

Atty. No. 41106

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

CHRISTOPHER KRAJ,)
on behalf of Plaintiff and the)
class members described herein,)
)
Plaintiff,)
)
vs.)
)
BARR MANAGEMENT LTD.; and)
BELMONT-CENTRAL)
CURRENCY EXCHANGE, INC.;)
)
Defendants.)

COMPLAINT – CLASS ACTION

1. Plaintiff Christopher Kraj brings this action to secure redress for the conduct of Defendants Barr Management Ltd. and Belmont-Central Currency Exchange, Inc., in adding unauthorized fees to checks dishonored because stop payment orders have been placed on them.

PARTIES

2. Plaintiff Christopher Kraj is a resident of Cook County.

3. Defendant Barr Management Ltd. (“Barr”) is an Illinois corporation with principal offices at 2400 W. Devon Ave., Chicago, IL 60659. Its registered agent and office is Fred Blumenfeld, 5215 Old Orchard Road, Suite 900, Skokie, IL 60077. Its president is Jonathan L. Klein and its secretary is Irving Barr.

4. Defendant Barr Management Ltd. manages over 40 currency exchanges in the Chicago metropolitan area, at which checks are regularly cashed. (Appendix A)

5. The currency exchanges are nominally separate entities.

6. However, all of the currency exchanges have standard policies and practices regarding their operations.

7. Defendant Belmont-Central Currency Exchange, Inc. (“Belmont-Central”), is one of these currency exchanges, located at 5559 W Belmont Ave, Chicago, IL 60641. It is an Illinois corporation. Its registered agent and office is Fred Blumenfeld, 5215 Old Orchard Road, Suite 900, Skokie, IL 60077. Its president and secretary are the same Irving Barr who is an officer of Barr Management Ltd.

FACTS

8. On October 10, 2020, Plaintiff signed and left a personal check for contractors performing work on his property, in the amount of \$950, representing part payment for the work. The payee was not filled in.

9. An employee or subcontractor of one of the contractors, Panagiotis Andrianakis, obtained the check, filled in his own name, and eventually took the check to Belmont-Central Currency Exchange, Inc., and cashed it, keeping the proceeds.

10. Andrianakis was not authorized to fill his name on the check or cash it.

11. Upon learning that Andrianakis had taken the check, Plaintiff placed a stop payment order with the bank upon which it was drawn.

12. On or about November 28, 2020, Barr Management Ltd. sent Plaintiff the letter in Appendix B. Plaintiff received it in the ordinary course of the mails.

13. The letter demanded payment not only of the \$950 check but an additional \$25.00.

14. On or about December 23, 2020, an attorney acting on behalf of Defendants sent

Plaintiff the letter in Appendix C. Plaintiff received it in the ordinary course of the mails.

15. The letter demanded payment not only of the check but “a return check fee of \$25.00 [which] is assessed by my client.”

16. The December 23, 2020 letter expressly acknowledges that Plaintiff’s check was not paid as a result of a stop payment order issued because of “contractual disputes you may have with Mr. Andrianakis.”

17. It is common for stop payment orders to be placed on checks as a result of disputes.

18. The currency exchanges managed by Barr Management, Ltd., frequently cash checks that are the subject of stop payment orders.

19. On information and belief, it is the regular practice of Defendants to demand payment of \$25.00 in addition to the face amount of such checks.

20. There is no legal basis for adding \$25.00 to a check that is not honored because of a stop payment order.

21. 810 ILCS 5/3-806 is the only basis for adding the \$25. It provides:

810 ILCS 5/3-806 [Penalties]

Any person who issues a check or other draft that is not honored upon presentment *because the drawer does not have an account with the drawee, or because the drawer does not have sufficient funds in his account, or because the drawer does not have sufficient credit with the drawee*, shall be liable in the amount of \$25, or for all costs and expenses, including reasonable attorney’s fees, incurred by any person in connection with the collection of the amount for which the check or other draft was written, whichever is greater, and shall be liable for interest upon the amount of the check or other draft at the rate provided in subsection (1) of Section 4 of the Interest Act [815 ILCS 205/4]. Costs and expenses shall include reasonable costs and expenses incurred in the nonlitigated collection of the check or other draft.

A person who undertakes a nonlitigated collection against the person who issued a check

or other draft that is not honored upon presentment shall make a written demand by certified mail, return receipt requested, delivered to the last known address of that person in order to become eligible for any costs and expenses in excess of \$25. The written demand shall demand payment within 30 days of the mailing of the demand and shall include notice of liability for the costs and expenses.

