

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

CITY OF HARVEY, an Illinois)	
municipal corporation,)	
)	
Plaintiff,)	Case No.
)	
v.)	
)	
SUSANA A. MENDOZA, Comptroller)	
Of the State of Illinois,)	
)	
Defendant.)	

VERIFIED COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION AND OTHER RELIEF

Now Comes, the Plaintiff, the City of Harvey (“City”), by and through its attorneys, Roth Fioretti, LLC, and brings this action to remedy and enjoin improper withholdings and recent and imminent violations of Illinois Public Policy, stating as follows:

INTRODUCTION

1. The City of Harvey is confronted with substantial and unprecedented financial burdens and seeks relief of this Court to order the release of its revenues in order to pay for its essential governmental services and an injunction from any further withholdings. Unless the City is granted its relief, the City will not be able to pay for, *inter alia*, approximately 200 employees, including but not limited to, police and fire protection, water and sanitation, and its governmental employees. Payroll of approximately \$400,000 is due on April 13, 2018. Additionally, the City is required to pay over \$300,000 for its employees’ health insurance. Presently, the City’s tax collection rate is at an all-time low, approximately 58%. The City’s independent audit demonstrates a governmental operational deficit of \$5,968,647. As a result, the City possesses less than \$200,000 in its general fund to pay the aforementioned essential governmental services.

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2. In furtherance of its unprecedented financial burden, the Comptroller of the State of Illinois, Susana A. Mendoza (“Comptroller Mendoza”), intercepted and is currently withholding monthly revenues due to the City in the amount of \$1,072,443.70, and continues to hold the City’s property. Comptroller Mendoza is withholdings these amounts under the request of the Harvey Police Pension Fund. However, Comptroller Mendoza may only legally withhold the City’s revenues for amounts delinquent pursuant to the Illinois Pension Code. The City has complied with the pension code, and no amounts are delinquent thereunder. Unless this unlawful withholding ceases, the City will face catastrophic issues regarding safety, security, and maintenance of adequate services to the City’s senior population, four school districts, Ingalls/University of Chicago Hospital and over 120 businesses.

3. Section 3-125 of the Illinois Police Pension Code requires the City to levy an annual requirement and to transmit those amounts to the police pension fund. If the City fails to transmit those amounts, the police pension fund may certify those amounts to the Illinois Comptroller for remittance. The City has levied the annual actual requirement under the Pension Code and has transmitted those amounts to the police pension fund. Therefore, there are no delinquent funds that the Illinois Comptroller may legally withhold from the City.

4. Further, the City requires the withholdings by the Illinois Comptroller to pay for it essential governmental services and will be unable to do so by April 13, 2018. The debt only derives from the judgment creditor, the Board of Trustees of the Harvey Police Pension Fund, entered on April 3, 2015, in the amount of \$7,334,181.88. The City has protested to Comptroller Mendoza, under the Illinois Administrative Code, that these withholdings are not currently due to the Board of Trustees of the Harvey Police Pension Fund. The City has asserted the following reasoning for release of the funds: (1) the City has pledged the revenues to its bondholders with

greater rights than the pension fund, (2) the City has levied the required actuarial amounts of \$1,226,215.00 and has appropriated future levies for the pension fund (therefore the amounts are not currently due under the Pension Code), and (3) it is against Illinois public policy to garnish public funds against a municipality used for essential governmental services.

5. It has been the law in Illinois since at least 1861 that public policy forbids a judgment creditor that holds a judgment against a municipality from collecting the judgment by executing on the property of a judgment debtor municipality. One cannot satisfy that judgment by execution against city property. Comptroller Mendoza is therefore currently withholding the City's property in violation of Illinois Public Policy. Further, Comptroller Mendoza may only withhold revenues that the City fails to transmit pursuant to 3-125 of the Pension Code. However, the City has levied the annual actuarial requirement under the Pension Code and has transmitted those collections to the Harvey Police Pension Fund. Therefore, no amounts are delinquent under 3-125 of the Pension Code and Part 295 of the Administrative Code. The City is seeking declaratory, injunctive relief, and mandamus to release its property intercepted and withheld by Comptroller Mendoza and to enjoin further imminent withholdings.

