DOC. NO. X07-HHD-CV-18-6090558-S	:	SUPERIOR COURT
WILLIAM PAETZOLD	:	COMPLEX LITIGATION
	:	J.D. OF HARTFORD
v.	:	
METROPOLITAN DISTRICT COMMISSION	:	AUGUST 14, 2019

Memorandum of Decision Granting Class Certification

In 2018 in *Glastonbury v. Metropolitan District Commission*, our Supreme Court affirmed Judge Peck's conclusion for this court that the Metropolitan District Commission overcharged thousands of its water customers.[1] This case was filed by three of those customers seeking to recover the money they overpaid.

These three customers ask the court to certify this case as a class action. They have defined the proposed class as follows:

> All persons who were charged a non-member town surcharge by the Metropolitan District Commission from March 6, 2012 through October 1, 2014 ("Class Period").
>
> Specifically excluded from the Class are: Defendant, including any parent, subsidiary, affiliate, or person controlled by Defendant; Defendant's officers, directors, agents, or employees; the judicial officers

[1] 328 Conn. 326.

assigned to this litigation and members of their staffs and immediate families; and any heirs, assigns, and successors of any of the above persons or organizations in their capacity as such.

For these customers to win class action certification, the case must satisfy the four criteria listed in Practice Book § 9-7:

> (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, and (4) the representative parties will fairly and adequately protect the interests of the class.

It additionally would have to satisfy the Practice Book § 9-8 (3) requirements that: "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

The categories notoriously overlap—particularly as they have been described as involving commonality, typicality, superiority and predominance. Rather than pretend they don't overlap in this case, the court prefers to discuss them in the context of the MDC's basic objections rather than discussing them category by category.

The MDC doesn't dispute that the class as defined is numerous enough for a class action. Instead, it focuses first on the claim of implied contract. It maintains that proof of an implied contract would have to be considered on a case by case basis with each customer proving that they orally or in writing bargained a deal for water and formally agreed that a water delivery would be followed by a customer payment.

This court rejected this claim on a motion to strike and won't revisit it now. Suffice it to say that the court views the matter as the MDC has in thousands of collection matters in the court's files: the acceptance of an offer of water implies a contract to pay for it. The proposed class members by definition are people who have accepted water from the MDC and impliedly agreed to pay for it. In the overwhelming number of cases, the MDC's own records will show who they are without the need of any individualized inquiry. The receipt of water at an illegal price is a question common to all class members and may be addressed in a common way. The proposed class representatives having received overpriced water in the way alleged have claims that will be typical of the class as described.

And the overcharge at issue here isn't a matter of a bargain made customer by customer either. The alleged implied agreement is for the sale of water at lawful rates. It is undisputed that those rates are governed by a state regulatory process, not by some customer-by-customer bargain. Likewise, no customer-by-customer bargain is needed to justify ordering the return of money charged in violation of state law. The court has the power to enforce the law against the MDC without having to determine whether a given customer bargained for it. Common questions predominate and will not be overwhelmed with individualized issues.

The MDC complains that customers—including some who gave affidavits in this case—know nothing about the statutes, the MDC bylaws, the overcharge, or even the

existence of a contract. But no one can credibly claim this is a surprise or should defeat a class action.

MDC customers don't have to know any of these things to know the basic thing at the root of their claim: they accepted water and agreed to pay for it—a thing proved by MDC records indicating water deliveries going one way and customer payments going the other.

Would the MDC claim these individual customers were supposed to know of the overcharge? Would it have each customer's right to be charged the lawful rate depend on them personally undertaking a town-by-town survey of water charges, discerning the difference and then demanding satisfaction?

This thinking should be rejected even by the most ardent utilitaphile. Indeed, the very ignorance of the average customer of what happened to them is one of the strong points in favor of the claim for class certification.

The total overcharges are in the range of $7 million. But those charges are spread through relatively modest recurring overcharges across thousands of people across a span of two years. To suggest each of the customers should be required to bring and prove their own lawsuit defies common sense. Because it's a small misappropriation of their money they wouldn't know it; if they were required to prove an individually bargained contract they couldn't show it, and; because litigation is long and expensive, the individual customer likely couldn't go it.

Instead, where lawyers encouraged to a public good, in part, by the prospect of fees can act for three customers— who can themselves stand in for thousands— wrongful charges might be deterred and money might be returned to those unwittingly overcharged. This is why class actions for thousands nicked for relatively small change make sense. It is the only way wrongs of these types will ever be addressed.

The MDC also claims the case will be overwhelmed by individualized issues because people move in and out of properties, connection sizes dictate surcharge sizes, and some people just don't pay their bills. The MDC suggests that ferreting out these individual issues could require testimony from all 9,000 putative class members.

But this just isn't so. Sorting these out will be a ministerial matter of records, not a person by person inquiry. If a remedy is granted it would be due only to those who paid the surcharge at issue and the remedy would be in the amount of the surcharge they paid. MDC records seen by the court already show the feasibility of making these calculations. Nothing about them suggests these issues will predominate over the common issues.

The MDC also points out it has likely litigated with some of the class members and some of them may have signed general releases. But the fact that there may be some individual defenses doesn't mean that at heart this isn't by far a matter about common claims that can be efficiently managed in a common way. The same holds true of the MDC waiver and estoppel claims. These claims hardly mean that common issues don't

predominate. At best, these and the release claims may mean that some provision might be made during the claims process to consider any individualized issues the MDC seeks to prove against specific customers.