A fee or charge not to exceed \$4.50 may be assessed to any person or owner of a commercial checking account or other similar commercial account where a check or other draft that is deposited into the account is dishonored upon presentment because of insufficient funds or because the drawer does not have an account with the drawee; provided, however, that, the limitation on the fee or charge specified in this paragraph does not apply to any fee or charge assessed to any bank or other depository institution or to any non-commercial checking account or other similar non-commercial account. (Emphasis added)

22. A check that is not honored because of a stop payment order is not dishonored “because the drawer does not have an account with the drawee,” or “because the drawer does not have sufficient funds in his account,” or “because the drawer does not have sufficient credit with the drawee”.

23. Another statute, 720 ILCS 5/17-1, authorizes recovery of amounts in addition to the face amount of a check where “With intent to obtain control over property or to pay for property, labor or services of another, . . . he or she issues or delivers a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository.”

24. This also does not apply to a check that was good when issued but was made the subject of a stop payment order. *Pratt v. Kilborn Motors, Inc.*, 48 Ill. App. 3d 932, 936, 363 N.E.2d 452, 455 (4th Dist. 1977) (“The issuance of a check and the subsequent stopping of payment on that check by the maker is clearly insufficient to constitute a deceptive practice under section 17 -- 1(d) of the Criminal Code which requires that the check be made with the knowledge that the drawee bank will not honor it.”).

25. Defendants have damaged Plaintiff and each member of the classes defined below by inflating the purported amounts of their obligations, whether or not the inflated amount was paid. *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 651 (7th Cir. 2015) (“We next address whether Bible has adequately pled damages. USA Funds argues she has not because she defaulted on her loan and continues to owe money on that obligation. This argument is meritless. Of course Bible continues to owe money under her loan obligation. That does not mean she has not been damaged by USA Funds' imposing over \$4,500 in unauthorized collection costs. These costs represent new charges that have been added to her accrued interest and principal, thereby increasing the total amount she owes on her account. Because these charges were not permitted by her contract, she has plausibly alleged damages, even if the remedy might take the form of a credit to her account rather than cash in her pocket. Bible has plausibly alleged a viable breach of contract claim under state law.”).

26. Defendants' conduct in inflating the amount owed is both misleading and coercive.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF

27. Plaintiff incorporates paragraphs 1-26.

28. Defendants contend that Plaintiff owes money in addition to the amount of the check.

29. Plaintiff disputes such contention.

30. A declaratory judgment is necessary to resolve such dispute.

31. Injunctive relief is necessary to prevent Defendants from using extrajudicial methods to collect the fee.

CLASS ALLEGATIONS¹

32. Plaintiff brings this claim on behalf of a class.

33. The class consists of (a) all individuals (b) who wrote checks cashed by one of the currency exchanges managed by Barr, (c) and issued a stop payment order on such check, (d) from whom Barr demanded (directly or through an attorney or agent) payment of sums in addition to the face amount of the check (e) which demand was made on or after a date 10 years prior to the filing of this action.

34. Plaintiff may alter the class definition to conform to developments in the case and discovery.

35. On information and belief, based on the size of Barr's operations, each class is so numerous that joinder of all members is not practicable.

36. Identification of the class members is simple because currency exchanges are required to keep records from which class members may be identified. 38 Ill.Admin.Code 120.90 provides:

Returned Items Record

A currency exchange must maintain a log of all returned checks, drafts, money orders or other evidence of money. The log must include the maker, remitter, check number, date of instrument, amount, reason for return, date of return, attempts to collect by the currency exchange, and any fees charged by the currency exchange.

37. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The

¹ Plaintiff intends to file the attached Plaintiff's Motion for Class Certification as soon as practically possible, Appendix D, as required by *Ballard RN Center, Inc. v. Kohll's Pharmacy and Homecare, Inc.*, 2015 IL 118644, 48 N.E.3d 1060. Plaintiff may request leave to supplement it later.

predominant common questions are:

- a. Whether Defendants engage in a practice of adding sums to the face amount of checks on which payment has been stopped;
- b. Whether such charges are legally authorized;
- c. The appropriate remedies.

38. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class action litigation. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

39. A class action is appropriate for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendants for:

- i. A declaration that amounts in excess of the face amount of a check are not authorized if payment is stopped on a check;
- ii. An injunction restraining Defendants from adding any amounts to checks on which payment is stopped;
- iii. Costs;
- iv. Such other or further relief as is proper.

