

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

ANGELA PARSONS,
Individually and on behalf of a class
of all persons similarly situated,

Plaintiffs,

v.

THE PHILADELPHIA PARKING
AUTHORITY, et al.,

Defendants.

JANUARY TERM, 2013

NO. 03419

CLASS ACTION

Control No. 16120791

DOCKETED

MAY 12 2017

**R. POSTELL
COMMERCE PROGRAM**

ORDER

And now, this 12th day of May 2017, upon consideration of plaintiff's Motion for Class Certification, the response thereto, and all other matters of record, and after oral argument in this matter, the parties having waived a hearing, and in accord with the court's Findings of Fact and Conclusions of Law issued simultaneously, it is **ORDERED** that plaintiff's Motion is **DENIED** and plaintiff's individual claim is transferred to the court's Arbitration Program.

BY THE COURT,


PATRICIA A. McINERNEY, J.

Parsons Vs Philadelphia-ORDER



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ANGELA PARSONS,	:	JANUARY TERM, 2013
Individually and on behalf of a class	:	
of all persons similarly situated,	:	NO. 03419
	:	
Plaintiffs,	:	CLASS ACTION
	:	
v.	:	Control No. 16120791
	:	
THE PHILADELPHIA PARKING	:	
AUTHORITY, et al.,	:	
	:	
Defendants.	:	

FINDINGS OF FACT

1. Plaintiff claims she paid for on-street parking by credit card at parking kiosks in the City of Philadelphia at certain times of night and on certain weekends when the Philadelphia Parking Authority was not enforcing parking charges.

2. Plaintiff purports to represent a class of thousands of people who were similarly duped into paying for parking when they did not need to pay.

3. Plaintiff asserts a single claim for Unjust Enrichment against the remaining defendant, City of Philadelphia, for accepting the amounts paid by the class when the parking was supposed to be free of charge.

4. The court adopts the parties' Stipulated Facts for Purposes of Class Certification, which were filed in this action on May 8, 2017 ("Stipulated facts").

CONCLUSIONS OF LAW

1. The class is so numerous that joinder of all members is impracticable, but identification of such members may be equally impracticable.

2. There are some questions of law and fact common to each class member's claims, but many other questions of law and fact would require individualized inquiries.

3. Plaintiff's claims are typical of the class with respect to some of the common questions, but not with respect to the individual questions.

4. Plaintiff may not be able adequately to represent the class with respect to the common questions.

5. A class action would not be a fair and efficient method for adjudication of the class members' many individual claims.

DISCUSSION

The court may certify this action as a class action only if the following requirements are met:

- (1) The class is so numerous that joinder of all members is impracticable;
- (2) There are questions of law or fact common to the class;
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pa. R. Civ. P.] 1709; and
- (5) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pa. R. Civ. P.] 1708.¹

"It is essential that the proponent of the class establish requisite underlying facts sufficient to persuade the court that the Rule 1702 prerequisites were met."²

I. The Numerosity Requirement Is Satisfied.

Whether the number [of potential class members] is so large as to make joinder impracticable is dependent not upon an arbitrary limit, but rather upon the circumstances surrounding each case. . . . The class representative need not plead or prove the number of class members so long as she is able to define the class

¹ Pa. R. Civ. P. 1702.

² Samuel-Bassett v. Kia Motors Am., Inc., 613 Pa. 371, 398, 34 A.3d 1, 16 (2011).

with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join.³

The plaintiff claims to represent a class of thousands who paid for parking when they did not have to do so. Many of those people may live in other counties, in other states, or even in other countries. They may also have to be divided into subclasses; those people who paid at kiosks by credit card, like named plaintiff, and those people who paid cash at kiosks or traditional parking meters. If a sufficient number of actual class members could somehow be identified,⁴ then the numerosity requirement would be satisfied.

II. There Are Some Common Questions of Law and Fact.

“Common questions of law and fact will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent.”⁵ The question of whether the PPA collected fees at times when parking was supposed to be free is a common question, but it has already been answered in the affirmative.⁶

The question of whether any person who comes forward is a member of the class who overpaid appears to be an individualized inquiry, particularly if the person claims to have paid cash. In addition, the question whether the City's alleged enrichment at the class members' expense was unjust is an individualized inquiry, as is the City's defense of voluntary payment by

³ Janicik v. Prudential Insurance Co. of America, 305 Pa. Super. 120, 131, 451 A.2d 451, 456 (1982).