PARTIES

6. Plaintiff, City of Harvey, is a municipal corporation created under the laws of the State of Illinois. The City has a population of approximately 25,000 residents in Cook County, Illinois, and is a "municipality" as defined in Section 3-103 of the Pension Code, 40 ILCS 5/3-103.

7. Defendant, Susana A. Mendoza ("Comptroller Mendoza"), is a duly elected Comptroller of the State of Illinois. Comptroller Mendoza was elected in a special election for the

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State Comptroller in November, 2016. Comptroller Mendoza was sworn in as State Comptroller in December 2016. She was preceded in office by appointed State Comptroller Leslie Munger.

VENUE

8. This Court is the proper venue for this action pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-101. The Defendant resides in Cook County and the conduct out of which this action arose occurred in Cook County.

ALLEGATIONS OF FACT

The Pension Code 40 ILCS 5/3-125

9. The Illinois Pension Code (40 ILCS 5/) provides how a municipality must finance its police pension fund in a sum sufficient to meet the annual requirements of the pension fund. 40 ILCS 5/3-125(a).

10. The City shall annually levy a tax upon all the taxable property of the municipality at a rate on the dollar which will produce an amount which, when added to the deductions from the salaries or wages of police officers, and revenues available from other sources, will equal a sum sufficient to meet the annual requirements of the police pension fund. 40 ILCS 5/3-125(a).

11. The annual requirements to be provided by such tax levy are equal to (1) the normal cost of the pension fund for the year involved, plus (2) an amount sufficient to bring the total assets of the pension fund up to 90% of the *total actuarial liabilities* of the pension fund by the end of municipal fiscal year 2040, as annually updated and determined by an enrolled actuary employed by the Illinois Department of Insurance or by an enrolled actuary retained by the pension fund or the municipality. (Emphasis added) 40 ILCS 5/3-125(a).

12. If a participating municipality fails to transmit to the fund contributions required of it under this Article for more than 90 days after the payment of those contributions is due, the fund

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may, after giving notice to the municipality, certify to the State Comptroller the amounts of the delinquent payments in accordance with any applicable rules of the Comptroller, and the Comptroller must, beginning in fiscal year 2016, deduct and remit to the fund the certified amounts or a portion of those amounts from the following proportions of payments of State funds to the municipality:

- (1) in fiscal year 2016, one-third of the total amount of any payments of State funds to the municipality;
- (2) in fiscal year 2017, two-thirds of the total amount of any payments of State funds to the municipality; and
- (3) in fiscal year 2018 and each fiscal year thereafter, the total amount of any payments of State funds to the municipality.

The State Comptroller may not deduct from any payments of State funds to the municipality more than the amount of delinquent payments certified to the State Comptroller by the fund. 40 ILCS 5/3-125(c).

13. The City levied the annual actuarial requirement and levied \$1,226,215 for the Harvey Police Pension Fund.

14. The Cook County Treasurer transmitted the collection on the City's levy directly to the Harvey Police Pension Trust Fund. The City does not directly receive these collections.

15. The fund contributions required under Article 3 are transmitted and therefore not delinquent. Since February 2018, the pension has received \$300,981.17 in distributions.

**The Pension Code/Illinois Administrative Code
74 Ill. Adm. Code 295**

16. Part 295 "Payments Remitted on Behalf of a Pension Fund", became effective on January 11, 2018.

17. Part 295 was adopted for the purpose of establishing a procedure for remitting certified amounts delinquent to claimants in accordance with, *inter alia*, Article 3 of the Illinois Pension Code. See 74 Ill. Adm. Code 295.100.

18. "Applicable Sections of the Code" means Code Sections 3-125, 4-118, 5-168, 6-165, 7-172.1, 8-173, 9-184.5, 10-107.5, 11-169, 12-149.5, 13-503.5 and 22-104. See 74 Ill. Adm. Code 295.200.

19. A pension fund may seek remittance under the applicable Sections of the Code and shall notify the Illinois Comptroller with a statement of notification from a pension fund certify that the certified amount delinquent has been established through notice and opportunity to be heard. See 74 Ill. Adm. Code 295.300(a)(b).

20. "Certified Amount Delinquent" means the amount of delinquent payments certified by a claimant pursuant to applicable Sections of the Code and this Part. 74 Ill. Adm. Code 295.200.

