

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WISCONSIN DEPARTMENT OF
REVENUE,

Plaintiff,

v.

Case No. 16-cv-281

DELAWARE STATE ESCHEATOR DAVID
GREGOR, in his official capacity,

and

MONEYGRAM PAYMENT SYSTEMS, INC.,

Defendants.

COMPLAINT

The Wisconsin Department of Revenue (DOR or Wisconsin), for a complaint against the defendants, alleges:

1. This is an action by Wisconsin to recover money erroneously submitted to the Delaware State Escheator by MoneyGram Payment Systems, Inc. in violation of 12 U.S.C. § 2503 and Wisconsin law.

JURISDICTION & VENUE

2. This Court has subject matter jurisdiction in this case under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.

3. This Court has supplemental jurisdiction over Wisconsin's state law claim under 28 U.S.C. § 1367(a).

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JURISDICTION & VENUE

2. This Court has subject matter jurisdiction in this case under 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.

3. This Court has supplemental jurisdiction over Wisconsin's state law claim under 28 U.S.C. § 1367(a).

4. The case is properly venued in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the omissions or events giving rise to the dispute occurred in this district. All of the funds at issue in this dispute originated in Wisconsin, and all of the money should have been submitted to the Wisconsin Department of Revenue in Madison, Wisconsin. In addition, adjudication of this case requires the application of Wisconsin law.

PARTIES

5. DOR is a department of the State of Wisconsin and is the statutory repository for unclaimed and abandoned property under Wisconsin law.

6. Defendant Delaware State Escheator David Gregor (Gregor) is an official of the State of Delaware who is responsible under Delaware law for receiving abandoned and unclaimed property. Gregor is made a party to this action in his official capacity.

7. MoneyGram Payment Systems, Inc. (MoneyGram) is a Delaware corporation that has its principal place of business in Texas. MoneyGram is a wholly owned subsidiary of MoneyGram International, Inc.

8. All parties have sufficient contacts with this district to warrant personal jurisdiction in this district.

FACTS

A. MoneyGram Money Orders and Official Checks

9. MoneyGram sells money orders and instruments that it markets as “official checks.”

10. These mediums of exchange are “instruments” within the meaning of the Uniform Commercial Code as adopted in Wisconsin (Wis. Stat. § 403.104(2)), and are collectively called “instruments” in this complaint.

11. MoneyGram sells its instruments to the public through MoneyGram offices located in Wisconsin.

12. Purchasers pay MoneyGram the amount of the instrument, plus a transaction fee.

13. After receiving payment, MoneyGram issues the instrument to the purchaser.

14. MoneyGram is directly liable for the stated amount of the instrument.

15. “Official check” is synonymous with “money order.” There is no material commercial difference between the instruments.

16. MoneyGram sells money orders in traditional retail locations, such as drug stores.

17. MoneyGram generally sells official checks at banks and other financial institutions.

18. MoneyGram accepts only immediate payment when selling its instruments; it does not sell instruments on credit.

19. MoneyGram is directly liable to pay the amount of its instruments.

20. When a MoneyGram official check is sold in Wisconsin, MoneyGram is the holder of the value of the official check as a matter of Wisconsin law and is not required to pay the value of the official check until it is processed for payment by a financial institution.

21. If an instrument is never presented for payment, MoneyGram never releases the value of the instrument.

22. MoneyGram does not generally record the addresses of the purchasers of the instruments.

B. Wisconsin's Unclaimed Property Law

23. Wisconsin's Unclaimed Property Act (the "Act"), Wis. Stat. ch. 177, defines which property is subject to deposit in the unclaimed property fund and which is subject to the custody and control of the state through the DOR.

24. Wisconsin Stat. § 177.01(8) defines a "holder" as any entity that is in possession of property belonging to another, or indebted to another on an obligation.

25. As an issuer of the described instruments, MoneyGram is a holder for purposes of the Act.

26. Any sum payable on an instrument that has been outstanding more than 7 years after issuance without communication from the owner is presumed to be abandoned property. Wis. Stat. § 177.04(2).

27. Sums payable on abandoned instruments are subject to Wisconsin's custody if the records of the issuer show that the instrument was purchased in Wisconsin. Wis. Stat. § 177.04(4)(a).

28. Wisconsin Stat. § 177.17(4)(a) requires MoneyGram to report all abandoned property to the administrator of the Act.

29. Wisconsin Stat. § 177.17(4)(a)2. requires MoneyGram to pay or to deliver to the administrator of the Act all abandoned property that MoneyGram is required to report.