⁴ See Opinion of the United States District Court for the Eastern District of Pennsylvania, docketed with this court on February 18, 2016 (“District Court Opinion”) at pp. 7-8 (“plaintiff has failed to identify any mechanism by which the putative class may be ascertained and she has not provided any evidence to show that any method could be successful.”)

⁵ Clark v. Pfizer Inc., 990 A.2d 17, 24 (Pa. Super. 2010).

⁶ Stipulated Facts, ¶¶ 5-8. It appears the problem has also been corrected and the kiosks no longer accept money when parking is free. *Id.*, ¶ 16.

many of the class members.⁷ Finally, the damages to which each class member may be entitled will vary widely among them.

III. The Named Plaintiff's Position Is Not Typical With Respect To All Issues.

The purpose of the typicality requirement is to ensure that the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members. Typicality exists if the class representative's claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented.⁸

Plaintiff claims to have overpaid by credit card at a kiosk, and may have occasionally paid cash, but she does not claim to have paid at a traditional meter. Furthermore, her answers to the questions regarding her knowledge of the parking rules, her intention to make a voluntary payment, and her damages will be unique to her.

IV. The Adequacy of Representation Requirement May Not Be Satisfied.

Plaintiff must show that she "will fairly and adequately assert and protect the interests of the class."⁹ In order to make this determination, the court must consider:

- 1) whether the attorney for the representative parties will adequately represent the interests of the class;
- 2) whether the representative parties have a conflict of interest in the maintenance of the class action; and
- 3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.¹⁰

⁷ See District Court Opinion at pp. 10-12.

⁸ Samuel-Bassett, 613 Pa. at 421-2, 34 A.3d at 30-1.

⁹ Pa. R. Civ. P. 1702(4).

¹⁰ *Id.* at 1709.

In this case, class counsel is an experienced attorney, although he has not yet shown that he and his client have adequate resources to embark on the discovery necessary to identify the many class and sub-class members. Furthermore, named plaintiff is class counsel's ex-wife, so it may be difficult for them to work together to pursue the interests of the class.

V. A Class Action Would Not Be A Fair and Efficient Method By Which to Try the Issues Raised By The Class.

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider:

- 1) whether common questions of law or fact predominate over any question affecting only individual members;
- 2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
- 3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
 - i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

* * *

- 4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
- 5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
- 6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
- 7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.¹¹

Common questions of law and fact do not predominate in this case. As previously determined by the federal court:

In order to succeed on an unjust enrichment claim, a plaintiff must show that: (1) plaintiff conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) acceptance and retention by the defendant of the benefits, under the circumstances, would make it inequitable for the defendant to

¹¹ Pa. R. Civ. P. 1708.

retain the benefit without paying for the value of the benefit. The most significant element of the doctrine is whether the enrichment of the defendant is unjust. Whether the doctrine applies depends on the unique factual circumstances of each case. . . . The state of mind of each putative class member would need to be individually examined in order to weigh whether a payment is unjust.

Additionally, defendant seeks to assert an affirmative defense of voluntary payment¹² against putative class members individually. . . . [D]efendant's assertion of the voluntary payment doctrine as a defense may thus require an inquiry into whether members of the putative class made their payments without a mistake of fact. Plaintiff has failed to show that such an individualized inquiry will not be required here. Thus, the necessity of individual inquiries to determine whether each class member's payments have unjustly enriched defendant makes the class action device inappropriate.¹³

Furthermore, as previously stated, the class members' damages determinations must be conducted on an individual basis.

Finally, the size of the class and the global extent of it, as well as the problem of identifying its members with any certainty, make the management of this class action extremely difficult. These difficulties also make it likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action that a class action would not be justified.

¹² See *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 661 (2009) (“Under the voluntary payment defense, ‘one who has voluntarily paid money with full knowledge, or means of knowledge of all the facts, without any fraud having been practiced upon him ... cannot recover it back by reason of the payment having been made under a mistake or error as to the applicable rules of law.’”)

¹³ District Court Opinion, pp. 10-12 (most citations omitted).

CONCLUSION

For all the foregoing reasons, plaintiff's Motion for Class Certification is denied and the named plaintiff's individual claim is transferred to the court's Arbitration Program.

BY THE COURT,


PATRICIA A. McINERNEY, J.