

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

STATE OF ILLINOIS, )  
)  
Plaintiff, )  
)  
vs. )  
)  
JERRY RYCE MASONRY, INC., JERRY )  
RYCE BUILDERS, INC., JS MASONRY & )  
TUCKPOINTING, INC., JS MASONRY & )  
STONE, INC. and J S MASONARY, INC., )  
Defendants. )  
)  
)

CH2 1886

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, the State of Illinois, by and through Lisa Madigan, Attorney General, for its Complaint against Defendants JERRY RYCE MASONRY, INC., JERRY RYCE BUILDERS, INC., JS MASONRY & TUCKPOINTING, INC., JS MASONRY & STONE INC. and J S MASONARY, INC. (collectively, "Defendants"), alleges the following:

**INTRODUCTION**

1. The State of Illinois' claims are brought under the Illinois Whistleblower Reward and Protection Act, 740 ILCS § 175/1, *et seq.* ("Whistleblower Act"), the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.* ("Consumer Fraud Act") and the Employee Classification Act, 820 ILCS § 185/1, *et seq.* ("Employee Classification Act").

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CHANCERY DIV.  
DOROTHY BROWN  
CLERK

2. Defendants have engaged in the practice of misclassifying their employees as “independent contractors” to avoid the payment of, among other things, unemployment insurance contributions.

3. While engaged in this practice of misclassification, Defendants have knowingly made, used, or caused to be made or used false records or statements to avoid or decrease their obligations to pay money to the State of Illinois and engaged in unfair and deceptive business practices.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to Section 4 of the Whistleblower Act (740 ILCS § 175/4), Section 7 of the Consumer Fraud Act (815 ILCS § 505/7) and Section 40 of the Employee Classification Act (820 ILCS § 185/40).

5. Venue in this Court is proper under 735 ILCS § 5/2-101 of the Illinois Code of Civil Procedure.

### **PARTIES**

6. The State of Illinois is the Plaintiff in this action. The Attorney General is authorized to initiate proceedings in Circuit Court on behalf of the State of Illinois, by her own attorneys, to obtain civil penalties and enjoin further violations of the aforementioned statutes, as well as to secure such equitable relief as may be appropriate in each case, including restitution.

7. Jerry Ryce Masonry, Inc. and Jerry Ryce Builders, Inc. are Illinois corporations that have engaged in the construction trades within the state since 2005. Boguslaw Omeilan has served as the President of both entities throughout all times relevant to this Complaint.

8. JS Masonry & Stone, Inc. is an Illinois corporation that has engaged in the construction trades within the state since 2005. JS Masonry & Tuckpointing, Inc. was an Illinois corporation that engaged in the construction trades within the state between 2002 and 2006. J S Masonary, Inc. is an Illinois corporation that has engaged in the construction trades within the state since 1993. Jan Staszal served as the President of these entities throughout all times relevant to this Complaint.

**COUNT I: EMPLOYEE CLASSIFICATION ACT**  
**820 ILCS § 185/1, et seq.**

9. Plaintiff repeats and realleges the foregoing paragraphs as though fully set forth herein.

10. The Employee Classification Act provides that an individual performing services for a contractor is deemed to be an employee except as provided for in Section 10(b) of the Employee Classification Act.

11. By misclassifying their workers as independent contractors when those workers do not satisfy the provisions of Section 10(b) of the Employee Classification Act, Defendants have violated Section 20 of the Employee Classification Act.

12. Specifically, the workers were in fact employees because:

- (1) Defendants exercised control and direction over the workers' job performance;
- (2) The services performed by the workers were within the usual course of services performed by Defendants; and
- (3) The workers were not engaged in an independently established trade, occupation, profession or business.

13. Furthermore, none of the sole proprietorships or partnerships that have

performed construction services for Defendants are legitimate pursuant to Section 10(c) and Section 20 of the Employee Classification Act.

14. Defendants' violations of this Act described herein were committed willfully and with the intent to defraud.

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order:

- (a) Finding and adjudging that Defendants have violated Section 20 of the Employee Classification Act, 820 ILCS § 185/20, by willfully misclassifying their employees as independent contractors;
- (b) Issuing and serving an order to cease and desist from further violation of the Act pursuant to 820 ILCS § 185/25(b)(i);
- (c) Taking all reasonable affirmative actions to eliminate effects of these violations pursuant to 820 ILCS § 185/25(b)(ii);
- (d) Awarding wages, salary, employment benefits, and other compensation denied or lost to the workers, pursuant to 820 ILCS § 185/25(b)(iii);
- (e) Assessing civil penalties for each violation, and double civil penalties for each willful violation, of the Act pursuant to 820 ILCS §§ 185/40 and 45(a);
- (f) Debarring Defendants from receiving state contracts for a period of four years pursuant to 820 ILCS § 185/42; and
- (g) Awarding such further relief as the Court deems just and proper.

**COUNT II: CONSUMER FRAUD AND DECEPTIVE  
BUSINESS PRACTICES ACT, 815 ILCS §505/1, et seq.**

15. Plaintiff repeats and realleges the foregoing paragraphs as though fully set forth herein.

16. Defendants were at all times relevant hereto engaged in trade and commerce within the meaning of the Consumer Fraud Act by advertising, offering for sale, and distribution of their services and property.