30. On information and belief, MoneyGram has sent to the Delaware State Escheator sums exceeding \$13,000,000 as abandoned property, that represent amounts for which MoneyGram was liable on instruments purchased in Wisconsin but never negotiated for the years 2000 and after (hereafter, the "Wisconsin Instruments").

31. Wisconsin Stat. § 177.17(4)(a)2. required MoneyGram to pay or deliver all of them money described in the preceding paragraph to the administrator of the Act.

C. Disposition of Abandoned Money Orders and Traveler's Check Act

32. A federal law, The Disposition of Abandoned Money Orders and Traveler's Checks Act (the "Federal Disposition Act"), 12 U.S.C. §§ 2501-03, applies to the facts of this case.

33. Under the Federal Disposition Act, if any sum is payable on a money order, traveler's check, or similar written instrument (other than a third party bank

check) on which a banking or financial organization or a business association is directly liable, the State where the money order, traveler's check, or similar written instrument was purchased holds the exclusive right to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or to take custody of such sum. 12 U.S.C. § 2503(1).

34. Under the Federal Disposition Act, a "business association" is defined as "any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals[.]" 12 U.S.C. § 2502(2).

35. MoneyGram is a business association under the Federal Disposition Act.

36. MoneyGram's books and records show Wisconsin as the state where the Wisconsin Instruments were purchased.

37. The Wisconsin Instruments are not third party bank checks.

38. The Wisconsin Unclaimed Property Act permits Wisconsin to take custody of the sums payable on the Wisconsin Instruments.

39. Under the Federal Disposition Act, Wisconsin has the exclusive right to take custody of the sums payable on the Wisconsin Instruments.

40. The funds at issue originated in Wisconsin and were statutorily required to be remitted to the Wisconsin Department of Revenue in Madison, Wisconsin.

41. Gregor instructed MoneyGram not to remit the funds to Wisconsin, and to remit the money to Delaware instead.

42. Gregor has not honored Wisconsin's right to custody of the sums payable on Wisconsin Instruments.

**COUNT I: DECLARATORY JUDGMENT ACT, 28 U.S.C. § 2201
(AGAINST ALL DEFENDANTS)**

43. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

44. There is an actual controversy between Wisconsin and the defendants regarding Wisconsin's right to custody of the sums payable on abandoned Wisconsin Instruments.

45. Wisconsin seeks a declaration that:

- a. the MoneyGram official checks constitute "similar written instruments" under the Federal Disposition Act;
- b. in the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act;
- c. the MoneyGram official checks are not third party bank checks;
- d. as to abandoned Wisconsin Instruments, Gregor, as the Delaware State Escheator, is violating Wisconsin's right to custody of the sums remitted to Delaware that represent the proceeds of abandoned Wisconsin Instruments;
- e. MoneyGram's transfer to Delaware of the proceeds of abandoned Wisconsin Instruments violates both the Federal Disposition Act and the Wisconsin Unclaimed Property Act; and
- f. all future sums payable on abandoned MoneyGram official checks that were purchased in Wisconsin shall be remitted to Wisconsin.

46. The interests of Wisconsin and the defendants are adverse: Wisconsin has demanded payment on the sums payable on the Wisconsin Instruments and has demanded that future sums payable on abandoned MoneyGram official checks purchased in Wisconsin be remitted to Wisconsin; the defendants have refused to comply with Wisconsin's demands.

47. A determination by this Court of the competing rights of Wisconsin and Delaware to abandoned MoneyGram official checks purchased in Wisconsin under the Federal Disposition Act and the Wisconsin Unclaimed Property Act will conclusively resolve the disputes between the parties.

48. A decision by this Court on the issues presented will render practical help to the parties, in that a decision will determine which parties are entitled to the proceeds of abandoned Wisconsin Instruments in the future.

**COUNT II: VIOLATION OF THE ACT
(AGAINST MONEYGRAM PAYMENT SYSTEMS, INC.)**

49. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

50. The Act required MoneyGram to report to Wisconsin all abandoned Wisconsin Instruments.

51. MoneyGram failed to report as required.

52. Money Gram was lawfully required to remit the sums payable on the abandoned Wisconsin Instruments to the custody of the DOR.

53. MoneyGram has not remitted to DOR the sums payable on the abandoned Wisconsin Instruments.

54. The Act provides that if the holder of abandoned property fails to report or remit as required, it is subject to a forfeiture of not less than \$100/day, not to exceed \$5,000, for each day the report is not filed or the funds are not remitted. Wis. Stat. § 177.34(2).

