

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

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CAROL SMALLS, on her own behalf and of all others similarly situated,	:	AUGUST TERM, 2000
	:	
Plaintiff	:	No. 2204
	:	
v.	:	COMMERCE CASE PROGRAM
	:	
GARY BARBERA'S DODGELAND,	:	
Defendant	:	Control No. 031110

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MEMORANDUM OPINION

Plaintiff Carol Smalls ("Smalls") has filed a motion to approve dismissal of this action without notice to the putative Class ("Motion"). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order for a hearing on the Motion.

BACKGROUND

The Plaintiff initiated this action on August 22, 2000 on behalf of herself and a class of persons who purchased motor vehicles from Defendant Gary Barbera Dodgeland ("Barbera") and were allegedly induced to finance their vehicles from Barbera at inflated interest rates. In particular, Barbera was allegedly paid a "kickback" in the form of a "dealer reserve" from its lenders on the inflated interest rate. In the course of discovery, the Plaintiff came to realize that no dealer reserve was imposed on the Plaintiff and that she could not in good faith continue to pursue her claim on her own behalf or on behalf of the putative class.¹

¹On March 5, 2001, Plaintiff ascertained this fact from an affidavit received from a Barbera representative which detailed the Plaintiff's financing and confirmed that no dealer reserve was imposed. Prior to this date, the parties dispute whether documents were to be exchanged

No class has been certified in this action, nor has a motion for class certification been filed. Each party believes that the case has not received publicity and that dismissal would not prejudice potential class members' claims. Additionally, Barbera is not making any payment, monetary or otherwise, to the Plaintiff or Plaintiff's counsel in connection with the dismissal of the action. Consequently, Plaintiff moves to dismiss this matter. Defendant does not oppose this Motion, but Defendant does contend that there was no pre-litigation good faith determination that a claim existed before filing suit and requests this Court to enter an Order that would not preclude Defendant from filing a further action to recovery its attorneys' fees and costs in this litigation.²

DISCUSSION

Under Pennsylvania Rule of Civil Procedure 1714 ("Rule 1714"), a class action suit may not be discontinued without the approval of the court. Rule 1714(a). If dismissal is made prior to certification, the action may be discontinued without notice to potential class members "if the court finds that the discontinuance will not prejudice the other members of the class." Rule 1714(b). The purpose of this procedure is "to protect putative members of the class from prejudicial and binding action by the representative party(s)." Silver Spring Twp. v. Pennsy Supply, Inc., 149 Pa. Commw. 314, 321, 613 A.2d 108, 111 (1992).

To grant a request for discontinuance, a court must "conclude that the settlement secures an adequate advantage for the class in return for the surrender of litigation rights . . . [J]udges should analyze

demonstrating that Plaintiff's name did not appear on the dealer reserve list or whether Plaintiff refused to execute a Confidentiality Agreement.

²Defendant raises this request as "New Matter" in its Opposition to Plaintiff's Motion. However, this is not the proper method for asserting a right to attorney fees and costs.

a settlement in terms of a ‘range of reasonableness’ and should generally refuse to substitute their business judgment for that of the proponents.” Dauphin Deposit Bank & Trust Co. v. Hess, 698 A.2d 1305, 1308 (Pa. Super. Ct. 1997) (citing Buchanan v. Century Fed. Sav. & Loan Ass’n, 259 Pa. Super. 37, 46-47, 393 A.2d 704, 709 (1978)). Specifically, a court should examine the following:

(1) the risks of establishing liability and damages, (2) the range of reasonableness of the settlement in light of the best possible recovery, (3) the range of reasonableness of the settlement in light of all the attendant risks of litigation, (4) the complexity, expense and likely duration of the litigation, (5) the stage of the proceedings and the amount of discovery completed, (6) the recommendation of competent counsel, and (7) the reaction of the class to the settlement.

Id. (citing Girsh v. Jepson, 521 F.2d 153 (3d Cir.1975)). In addition, granting a motion to dismiss presumes “there has been no private compensation to the representative party as a consideration for his discontinuance of the action.” Rule 1714, Explanatory Note --1987.

Rule 1714(b) gives significant responsibility to a court: “[t]he court should conduct a careful inquiry before approving a request for discontinuance before certification. It should not be treated as a perfunctory matter. This is essential because the court has the responsibility to enter a finding that there will be no prejudice to other members of the class.” Rule 1714, Explanatory Note --1987. Furthermore, “the trial court has an affirmative duty to conduct a hearing and make a finding that a discontinuance will not prejudice members of the class, which finding must be factually based. Such a determination cannot be made pro forma.” Silver Spring Twp., 149 Pa. Commw. at 321, 613 A.2d at 112. Consequently, it is incumbent on the Court to schedule a hearing prior to granting the Motion.

To comply with its Rule 1714 obligations, the Court is scheduling a hearing on the Motion for _
May 21, 2001 at 1:30 p.m. in Courtroom 275, City Hall, Philadelphia, Pennsylvania. At that time, the
Plaintiff may present evidence to show that this matter should be discontinued.

BY THE COURT:

JOHN W. HERRON, J.

Dated: April 30, 2001

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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ORDER

AND NOW, this 30th day of April, 2001, upon consideration of Plaintiff Carol Small's Motion to Approve Dismissal ("Motion"), Defendant's Opposition to the Motion, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that a hearing and oral arguments regarding the Plaintiff's Motion shall be held on May 21, 2001 at 1:30 p.m. in Courtroom , 275 City Hall, Philadelphia, Pennsylvania.

BY THE COURT:

JOHN W. HERRON, J.