

STATE OF MICHIGAN
IN THE THIRD JUDICIAL CIRCUIT COURT
COUNTY OF WAYNE

JAMES SHAKE,
an individual,

Plaintiff,

Case No. 19 - - NZ

-v-

Hon. _____

INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICAN (UAW),

Defendant.

Derk A. Wilcox (P66177)
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Midland, MI 48640
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VERIFIED COMPLAINT

INTRODUCTION

This matter involves the payment of what were allegedly “dues” paid by an employee of the Defendant UAW. At all times relevant to this matter, the UAW was acting as the employer, and not as a representative of employees, as it usually does in its capacity as a labor union. These “dues” were ostensibly withheld from the Plaintiff employee’s paycheck by the Defendant UAW for the purpose of a local union which supposedly represented the Plaintiff employee as his labor representative which would bargain with the UAW as his employer. However, there does not appear to have been any union representing a bargaining unit that included Plaintiff and,

upon information and belief, the UAW has kept Plaintiff's "dues" for itself. This Complaint, therefore, sounds in fraud, conversion, and contract; and Plaintiff seeks to recover the "dues" that were wrongly withheld from his paycheck.

THE PARTIES, VENUE AND JURISDICTION

1. Plaintiff, James Shake, is an individual who currently resides in Marcellus, New York. At all times relevant to the allegations in the Complaint, he was a resident of Harrison Township, Macomb County, State of Michigan.
2. The Defendant, UAW, is a corporation located in Detroit, Wayne County, State of Michigan.
3. This matter alleges fraud, conversion, and breach of contract over which the circuit court has original jurisdiction per MCL 600.605.
4. Plaintiff requests equitable relief, over which this circuit court has exclusive jurisdiction per MCL 600.601.
5. Defendant UAW is headquartered in Wayne County, making this court the appropriate venue per MCL 600.1621.

GENERAL ALLEGATIONS

6. Plaintiff incorporates the preceding paragraphs as though restated herein.
7. Plaintiff was an employee of the Defendant UAW beginning in November 2008.
8. Plaintiff was employed by the Defendant UAW as an actuary.
9. In October 2014, Plaintiff was provided with a dues withholding authorization form.
10. Plaintiff objected to the requirement that he pay dues to a union, and the method by which dues were calculated. After being presented with a dues withholding authorization form, Plaintiff returned the dues authorization form with hand-written modifications he had made to

reflect what he thought the proper dues amount would be in accordance with the usual method used for the rank and file members of UAW locals. See Exhibit A attached to this Complaint.

11. In mid-November 2014, Plaintiff was called into the office of Chuck Browning¹ – who was, at that time, an aide to then-UAW President, Dennis D. Williams.² At this meeting, Plaintiff was told that his modified dues withholding authorization form was not acceptable. Plaintiff replied that Michigan was a right-to-work state, and that he wasn't required to pay dues or fees. At that point Chuck Browning referred Plaintiff to the UAW Constitution, Art. 13, Sec. 6, which stated that he was an at-will employee. Believing that this was a threat to fire him, Plaintiff signed an un-modified dues withholding authorization form. The un-modified dues withholding authorization was identical to Exhibit A except for the Plaintiff's hand-written changes. Plaintiff does not have a copy of the un-altered dues authorization he signed. Upon information and belief, the signed form is in the possession of Defendant. Neither Browning nor Williams are named as parties in this suit at this time.

12. The dues withholding authorization form does not specify to which union Plaintiff was supposedly paying dues. It only had an "X" marked in the blank after "Local." Plaintiff will refer to this ostensible local union he was required to pay dues to as "Local X." Exhibit A, supra.

13. Plaintiff began paying dues to Local X in 2014. In 2014 he paid \$296.66 in dues to Local X. This information was provided by Defendant to the Internal Revenue Service. See Exhibit B (with redacted social security number) attached to this Complaint.

¹ Chuck Browning has since been elected to the position of director of UAW Region 1A.

² Dennis Williams has since retired, and has been the subject of federal criminal investigations, although he has not been charged with any crime at the time of this filing.

<https://www.detroitnews.com/story/business/autos/2019/09/12/uaw-presidents-gary-jones-dennis-williams-implicated-in-federal-probe/2302410001/>

14. In 2015, Plaintiff paid \$1,833.27 to Local X. This information was provided by Defendant to the Internal Revenue Service. See Exhibit C (with redacted social security number) attached to this Complaint.