55. The Act provides that if the holder of abandoned property subject to the Act fails to remit funds as required, the holder is subject to an interest charge of 18% per annum from the date the property should have been remitted. Wis. Stat. § 177.34(1).

56. The Act provides that if the holder of abandoned property subject to the Act fails to remit funds as required, the holder is subject to a forfeiture of 25% of the value of the property that should have been remitted. Wis. Stat. § 177.34(3).

57. The Wisconsin Unclaimed Property Act authorizes the Wisconsin Attorney General to pursue civil actions for the purpose of enforcing the Act. Wis. Stat. § 177.32.

**COUNT III: VIOLATION OF THE FEDERAL DISPOSITION ACT
(AGAINST MONEYGRAM PAYMENT SYSTEMS, INC.)**

58. Wisconsin incorporates the foregoing paragraphs as if fully set forth herein.

59. Under the Federal Disposition Act, Wisconsin has the exclusive right to take custody of the sums payable on the Wisconsin Instruments.

60. Money Gram was lawfully required under the Federal Disposition Act to remit the sums payable on the abandoned Wisconsin Instruments to the custody of the DOR.

61. MoneyGram has not remitted to DOR the sums payable on the abandoned Wisconsin Instruments.

WHEREFORE, Wisconsin requests judgment as follows:

A. On Count I, entering judgment in favor of Wisconsin and against defendants and declaring that:

- a. The MoneyGram official checks constitute “similar written instruments” under the Federal Disposition Act;
- b. in the alternative, the MoneyGram official checks are money orders under the Federal Disposition Act;
- c. the MoneyGram official checks are not third party bank checks;
- d. as to abandoned Wisconsin Instruments, Gregor, as the Delaware State Escheator is violating Wisconsin’s right to custody of the sums remitted to Delaware that represent the proceeds of abandoned Wisconsin Instruments;
- e. MoneyGram’s transfer to Delaware of the proceeds of abandoned Wisconsin Instruments violates both the Federal Disposition Act and the Wisconsin Unclaimed Property Act; and
- f. all future sums payable on abandoned MoneyGram official checks that were purchased in Wisconsin shall be remitted to Wisconsin.

B. On Count II, awarding damages in favor of Wisconsin and against MoneyGram, in an amount to be determined at trial, plus interest at 18% per annum, penalties of \$100/day (up to \$5,000) a 25% penalty on

amounts for which required remittance was not made, and attorneys' fees and costs.

C. On Count III, awarding damages in favor of Wisconsin and against MoneyGram in an amount to be determined at trial.

D. Granting Wisconsin such other and further relief as the Court deems just and proper.

Dated this 27th day of April, 2016.

BRAD D. SCHIMEL
Wisconsin Attorney General

/s/F. Mark Bromley
F. MARK BROMLEY
Assistant Attorney General
State Bar #1018353

THERESA (ESA) M. ANZIVINO
Assistant Attorney General
State Bar #1079343

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 264-6201 (Bromley)
(608) 266-8554 (Anzivino)
(608) 267-8906 (Fax)
bromleyfm@doj.state.wi.us
anziviotm@doj.state.wi.us

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WISCONSIN DEPARTMENT OF REVENUE

(b) County of Residence of First Listed Plaintiff Dane (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

F. MARK BROMLEY and THERESA (ESA) M. ANZIVINO Assistant Attorneys General Post Office Box 7857, Madison, WI 53707

DEFENDANTS

DELAWARE STATE ESCHEATOR DAVID GREGOR, in his official capacity, and MONEYGRAM PAYMENT SYSTEMS, INC.

County of Residence of First Listed Defendant foreign (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 12 U.S.C. secs, 2501 and 2503

Brief description of cause: claim under federal disposition act for escheated property

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/27/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ F. MARK BROMLEY

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin



WISCONSIN DEPARTMENT OF REVENUE

Plaintiff(s)

v.

DELAWARE STATE ESCHEATOR DAVID GREGOR, in his official capacity, and MONEYGRAM PAYMENT SYSTEMS, INC.

Defendant(s)

Civil Action No. 16-cv-281

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Delaware State Escheator David Gregor Delaware Dept. of Finance 820 North French Street, 8th Floor Wilmington, DE 19801

MoneyGram Payment Systems, Inc. 2828 North Harwood Street, 15th Floor Dallas, TX 75201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

F. Mark Bromley and Theresa (Esa) M. Anzivino Assistant Attorneys General Post Office Box 7857 Madison, WI 53707-7857

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 16-cv-281

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: