complaint as though set forth herein.

34. 815 ILCS 205/2 [Creditors rate; after money due], provides:

Creditors shall be allowed to receive at the rate of five (5) per centum per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advanced for the use of another; on money due on the settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another *and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment.* In the absence of an agreement between the creditor and debtor governing interest charges, upon 30 days' written notice to the debtor, an assignee or agent of the creditor may charge and collect interest as provided in this Section on behalf of a creditor.

815 ILCS 205/2. (Emphasis added).

35. The City of Chicago has knowingly retained and withheld for an unreasonable and vexatious delay the uncashed checks described in this complaint.

36. By the forgoing conduct, the Defendant knowingly concealed or knowingly and improperly avoided an obligation to transmit money or property to the State; and concealed the ability of a person owed money to have a way to learn of it and recover it.

37. The City of Chicago has not turned over a listing or uncashed checks or balances to the State of Illinois under the Unclaimed Property Act (and the Revised Unclaimed Property Act, effective Jan. 1, 2018), to report abandoned property.

38. When the City of Chicago failed to report or turn over uncashed checks held in the "float", the City acted with actual knowledge, deliberate ignorance, or reckless disregard of the fact that the sums of the checks had become abandoned under 765 ILCS 1026/15-201, 401, 603 and/or (765 ILCS 1025/2(a)), and under the Interest Act "withheld by an unreasonable and vexatious delay of payment" these amounts keeping them and keeping them from being found by their rightful claimants.

39. By the forgoing conduct, the Defendant knowingly concealed or knowingly and improperly avoided an obligation to transmit money or property to the State and concealed and

withheld the process by which payees could know of or make claims for their monies.

40. By the City's intentional concealment and avoidance of the obligation to report and turn over the abandoned sums, the City vexatiously and unreasonably delayed payment of the monies and is therefore subject to statutory interest under 815 ILCS 205/2 at the rate of 5% per annum.

COUNT III: VIOLATION OF THE CONSUMER FRAUD ACT

41. Plaintiffs for themselves and the Class, repeat and reallege the facts and allegations contained in paragraphs 1 through 40 above, as if fully set forth herein.

42. At all relevant times, there was in full force and effect in Illinois the Consumer Fraud Act, 815 ILCS 505/1, *et seq.* ("The Act" or the "Consumer Fraud Act").

43. Under the Illinois Consumer Fraud and Deceptive Business Practices Act, any unfair or deceptive act or practice in the conduct of trade or commerce is actionable. (815 ILCS 505/1 *et seq.*). The statute expressly prohibits unfair or deceptive acts including concealment of any material fact.

44. Section 2 of the Consumer Fraud Act, 815 ILCS 505/2 provides in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

45. The Act expressly incorporates violations of the Uniform Deceptive Trade

Practices Act, 815 ILCS 510/1, et seq., (“Uniform Act”), and the Uniform Act provides at Section 2, 815 ILCS 510/2, in pertinent part:

§ 2. A person engages in a deceptive trade practice when, in the course of his business, vocation or occupation, he: ...

(12) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

46. In order to prevail in an action under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding.

47. This Section does not affect unfair trade practices otherwise actionable at common law or under other statutes of this State.

48. Section 10(a) of the Consumer Fraud Act, states, in pertinent part:

(a) Any person who suffers damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual damages or any other relief which the court deems proper. Proof of public injury, a pattern, or an effect on consumers generally shall not be required...

(c) Except as provided in subsection (f), (g), and (h) of this Section, in any action brought by a person under this Section, *the Court may grant injunctive relief* provided in this Section, reasonable attorney’s fees and costs to the prevailing party. (Emphasis added).

49. Plaintiffs are persons under the Act, and the City is a business services under the Act.

A Deceptive Act or Practice.

50. Defendants’ conduct to 1) conceal, 2) not turn over to the state, or 3) make the balances available violates the Consumer Fraud Act as a material deceptive act or practice. The City’s concealment keeps a person owed money a way to learn of it and recover it.

Intent on the Defendants’ Part that the Plaintiffs Rely on the Deception.

51. Defendants concealed material information from the Plaintiffs and the class.

52. Defendants are in the best position to report and turn over the sums to the State, Relators/Plaintiffs, and the class. By concealing the information, they intend on keeping the float indefinitely.

Occurred in Trade and Commerce.

53. Defendants' wrongful conduct, as alleged herein, occurred in trade and commerce and caused actual damages to Plaintiffs and members of the class.

