

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DANA A. ADAMS, et al.

Case No. 2007-04389-AD

Plaintiffs

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

OHIO STATE UNIVERSITY

Defendant

{¶1} Plaintiff Dana S. Adams and Plaintiff Robin L. Bowman, filed this complaint against defendant, The Ohio State University ("University"), asserting the University seized their income tax refund from the State of Ohio as satisfaction for a debt allegedly owed by plaintiff Adams to defendant. Plaintiffs seek recovery of \$429.00, the amount of their income tax refund, plus 4% interest per year which was calculated at \$17.16. The filing fee was paid.

{¶2} On September 26, 2005, defendant filed an action against plaintiff Adams seeking recovery of unpaid tuition costs plaintiff Adams had allegedly owed the University from August 20, 1998. Judgment in the debt collection action filed in the Franklin County Municipal Court was subsequently entered in favor of plaintiff Adams on March 2, 2006. Pursuant to the March 2, 2006 Judgment Entry, the court entered judgment for Adams due to the fact that no University representative appeared for the court scheduled damages hearing. Defendant then filed a Motion for Reconsideration of the Franklin County Municipal Court's March 2, 2006 judgment. On May 23, 2006, a judge of the Franklin County Municipal Court overruled the motion filed by the University and let the March 2, 2006 judgment entry stand.

{¶3} Despite the fact a court determined on March 2, 2006 that Dana S. Adams did not owe the University any tuition debt, the Ohio Attorney General's Office offset the Ohio income tax refund due plaintiffs Adams and Bowman as partial satisfaction of the

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purported tuition obligation. The Notice of Adjustment to Income Tax Refund Offset was received by plaintiffs at their Marion, Ohio address on April 12, 2006, after the March 2, 2006, court judgment, but before the May 23, 2006, court ruling on the motion for reconsideration. Plaintiffs, through legal representation, made written and telephone requests to recover the withheld income tax refund. Defendant refused to return any money to plaintiffs. Consequently, on April 18, 2007, after multiple unsuccessful attempts to recover the withheld tax refund, plaintiffs filed this action against defendant University.

{¶4} Defendant acknowledged the University pursued an action for debt collection against plaintiff Adams in the Franklin County Municipal Court. Defendant also acknowledged the debt collection action was dismissed and a Motion for Reconsideration of this dismissal was denied. Furthermore, defendant admitted plaintiffs' tax refund from the State of Ohio in the amount of \$429.00 was directed to the Attorney General's Office to satisfy the purported debt plaintiff Adams allegedly still owed the University. Defendant explained when the matter concerning the improper offset of plaintiffs' tax refund was brought to the Attorney General's Office, "it was investigated and the error was corrected." Subsequently, a check was issued to plaintiff Adams in the amount of \$429.00 and the check was cashed. Defendant asserted any

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claim plaintiffs may have had against the University was partially discharged when the \$429.00 check issued to plaintiff Adams was cashed. Evidence has shown the Attorney General's Office erroneously offset plaintiffs' tax refund check on or about April 12, 2006 and issued a replacement check on June 18, 2007. Evidence has also shown the replacement check was issued over fourteen months after the tax refund was erroneously offset, many months after multiple requests and unsuccessful attempts were made to correct the error outside of court proceedings, and two months after plaintiffs' action was filed in this court.

{¶15} Although plaintiffs, after filing this claim, received payment of their wrongfully withheld tax refund, the court determines plaintiffs are entitled to loss of use damages based on the calculation requested in the complaint. Plaintiffs' claim is undoubtedly a conversion action and generally in a conversion claim plaintiffs are entitled to damages calculated from the time of the conversion. *Booth v. Cincinnati Finance Co.* (1923), 19 Ohio App. 130, affirmed (1924), 111 Ohio St. 361, 145 N.E. 543; *Morris v. Pearl Street Auction Co.* (1939), 61 Ohio App. 452 , 15 O.O. 283, 22 N.E. 2d 740. It appears plaintiffs are entitled, under common law provisions, and defendant is liable for damages based from the time the tax refund was converted. Defendant is liable for these damages despite the belated effort in offering tender of the tax refund

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amount subsequent to the filing of plaintiffs' claim. In order for tender to discharge the liability of a defendant, it must be made before commencement of the action by plaintiff and for complete settlement of the claim. *Conklin v. Tyler* (1912), 20 Ohio C.C. 133, paragraph two of the syllabus (tender must be before action commences). In accord *In re Appropriation for Hwy. Purposes* (1968), 14 Ohio App. 2d 165, 168-169 43 O.O. 2d 376, 237 N.E. 2d 408 (tender must be for full amount); See also *Lyle v. Durham, N.K.A. Mink* (1984), 16 Ohio App. 3d 1, 16 OBR 1, 473 N.E. 2d 1216. Loss of use damages may be appropriate in conversion actions filed in this court even under circumstances where tender of the converted property is made prior to the commencement of the action. See *Caddell v. Bureau of Workers' Compensation* (June 8, 1993), Franklin App. No. 92AP-1466. Under the circumstances presented, the court determines defendant is liable to plaintiffs for the loss of use damages claimed \$17.16, plus the \$25.00 filing fee which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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[Cite as *Adams v. Ohio State Univ.*, 2008-Ohio-1204.]

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THE OHIO STATE UNIVERSITY

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$42.16, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
12/19
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