21. "Claim Eligible to be Remitted" means an amount authorized by applicable Sections of the Code to be remitted by the Comptroller that represents fund contributions certified by a claimant as delinquent. 74 Ill. Adm. Code 295.200.

22. For purposes of the applicable Sections of the Code and this Part, "statement of notification" of a claim eligible to be remitted shall be deemed to occur when the claimant in favor of which the claim has arisen has certified and submitted to the Comptroller the following information:

- 1) the name and FEIN or Government Unit Code for the person against whom the claim exists;
- 2) the certified amount delinquent then due and payable to the fund;
- 3) the reason why there is an amount due to the fund;
- 4) the time period to which the claim is attributable;
- 5) a description of the type of notification given to the person against whom the claim exists and the type of opportunity to be heard afforded that person;

- 6) a statement as to the outcome of any hearings or other proceedings held to establish the claim, or a statement that no hearing was requested; and
- 7) the date of the final determination of the claim.

74 Ill. Adm. Code 295.300(c).

23. Warrants subject to remittance are from proportions of payments of State funds to the payee, when the claim is made pursuant to Code Section 3-125. See 74 Ill. Adm. Code 295.400(a)(1).

24. Section 295.500 governs the processing of a certification under application Sections of the Code. 74 Ill. Adm. Code 295.500. If a protest conforming to the requirements of Section 295.600(b) is made, the Comptroller shall not issue the warrant to the claimant until the Comptroller ascertains the amount due and payable as provided in Section 295.600(c). 74 Ill. Adm. Code 295.500(b).

25. Upon processing a claim eligible to be remitted, the Comptroller shall, as soon as is practicable, give notice in writing to the payee subject to remittance. 74 Ill. Adm. Code 295.600(a).

26. Section 295.600(b) provides:

b) Persons wishing to make a protest of the claim eligible to be remitted shall, within 60 days after the Comptroller gives notice as prescribed in subsection (a), notify the Comptroller in writing of:

- 1) the reasons for contesting the claim;
- 2) the amount, if any, that the payee acknowledges to be due and payable to the claimant; and
- 3) any other information that will enable the Comptroller to determine the amount, if any, that is due and payable to the claimant.

74 Ill. Adm. Code 295.600(b).

27. Upon receipt of a timely protest, the Comptroller shall determine the amount due and payable to the claimant. This determination shall be made in light of all information relating to the transaction in the possession of the Comptroller and any other information the Comptroller

may reasonably request and obtain from the claimant and the payee subject to remittance. 74 Ill. Adm. Code 295.600(c).

Illinois Comptroller Withholdings

28. Comptroller Mendoza has sent ten (10) notices in writing the City subject to remittance. The notices in writing subject to remittance were sent on February 7, 14, 16, and March 8, 14, and 15, 2018. See the attached true and correct copies of Comptroller Mendoza's notices in writing, attached hereto as Group Exhibit A. Comptroller Mendoza intercepted the revenue payments due to the City.

29. On February 7, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Sales Tax Revenues in the amount of \$172,393.36, due to Amalgamated Bank of Chicago, Trustee in c/o the City's bondholders. See Group Exhibit A, at pg. 1.

30. On February 14, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Local Use Sale Tax Revenues in the amount of \$63,963.78. See Group Exhibit A, at pg. 2.

31. On February 14, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Transportation Revenues in the amount of \$523.30. See Group Exhibit A, at pg. 3.

32. On February 16, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Income Tax and Local Use Tax Revenues in the amount of \$278,094.36. See Group Exhibit A, at pg. 4.

33. On March 8, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Sales Tax Revenues in the amount of \$173,764.30, due to Amalgamated Bank of Chicago, Trustee in c/o the City's bondholders. See Group Exhibit A, at pg. 5.

34. On March 8, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Motor Fuel Revenues in the amount of \$49,551.00, due to U.S. Bank, Trustee in c/o the City's bondholders. See Group Exhibit A, at pg. 6.

35. On March 8, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Person Property Replacement Taxes Revenues in the amount of \$71,346.75. See Group Exhibit A, at pg. 7.

36. On March 14, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Transportation Revenues in the amount of \$191.27. See Group Exhibit A, at pg. 8.

37. On March 14, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Excise Taxes Revenues in the amount of \$41,907.57. See Group Exhibit A, at pg. 9.