An Unfair Practice.

54. The Defendants' scheme is also unfair.

55. Defendants' policy is unethical and is oppressive and unscrupulous because it was done for its own profit at the expense of the Plaintiffs and class, causing substantial injury.

Class Action Allegations

56. This action may be brought and properly maintained as a class action pursuant to Illinois Code of Civil Procedure 735 ILCS §2-801.

57. Plaintiffs bring this action (Counts I, II, and III) for themselves and as representative members for all others similarly situated of the proposed class of all people the City owed money – who are contained in the list of payees of uncashed City of Chicago checks - for which the City's actions kept them from being able to have a way to learn of it and recover it.

58. The class is defined as:

All persons who are listed as payee of uncashed City of Chicago checks in Exhibit 1 (to be brought current by discovery);

or

All persons for whom the City has issued checks more than three years old that remain uncashed, and not reported to the State or otherwise searchable online..

59. Numerosity. The proposed class is so numerous that the individual joinder of all

members is impracticable. While the exact number and identities of the class members are unknown to Plaintiffs at this time, Plaintiffs believe the number is over 22,000 based on last FOIA request for a listing of outstanding uncashed check held by the City of Chicago.

60. Existence and Predominance of Common Questions of Law and Fact. Questions of law or fact exist that arise from Defendants' actions; such questions are common to all class members and predominate over any questions affecting only individual members of the class. The questions of law and fact common to the class include:

Did Defendants' conceal and ignoring its obligation to report and transmit abandoned money to the State under 765 ILCS 1026?

Did the City give persons owed money a reasonable way to learn of it and recover it?

Did the City's concealment policy result in an *unreasonable and vexatious delay of payment*?

Was the City's concealment unfair or deceptive?

What rate of interest should be charged to the City?

How should the interest be allocated between the State and the payees?

61. Adequacy of Representation. Plaintiffs will fairly and adequately protect and pursue the interests of the members of the Class. Plaintiffs understand the nature of the claims herein, have no disqualifying interests, and will vigorously represent the interests of the Class. Plaintiffs' counsel, Clinton A. Krislov and the law firm of Krislov & Associates, Ltd., have vast experience and knowledge and accomplishments in complex litigation, tort, consumer class action and trial litigation. Plaintiffs' co-counsel, Myron M. Cherry, Myron M. Cherry & Associates, Ltd., likewise has vast experience in these types of matters.

62. Appropriateness of a class action. Class litigation is an appropriate method for the fair and efficient adjudication of the claims involved. Questions of law and/or fact are common to

the class, and predominate over any questions affecting only individual members, such that a class action is superior to other available methods for fair and efficient adjudication.

63. The rights of class members are clear questions of law that are common to the entire class. The relatively small amount per customer deters the likelihood of individual actions. Under these circumstances, the determination of plaintiffs' claims will determine, as well, the claims of other class members who first are entitled to have a way to learn of money owed them by the City and to recover it.

64. Class certification is appropriate because the prosecution of separate actions by individual members of the class would create a risk of inconsistent outcomes on varying standards.

65. Class certification is also appropriate because defendants acted on grounds generally applicable to the Class, making appropriate equitable, injunctive and or declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, the Relators pray for judgment against the Defendant as follows:

As to **Counts I, II and III**:

1. Certify this case to proceed as a Class Action as to Counts I, II and III, as set forth herein:
 - a. Designate Mr. Thulis and Mr. Webb as the Class Representatives, and
 - b. Clinton A. Krislov and Krislov & Associates, Ltd. as Lead Class Counsel;
2. Enter a judgment against the City for Count I – on behalf of the Plaintiffs and the Class, and award injunctive relief and damages.
3. Enter a judgment against the City for Count II - Violation of 815 ILCS 205/2 for unreasonable and vexatious delay;
4. Enter a judgment against the City for Count III – Violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1, *et seq.* (“The Act” or the “Consumer Fraud Act”) - as an unfair and deceptive practice.

5. As to Counts I, II, and III:
 - a. Award Plaintiffs and the Class a injunctive relief – notice and ability to claim their funds;
 - b. Award Plaintiffs and class members their actual and compensatory damages, and interest;
 - c. Award reasonable attorney’s fees;
 - d. Award costs
6. As to all Counts grant such further relief as may be just and proper.

JURY DEMAND

The plaintiffs by and through legal counsel hereby demand a jury in this case.

Respectfully submitted,
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