COUNT II – ILLINOIS CONSUMER FRAUD ACT

40. Plaintiff incorporates paragraphs 1-26.

41. As described above, Defendants regularly overcharged persons whose checks were cashed by the Barr-managed currency exchanges.

42. Such conduct was both unfair and deceptive, in violation of 815 ILCS 505/2.

43. Defendants engaged in such conduct in the course of trade and commerce in financial services.

44. Defendants engaged in such conduct for the purpose of obtaining money from persons, to which Defendants were not entitled. Defendants' conduct is contrary to public policy, unscrupulous and caused injury to consumers.

45. Plaintiff and each class member suffered damages as a result of defendant's conduct in the form of increased debt.

CLASS ALLEGATIONS

46. Plaintiff brings this claim on behalf of a class.

47. The class consists of (a) all individuals (b) who wrote checks cashed by one of the currency exchanges managed by Barr, (c) and issued a stop payment order on such check, (d) from whom Barr demanded (directly or through an attorney or agent) payment of sums in addition to the face amount of the check (e) which demand was made on or after a date 3 years prior to the filing of this action.

48. Plaintiff may alter the class definitions to conform to developments in the case and discovery.

49. On information and belief, based on the size of Barr's operations, each class is so numerous that joinder of all members is not practicable.

50. Identification of the class members is simple because currency exchanges are

required to keep records from which class members may be identified. 38 Ill.Admin.Code

120.90 provides:

Returned Items Record

A currency exchange must maintain a log of all returned checks, drafts, money orders or other evidence of money. The log must include the maker, remitter, check number, date of instrument, amount, reason for return, date of return, attempts to collect by the currency exchange, and any fees charged by the currency exchange.

51. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether Defendants engage in a practice of adding sums to the face amount of checks on which payment has been stopped;
- b. Whether such charges are legally authorized;
- c. The appropriate remedies.

52. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class action litigation. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

53. A class action is appropriate for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendants for:

- i. A declaration that amounts in excess of the face amount of a check

are not authorized if payment is stopped on a check;

- ii. An injunction restraining Defendants from adding any amounts to checks on which payment is stopped;
- iii. Compensatory damages;
- iv. Punitive damages;
- v. Attorney's fees, litigation expenses and costs;
- vi. Such other or further relief as is proper.

COUNT III – UNJUST ENRICHMENT

54. Plaintiff incorporates paragraphs 1-26.

55. As described above, Defendants regularly overcharged persons whose checks were cashed by the Barr-managed currency exchanges.

56. As a result, Defendants obtained money to which they were not entitled in equity and good conscience.

CLASS ALLEGATIONS

57. Plaintiff brings this claim on behalf of a class.

58. The class consists of (a) all individuals (b) who wrote checks cashed by one of the currency exchanges managed by Barr, (c) and issued a stop payment order on such check, (d) from whom Barr demanded (directly or through an attorney or agent) payment of sums in addition to the face amount of the check (e) which demand was made on or after a date 5 years prior to the filing of this action.

59. Plaintiff may alter the class definitions to conform to developments in the case and discovery.

60. On information and belief, based on the size of Barr's operations, each class is so numerous that joinder of all members is not practicable.

61. Identification of the class members is simple because currency exchanges are required to keep records from which class members may be identified. 38 Ill.Admin.Code 120.90 provides:

Returned Items Record

A currency exchange must maintain a log of all returned checks, drafts, money orders or other evidence of money. The log must include the maker, remitter, check number, date of instrument, amount, reason for return, date of return, attempts to collect by the currency exchange, and any fees charged by the currency exchange.

62. There are questions of law and fact common to the class members, which common questions predominate over any questions relating to individual class members. The predominant common questions are:

- a. Whether Defendants engage in a practice of adding sums to the face amount of checks on which payment has been stopped;
- b. Whether such charges are legally authorized;
- c. The appropriate remedies.

63. Plaintiff will fairly and adequately represent the class members. Plaintiff has retained counsel experienced in class action litigation. Plaintiff's claim is typical of the claims of the class members. All are based on the same factual and legal theories.

64. A class action is appropriate for the fair and efficient adjudication of this matter, in that:

- a. Individual actions are not economically feasible.
- b. Members of the class are likely to be unaware of their rights.

WHEREFORE, the Court should enter judgment in favor of Plaintiff and the class and against Defendants for:

- i. A declaration that amounts in excess of the face amount of a check are not authorized if payment is stopped on a check;
- ii. Appropriate monetary relief;
- iii. Attorney's fees, litigation expenses and costs;
- iv. Such other or further relief as is proper.

/s/ Daniel A. Edelman
Daniel A. Edelman

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