38. On March 15, 2018, Comptroller Mendoza sent the City a remittance notice regarding the City's Income Tax and Local Use Tax Revenues in the amount of \$220,708.01. See Group Exhibit A, at pg. 10.

39. Therefore, the current total withholdings amounts to \$1,072,443.70.

City Protest Letters

40. On February 17, 2018, the City sent Comptroller Mendoza its protest letter pursuant to 40 ILCS 5 and Section 295.600 of the Title 74 of the Illinois Administrative Code and is within the prescribed 60 days ("February 17 Protest Letter"). See the attached true and correct copy of the City's February 17, 2018, Protest Letter, attached hereto as Exhibit B.

41. The February 17 Protest Letter was directed to the remittance notice of February 7, 2018, regarding the City's Sales Tax Revenues in the amount of \$172,393.36, due to Amalgamated

Bank of Chicago, Trustee in c/o the City's bondholders. See Exhibit B. The February 17 Protest Letter cited the revenue was (1) pledged to the bondholders with greater rights than the pension fund, (2) the City has levied the required actuarial amounts and has appropriated future levies for the pension fund (therefore the amounts are not current due to the pension fund), (3) it is against Illinois public policy to garnish public funds against a municipality for essential governmental services. See Exhibit B.

42. On February 21, 2018, the City sent Comptroller Mendoza its protest letter pursuant to 40 ILCS 5 and Section 295.600 of the Title 74 of the Illinois Administrative Code and is within the prescribed 60 days ("February 21 Protest Letter"). See the attached true and correct copy of the City's February 21, 2018, Protest Letter, attached hereto as Exhibit C.

43. The February 21 Protest Letter was directed to the remittance notices of February 14 and 16, 2018, regarding the City's Local Use Sale Tax Revenues in the amount of \$63,963.78, the City's Transportation Revenues in the amount of \$523.30, and the City's Income Tax and Local Use Tax Revenues in the amount of \$278,094.36. See Exhibit C. The February 21 Protest Letter cited (1) the City has levied the required actuarial amounts and has appropriated future levies for the pension fund (therefore the amounts are not current due to the pension fund) and (2) it is against Illinois public policy to garnish public funds against a municipality for essential governmental services. See Exhibit C.

44. On March 29, 2018, the City sent Comptroller Mendoza its protest letter pursuant to 40 ILCS 5 and Section 295.600 of the Title 74 of the Illinois Administrative Code and is within the prescribed 60 days ("March 29 Protest Letter"). See the attached true and correct copy of the City's March 29, 2018, Protest Letter, attached hereto as Exhibit D.

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45. The March 29 Protest Letter was directed to the remittance notice of March 8, 14, and 15, 2018, regarding the City's Sales Tax Revenues in the amount of \$173,764.30, due to Amalgamated Bank of Chicago, Trustee in c/o the City's bondholders, the City's Motor Fuel Revenues in the amount of \$49,551.00, due to U.S. Bank, Trustee in c/o the City's bondholders, the City's Person Property Replacement Taxes Revenues in the amount of \$71,346.75, the City's Transportation Revenues in the amount of \$191.27, the City's Excise Taxes Revenues in the amount of \$41,907.57, and the City's Income Tax and Local Use Tax Revenues in the amount of \$220,708.01. See Exhibit D. The March 29 Protest Letter cited the revenue was (1) pledged to the bondholders with greater rights than the pension fund, (2) the City has levied the required actuarial amounts and has appropriated future levies for the pension fund (therefore the amounts are not current due to the pension fund), (3) it is against Illinois public policy to garnish public funds against a municipality for essential governmental services. See Exhibit D.

46. To date, Comptroller Mendoza has not released any of the \$1,072,443.70 to the City and/or its Trustees in c/o the City's bondholders, can will continue to so.

47. Further, on March 29, 2018, Eric J. Kellogg, Mayor of the City of Harvey, sent a letter to Comptroller Mendoza indicating the City's imminent catastrophic issues if the unlawfully withheld revenues are not release to the City. See a true and correct copy of the March 29, 2018, letter attached hereto as Exhibit E.

48. Thereafter, on April 2, 2018, the Department Heads in the City of Harvey supported Mayor Kellogg's letter dated March 29, 2018, indicating the devastating financial struggles the departments faces in meeting the needs of the City's citizens. See a true and correct copy of the March 29, 2018, letter attached hereto as Exhibit F.