17. The trade or commerce entered into by Defendants directly or indirectly affected the people of this State.

18. By misrepresenting the material fact of the true employment status of their workers, Defendants misled, deceived and damaged the State by, among other things, neglecting to make sufficient Unemployment Insurance contributions to the State of Illinois.

19. Defendants' actions described herein constitute unfair methods of competition and unfair and deceptive acts and practices within the meaning of and in violation of Section 2 of the Consumer Fraud Act.

20. Defendants intended that the State of Illinois rely on these unfair and deceptive acts or practices.

21. Defendants' violations of this Act described herein were committed willfully and with the intent to defraud.

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order:

- (a) Declaring that the conduct of Defendants as described above constitutes unfair and/or deceptive acts or practices within the meaning of 815 ILCS § 505/2;
- (b) Permanently enjoining, pursuant to 815 ILCS § 505/7(a), Defendants and their employees, officers, directors, agents, successors, assigns, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and any and all persons acting in concert or participation with Defendants, from continuing the unlawful conducts, acts, and practices described above;
- (c) Awarding the People of the State of Illinois restitution and actual damages, pursuant to 815 ILCS § 505/7(a);
- (d) Imposing a civil penalty on Defendants in the amount of \$50,000, pursuant to 815 ILCS § 505/7(b);

- (e) Appointing a receiver, pursuant to 815 ILCS § 505/7(a), with full authority to collect, take possession of, and aggregate all of Defendants' assets, proceeds, and anything derived therefrom for the benefit of the People of the State of Illinois;
- (f) Awarding penalties in the amount of \$50,000 for each violation found by the Court to have been committed by the Defendants with the intent to defraud, pursuant to 815 ILCS § 505/7(b);
- (g) Awarding all costs in this action; and
- (h) Awarding such further relief as the Court deems just and proper.

**COUNT III: WHISTLEBLOWER REWARD AND PROTECTION ACT**  
**740 ILCS § 175/1, *et seq.***

22. Plaintiff repeats and realleges the foregoing paragraphs as though fully set forth herein.

23. Pursuant to the Illinois Unemployment Insurance Act, at all relevant times Defendants were required to submit Employer's Contribution and Wage Reports ("Wage Reports") to the State of Illinois through the Illinois Department of Employment Security.

24. Wage Reports require Defendants to identify all of their employees so that the State of Illinois may properly compute and collect Defendants' contributions to the Unemployment Insurance fund. In general, the more employees a business has the larger the sum of contributions it will owe to the State.

25. Every Wage Report submitted by Defendants to the State of Illinois was signed and contained the following certification:

I hereby certify that the information contained in this report and in all accompanying schedules is true and correct to the best of my knowledge and belief. . . .

26. Defendants falsely classified the vast majority of their workers as “independent contractors”, instead of employees, and therefore did not include them in the Wage Reports. By knowingly misrepresenting the actual number of their employees, Defendants paid a lesser amount in Unemployment Insurance contributions than they were legally obligated to.

27. Defendants submitted these false Wage Reports with actual knowledge of their falsity, in deliberate ignorance of the truth or falsity of the information provided, or in reckless disregard of the truth or falsity of the information presented. The State was unaware of the falsity of the Wage Reports at the time they were submitted.

28. The false Wage Reports were material because they caused the State to calculate Unemployment Insurance contributions due from Defendants without accounting for the number of individuals the Defendants actually employed.

29. Each of the Defendants’ Wage Reports represents a separate false record or statement knowingly made, used, or caused to be made or used to avoid or decrease an obligation to pay money to the State, and as such violates the Whistleblower Act.

30. As a result of Defendants’ violations of 740 ILCS § 175/3(a) (7), the State has suffered damages.

WHEREFORE, Plaintiff prays that this Honorable Court enter an Order:

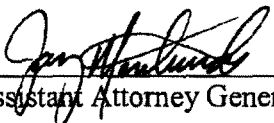
- (a) Finding and adjudging that Defendants have violated the Whistleblower Reward and Protection Act, 740 ILCS § 175/3(a) (7);
- (b) Imposing a civil penalty upon the Defendants of not less than \$5,500 and not more than \$11,000 for each false claim, pursuant to 740 ILCS § 175/3;

- (c) Awarding the State treble the amount of actual damages it has sustained as a result of Defendants' violations plus costs, pursuant to 740 ILCS § 175/3;
- (d) Awarding all costs in this action; and
- (e) Awarding the State such further relief as the Court deems just and proper.

**The STATE OF ILLINOIS,  
by and through Attorney General Lisa Madigan**

Date: July 6, 2009

By:

  
Assistant Attorney General

Paul J. Gaynor  
Jon Rosenblatt  
Jay Monteverde  
Assistant Attorneys General  
Office of the Illinois Attorney General (Attorney ID No. 99000)  
100 W. Randolph St., 13th Floor  
Chicago, Illinois 60601  
(312) 814-3000