

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

FERNICE GREER, on Her Own Behalf and on	:	May Term, 2000
Behalf of All Others Similarly Situated,	:	
Plaintiff	:	No. 4175
	:	
v.	:	Commerce Case Program
	:	
FAIRLESS MOTORS, INC.,	:	Control No. 120571
Defendant	:	

MEMORANDUM OPINION

Plaintiff Fernice Greer has filed a motion to approve dismissal (“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 May 30, 2000 on behalf of herself and a class of persons who allegedly were overcharged by Defendant Fairless Motors, Inc. in violation of the Pennsylvania Motor Vehicle Sales Finance Act¹ and the Unfair Trade Practices and Consumer Protection Law.² In the course of discovery, the Plaintiff came to the realization that she cannot properly and adequately prosecute the case on her own behalf and on behalf of the putative class.

While the Plaintiff and the Defendant have formalized a settlement agreement involving the return of her vehicle and the cancellation of the Plaintiff’s obligations (“Mutual Release Agreement”), no money is to be exchanged. No class has been certified in this action, nor has a class certification

¹ 73 Pa. C.S. §§ 601-637.

² 69 Pa. C.S. §§ 201-1-201-9.2

motion been filed. In addition, the Mutual Release Agreement allegedly is without prejudice to any claims by putative class members.³ Consequently, the Plaintiff contends that granting the Motion will not prejudice any potential class members' claims.

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 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:

³ The Mutual Release Agreement states that the Parties “wish to resolve their differences - with prejudice as to Greer individually, without prejudice as to any other member of the putative class.” Mutual Release Agreement at Preamble. In addition, the Agreement states that “[i]t is understood and agreed that there will be a discontinuance only, without prejudice, to any absent class members.” Mutual Release Agreement at ¶ 4(b).

(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 --1987.⁴

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.

⁴ The Court is unsure that the Plaintiff will be able to meet this expectation. However, it will reserve judgment pending the presentation of testimony and/or evidence at the hearing.

To comply with its Rule 1714 obligations, the Court is scheduling a hearing on the Motion for Monday, January 29, 2001 at 1:00 p.m. in Courtroom 275. At that time, the Plaintiff may present evidence to show that this matter should be discontinued.

BY THE COURT:

JOHN W. HERRON, J.

Dated: December 20, 2000

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ORDER

AND NOW, this 20th day of December, 2000, upon consideration of Plaintiff Fernice Greer's Motion to Approve Dismissal, 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 Monday, January 29, 2001 at 1:00 p.m. in Courtroom 275 of City Hall, Philadelphia, Pennsylvania.

BY THE COURT:

JOHN W. HERRON, J.