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

Paige Campbell Boyle, et. al.	:	August Term 1998
Plaintiff,	:	
v.	:	No. 00840
U-Haul International, Inc. and	:	
U-Haul Co. of Pennsylvania, Inc.,	:	Commerce Program
Defendants.	:	Control Number 080965

O R D E R

AND NOW, this 5th day of November, 2003, upon consideration of Plaintiffs' Motion for Leave to Voluntarily Dismiss the instant action without Prejudice, Defendants' response in opposition, the respective memoranda, all matters of record and in accord with the contemporaneous Opinion being filed of record, it is hereby **Ordered** and **Decreed** that a hearing and oral argument regarding Plaintiffs' motion shall be held on November 12, 2003 at 9:30 a.m. in court room 676 City Hall, Philadelphia, Pennsylvania.

BY THE COURT,

_____

C. DARNELL JONES, II. J.

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

Paige Campbell Boyle, et. al.	:	August Term 1998
Plaintiffs,	:	
v.	:	No. 00840
U-Haul International, Inc. and	:	
U-Haul Co. of Pennsylvania, Inc.,	:	Commerce Program
Defendants.	:	Control Number 080965

MEMORANDUM OPINION

Presently before this court is Plaintiffs' Paige Campbell Boyle and Diana L. Day Motion for Leave to Voluntarily Dismiss this action without Prejudice in order to pursue the claims asserted herein in a related federal court action currently pending in the United States District Court for the Southern District of Florida. For the reasons that follow, the court is issuing a contemporaneous order for a hearing on the motion.

BACKGROUND

Plaintiffs Paige Campbell Boyle and Diana L. Day (hereinafter plaintiffs) instituted this action for damages and injunctive relief against Defendant U-Haul International and Defendant U-Haul Company of Pennsylvania, Inc. (collectively referred to as defendants). The complaint alleges that defendants' engaged in deceptive advertising and marketing practices in connection with their renting of trucks, vans or other similar equipment for personal use (hereinafter referred to as moving equipment) and defendants' sale or related insurance coverage with respect to the moving equipment such as Collision Damage Waiver, Safemove and other similar coverage. The Plaintiffs further allege that defendants' practices deceived consumers about the true cost of renting moving equipment at the widely advertised and quoted rates. Plaintiffs' allege that the misconduct is nationwide and bring this action on their own behalf and on behalf of a

class consisting of all persons who sustained damages as a result of renting U-Haul Moving equipment within the Commonwealth of Pennsylvania who were wrongfully charged for an additional rental term during the period August 7, 1992 through the present. This class is referred to as the "Extra Term Class." Plaintiffs also bring this action on behalf of a sub class consisting of all members of the Extra Term Class who were wrongfully charged for Insurance Products. This class is referred to as the "Coverage Class".

The complaint seeks damages for violation under the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. (UPTCPL) (counts I and II), for common law negligent misrepresentation (count III) and breach of contract and the implied covenant of good faith and fair dealing under the common law under certain provisions of the Uniform Commercial Code, 13 P.C.S. § 1203 (count VI).

Recently, a federal action was filed in the United States District Court for the Southern District of Florida. According to Plaintiffs, excluded from the Antitrust Class are Defendant U-Haul, its parents, subsidiaries and affiliates and the directors and officers of Defendant U-Haul dealers. The federal complaint alleges causes of action for violations of the Sherman Act and applicable state law in connection with its business of renting trucks, vans and other similar equipment and Collision Damage Waiver, Safemove or similar coverage. The anti trust class consists of all persons and entities who rented, contracted or otherwise paid for rental and return to the same location for U-Haul or from independent U-Haul dealers during the period July 15, 1998 through the present. The Trade Practices class consists of all persons who sustained damages as a result of renting U-haul moving equipment who were wrongfully sold, charged and /or

paid for CDW, Safemove or similar coverage thereon during the period August 7, 1992 through the present. The Trade Practices Class asserts the claims set forth in Counts II, III and IV of the complaint which arise under the common law of fraud, negligent misrepresentation and breach of contract and the UCC.

Plaintiffs submit that they should be permitted to voluntarily dismiss this litigation without prejudice with each party to bear it own costs and attorneys fees so that the claims asserted herein can be joined with the claims asserted in the Federal Action. In support thereof, plaintiffs argue efficiency and duplicative discovery as grounds for dismissal. On the other hand, defendants argue that plaintiffs' motion should be denied since dismissal would prejudice the defendants as well as the putative Pennsylvania class.

At this time, no class has been certified nor has a motion for class certification been filed.

DISCUSSION

Pennsylvania Rule of Civil Procedure 229 (a) provides:

> A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial.

Most recently, the Pennsylvania Supreme Court explained that a trial court's decision to grant a voluntary discontinuance is subject to the considerations for striking a discontinuance specified in Pa. R. Civ. P. 229(c). Truesdale ex. rel. v. Albert Einstein Medical Center, 767 A.2d 1060, 1063 (Pa. Super. 2001) (citing Fancsali v. University Health Center of Pittsburgh, 563 Pa. 439, 761 A.2d 1159, 1161-62 (Pa. 2000). Thus, when granting a discontinuance of a plaintiff's action, the trial court must consider the extent to which the discontinuance poses "unreasonable inconvenience, vexation,

harassment, expense or prejudice" to other parties. Id. In making the determination to grant a discontinuance without prejudice, the trial court must consider all facts and weigh the equities. Further, the trial court must consider the benefits or injuries which may result to the respective sides if a discontinuance is granted. Id. A discontinuance that is prejudicial to the rights of others should not be permitted to stand even if it was originally entered with the expressed consent of the court. Robinson v. Pennsylvania Hosp., 737 A.2d 291, 293 (Pa. Super. 1999) (quoting Foti v. Askinas, 432 Pa. Super. 604, 639 A.2d 807, 808 (Pa. Super. 1994). To determine whether opposing parties are in fact prejudiced by a discontinuance, our courts have considered, inter alia, the length of time for which the case had been pending, the effort and expense those parties have incurred in discovery, and the disadvantage imposed by the passage of additional time on the parties' ability to litigate the claim. Id. (citing Fancsali, 761 A.2d at 1164-65; Foti, 639 A.2d at 809).

Under Pennsylvania Rule of Civil Procedure 1714, a class action suit may not be discontinued without the approval of the court. Smalls v. Gary Barbera's Dodgeland, 2001 WL 1807869 (Pa. Com. Pl. 2001)(Herron) (citing 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." Id (quoting 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)." Id.

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." Id(quoting Rule 1714 Explanatory Note—1987).

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. 320, 321 613 A.2d 108, 112 (Pa. Commw. 1992).

To comply with its Rule 1714 obligations, the court is scheduling a hearing on the Motion for November 12, 2003 at 9:30 a.m. in Courtroom 676 City Hall. At that time, plaintiffs may present evidence that the matter should be discontinued.

BY THE COURT,

_____

C. DARNELL JONES, II, J.

Dated: 11/5/03