City's Financial Status

49. City currently operating at a deficit of \$5,968,647.
50. The City's collection rate regarding its real estate property taxes is at approximately 58%.
51. The City is required to pay approximately \$800,000 in governmental employees' payroll per month. The City will not be able to make its bi-monthly payroll of approximately \$400,000 on April 13, 2018, with less than \$200,000 in its general fund.

Police Pension Fund Judgment Against the City of Harvey

52. On April 3, 2015, the Circuit Court of Cook County entered a judgment in the amount of \$7,334,181.88, in favor of the Board of Trustees of the Harvey Police Pension Fund, and against the City. See the attached true and correct copy of the April 3, 2015, Judgment, attached hereto as Exhibit G.

Illinois Public Policy Against Garnishing Funds For Essential Governmental Services

53. It has been the law in Illinois since at least 1861 that public policy forbids a judgment creditor that holds a judgment against a municipality from collecting the judgment by executing on the property of a judgment debtor municipality. One cannot satisfy that judgment by execution against city property.

54. The City requires all funds withheld to be immediately released to fund essential governmental services due on April 13, 2018, and thereafter.

COUNT I **Injunctive Relief**

55. The City re-alleges and incorporates by reference the allegations in Paragraphs 1 – 54 as if fully set forth herein.
56. Comptroller Mendoza is holding property of the City.

57. Comptroller Mendoza continues to hold the property of the City without legal authority.

58. Without the property withheld by Comptroller Mendoza, the City will not be able to pay for its essential governmental services.

59. It is against Illinois Public Policy for Comptroller Mendoza to allow execution of the City's property necessary for essential governmental services.

60. Comptroller Mendoza's actions and conduct is causing irreparable harm to the City.

61. Absent permanent injunctive relief from this Court, Comptroller Mendoza is likely to continue to hold property of the City.

62. The City has no adequate remedy at law and is seeking a permanent injunction against Comptroller Mendoza preventing her from continuing to withhold City property.

WHEREFORE, the City of Harvey, respectfully request that the Court enter an order:

- a. Declaring that payments of the City comply with Section 3-125 of the Pension Code.
- b. Declaring the revenues withheld by Comptroller Mendoza as property of the City of Harvey.
- c. Declaring the property withheld by Comptroller Mendoza is depriving the City of Harvey of its essential governmental services.
- d. Declaring the withholding of the City of Harvey's property against Illinois Public Policy.
- e. Declaring Comptroller Mendoza does not have the authority to execute the property of the judgment debtor municipality, City of Harvey.
- f. Enjoining Comptroller Mendoza from any further action of withholding City tax revenues in violation of Part 295 of the Illinois Administrative Code.
- g. Enjoining Comptroller Mendoza from any further action of withholding City property in violation of Illinois Public Policy.
- h. Affirmatively enjoining the release of the \$1,072,443.70 to the City of Harvey and its Trustees in c/o the City's bondholders.
- i. Such other and further relief as this Court deems just.

COUNT II
Action for Mandamus to Compel Release of Revenues Withheld

63. The City re-alleges and incorporates by reference the allegations in Paragraphs 1 – 62 as if fully set forth herein.

64. There are no delinquent payments in accordance with any applicable rules.

65. Comptroller Mendoza has a clear duty pursuant to the Illinois Administrative Code to release all withholdings to the City of Harvey and its Trustees in c/o the City's bondholders.

66. The City has a clear right to the release of all withholdings by Comptroller Mendoza.

67. The Illinois Administrative Code provides clear authority to return to the City all withholdings by Comptroller Mendoza.

WHEREFORE, the City of Harvey, respectfully request that the Court enter an order compelling Comptroller Mendoza to release the \$1,072,443.70 withholdings to the City of Harvey and its Trustees in c/o the City's bondholders. The City requests such other and further relief as this Court deems just.

Respectfully submitted,

/s/Ken Hurst
Attorney for the City of Harvey

Mark D. Roth
Robert Fioretti
Ken Hurst
Attorney No. 37547
Roth Fioretti, LLC
311 S. Wacker Drive, Suite 2470
Chicago, IL 60606
(312) 922-6262
ken@rothfioretti.com