15. In 2016, Plaintiff paid \$1,985.67 to Local X. This information was provided by Defendant to the Internal Revenue Service. See Exhibit D (with redacted social security number) attached to this Complaint.

16. In 2017, Plaintiff paid \$1,961.49 to Local X. This information was provided by Defendant to the Internal Revenue Service. See Exhibit E (with redacted social security number) attached to this Complaint.

17. In 2018, Plaintiff paid \$1,463.64 to Local X. This information was provided by Defendant to the Internal Revenue Service. See Exhibit F (with redacted social security number) attached to this Complaint.

18. Plaintiff retired from the UAW in 2018.

19. During his tenure at the UAW, Plaintiff was never approached by any representative of Local X, nor any other union which claimed to represent him in matters with his UAW employer.

20. During his tenure at the UAW, Plaintiff never witnessed any meetings; contract negotiations; employee representation; nor any other hallmark of union representation carried out on his or anyone else's behalf by Local X, nor by any other union which claimed to represent him or his unit in employment matters with his UAW employer.

21. Although there are other unions representing employees of the UAW at its headquarters, none of these represented Plaintiff or similarly situated employees. Specifically, "International Union, UAW Staff Council" and "OPEIU Local 494" are two unions which represent UAW

headquarter employees, but neither represented Plaintiff, nor any bargaining unit he would have been in.

22. Plaintiff and his counsel have researched federal labor union filings (“LM-2” forms), IRS tax returns for local unions (IRS “990” forms), National Labor Relations Board filings, and news accounts, and have found no union which could be the mysterious Local X by that or any other name.

23. Upon information and belief, the UAW’s federal LM-2 forms, for the relevant years, do not disclose payments or transfers to Local X (nor any local union that would have covered Plaintiff or similarly-situated employees) as a recipient of withheld payroll funds, as it should have if such a local union actually existed.

24. Plaintiff was informed by UAW staff attorneys that Local X was a kickback scheme, and that no such local union existed.

25. During his tenure as an employee of the UAW, from 2014 until his retirement in 2018, Plaintiff paid \$7,540.73 in dues to this Local X which does not appear to exist.

26. The UAW reported these deductions to the IRS as “dues.” See Exhibits B through F.

27. Upon information and belief, there is no Local X nor any other local union which represented a bargaining unit which covered Plaintiff’s position.

28. Plaintiff sent a letter to Defendant on April 19, 2019, demanding a refund of the “dues” paid to Local X. See Exhibit G attached to this Complaint.

29. Defendant never replied to Plaintiff’s April 19, 2019 letter.

COUNT I

COMMON LAW CONVERSION

20. Plaintiff hereby incorporates the preceding paragraphs as if restated herein.

31. Defendant acted willfully and wrongly asserted dominion over money owned by Plaintiff, and took and held it in denial of Plaintiff's rights.

32. Defendant wrongly took Plaintiff's money by falsely alleging that it was being taken from him as dues to pay a local union he supposedly belonged to.

33. Plaintiff was threatened against his continued employment if he did not pay these false dues.

34. Upon information and belief, Plaintiff's money was taken by Defendant and used for its own purposes.

35. In Michigan, money is a possession which can be converted. See, for instance, *Lawsuit Financial LLC v Curry*, 261 Mich App 579 (2004).

COUNT II

STATUTORY CONVERSION

36. Plaintiff hereby incorporates the preceding paragraphs as if restated herein.

37. In Michigan, a cause of action for statutory conversion is provided for in MCL 600.2919a:

Sec. 2919a. (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or converting property to the other person's own use.

38. By taking the alleged dues deduction, which had ostensibly been for the purpose of paying local union dues, and then keeping it for its own use, Defendant converted Plaintiff's property to its own use.

39. In Michigan, money is a possession which can be converted. See, for instance, *Lawsuit Financial LLC v Curry*, 261 Mich App 579 (2004).

COUNT III

FRAUD

40. Plaintiff hereby incorporates the preceding paragraphs as if restated herein.

41. Defendant made material representations that Plaintiff was part of a bargaining unit represented by a local union and that dues for this local union had to be deducted from his pay check.³

42. Upon information and belief, the representations in the previous paragraph were false.

43. Upon information and belief, Defendant knew these were false when these misrepresentations were made, or made these recklessly, without any knowledge of its truth and as a positive assertion.

44. Upon information and belief, Defendant made the representations with the intention that the Plaintiff would act on these and authorize the payment of dues.

45. Plaintiff reasonably acted in reliance on these misrepresentations, paid the dues which were retained by the Defendant, and the Plaintiff suffered injury because of that reliance.

COUNT IV

BREACH OF CONTRACT

46. Plaintiff hereby incorporates the preceding paragraphs as if restated herein.

47. Plaintiff was induced by Defendant to sign the dues authorization. See Exhibit A.

48. The dues withholding authorization form is a contract.

49. Defendant was a party to that contract which had duties described in the contract – the duty to deduct and forward dues to Local X.

³ The allegation stated in Count III, along with the general allegations, state with particularity the circumstances surrounding this fraud, as required by MCR 2.112(B).

50. The contract states that deducted funds will be forwarded to a Local X for the purpose of paying bargaining unit dues.

51. Upon information and belief, Defendant did not forward what it called “dues” to Local X nor any other local union representing a bargaining unit that represented Plaintiff. Instead, Defendant kept those “dues.”

52. Defendant’s conduct constituted a breach of the subject contract where it failed to transfer Plaintiff’s funds to a local union representing him.

COUNT V

DECLARATORY JUDGMENT

53. Plaintiff hereby incorporates the preceding paragraphs as if restated herein.

54. Plaintiff has standing to seek a declaratory judgment when he meets the requirements of MCR 2.605:

In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

55. To establish standing for declaratory relief, a plaintiff must demonstrate:

First, the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent’, not ‘conjectural’ or ‘hypothetical.’ Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’

Lee v Macomb Co Bd of Comm'rs, 464 Mich 726, 739 (2001)

56. Plaintiff has suffered an actual injury in fact that is concrete and particularized by paying false ‘union dues’ as a direct result of Defendant’s assertions. Defendant’s actions may have further repercussions - besides the money already taken from Plaintiff, Defendant has filed false

information on Plaintiff with the Internal Revenue Service. It does not matter that Plaintiff has not yet suffered any consequences as a result of Defendant's false information provided to the IRS or any other third party; as long as there is the potential for such harm, declaratory judgment is available. The purpose of a declaratory judgment is:

[T]o enable the parties to obtain adjudication of rights before an actual injury occurs, to settle a matter before it ripens into a violation of the law or a breach of contract, or to avoid multiplicity of actions by affording a remedy for declaring in expedient action the rights and obligations of all litigants.

Rose v Nat'l Auction Group, 466 Mich 453, 461 (2002)

REQUEST FOR RELIEF

Plaintiff requests that this court award him his \$7,540.73 in damages for Defendant's actions recited above. Further, pursuant to MCL 600.2919a, Plaintiff requests treble damages.

Plaintiff requests a declaratory judgment to the effect that there was no 'Local X' nor any other local union which represented Plaintiff as an employee of Defendant, and that Plaintiff paid those 'dues' in reliance on fraudulent conduct by Defendant.

Also pursuant to MCL 600.2919a, Plaintiff requests his reasonable attorney fees and costs. Plaintiff requests interest on his damages, along with any other relief that this court might grant.

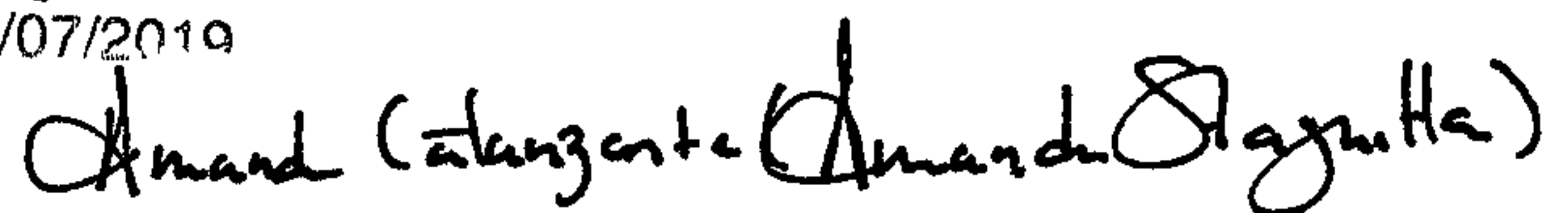
Respectfully submitted,

December 5, 2019


James Shake

AMANDA CATANZARITE
Notary Public - State of New York
No. 01CA6333917
Qualified in Onondaga
My Commission Exp. 12/07/2019

12/5/19


Amanda Catanzarite (Amanda Stagnitta)