The idea that waiver or estoppel would have to be examined customer by customer is equally unsustainable. Any claim that paying one's bill is by itself a waiver or estops the party paying from demanding a refund can be dealt with on a class basis, not an individual basis. Likewise, any generalized MDC right to setoff or recoupment against any class payment debts customers may owe the MDC is first a legal issue to be settled class wide and at most might require reference to MDC records rather than individual trials.

The MDC also says the class representatives are inadequate. It points out that neither William Paetzold nor his wife could explain how their claim is affected by the intricacies of the MDC Charter, bylaws, ordinances, meeting minutes, billing records and other documents that are involved in their claims.

But neither the class action rules nor any controlling authority requires them to have any such knowledge. As our Supreme Court in 2005 explained in *Collins v. Anthem Health Plans, Inc.*, adequacy only requires proof that: "the representatives: (1) have common interests with the unnamed class members; and (2) will vigorously prosecute the class action through qualified counsel."[2] Nothing the MDC has said suggests they

[2] 275 Conn. 309, 326.

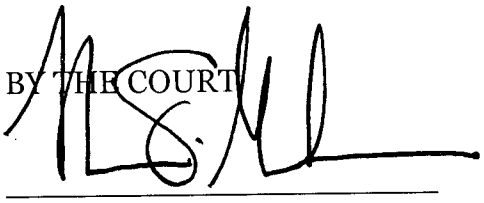
don't meet these criteria. They have the common interest of claiming a refund. Their testimony shows they are committed to doing it, have a working knowledge of the basic claims—as opposed to matters the lawyers should understand —and are working in that endeavor with experienced and competent class action counsel that know the documents at issue and will marshal them in favor of the class.

Next, the MDC fears that some class members might recover only small sums of money and resent the inevitable rate increase needed to fund the settlement. But whatever hypothetical divergent interest these putative class members would be lessened by the fact that—this time—any rate increase—assuming one is permitted—would have to be paid and spread over a group many times as great as the proposed class because the entirety of the MDC ratepayers would have to pay any increase. The idea that hypothetical class members might pay more in rate increases then they got in settlement is no reason to say no one should recover. Given the customer base, any difference would likely be microscopic. In any case, given that no such interest has been proved, the court need hardly treat it as fatal to class certification now. Should actual proof of harm to actual class members be offered, the court will consider it and has the power to change its certification to address it.

After a vigorous weighing of the applicable factors and the evidence relating to them the court concludes that this case is well suited for class certification. There is a common core issue that is susceptible of common proof. That core clearly predominates

over the lesser issues raised by the MDC. This case is therefore quite manageable and far superior handled as a class than as thousands of individual claims. The class representatives are knowledgeable about the basis of the claims, are committed to litigate; they have typical claims and are well represented by experienced counsel. The court will grant class certification as set forth in the accompanying order.

BY THE COURT:



Moukawsher, J.

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ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL

Presently before the Court is a motion by Plaintiffs for class certification and appointment of class representatives and class counsel. Plaintiffs claim Defendant, the Metropolitan District Commission, breached its implied contracts with customers in nonmember towns by imposing an unlawful non-member town surcharge on these customers.

IT IS HEREBY ORDERED THAT Plaintiffs' motion for class certification is GRANTED. The certified Class shall be defined as follows:

> All persons who were charged a non-member town surcharge by the Metropolitan District Commission from March 6, 2012 through October 1, 2014.
>
> Specifically excluded from the Class are: Defendant, including any parent, subsidiary, affiliate, or person controlled by Defendant; Defendant's officers, directors, agents, or employees; the judicial officers assigned to this litigation and members of their staffs and immediate

families; and any heirs, assigns, and successors of any of the above persons or organizations in their capacity as such.

Certification of this class under Practice Book §§ 9-7, 9-8, and 9-9 is appropriate because:

1. The Class is so numerous that joinder of all members is impracticable, satisfying the requirement of Practice Book § 9-7 (1).

2. There are questions of law or fact common to the Class, satisfying the requirements of Practice Book § 9-7 (2).

3. The claims of the representative parties are typical of the claims of the Class, satisfying the requirements of Practice Book § 9-7 (3).

4. Plaintiffs William and Laurie Paetzold and Andrew Pinkowski will fairly and adequately protect the interests of the Class, satisfying the requirements of Practice Book § 9-7 (4).

5. The law firm of Izard, Kindall & Raabe LLP will fairly and adequately represent the interests of the Class as Class Counsel, satisfying the requirements of Practice Book §§ 9-7 (4) and 9-9 (d).

6. Questions of law or fact common to the members of the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, satisfying the requirements of Practice Book § 9-8 (3).

IT IS FURTHER ORDERED THAT Plaintiffs William and Laurie Paetzold and Andrew Pinkowski shall serve as Class Representatives for the Class certified herein.

IT IS FURTHER ORDERED THAT Izard, Kindall & Raabe LLP is appointed as Class Counsel.

IT IS FURTHER ORDERED THAT no later than 21 days after the date of this Order, the parties through their counsel are to meet and confer to determine the most cost-effective and efficient means to provide adequate notice to the Class, in accordance with Practice Book § 9-9, and advise the Court of the terms of said notice. If the parties fail to agree on the terms and manner of the notice, the parties shall submit their proposed form and means of providing notice to this Court not later than 30 days after the date of this Order.

With respect to the nature and form of notice, the Court shall then rule or schedule a hearing, as it deems necessary in its sole discretion.

BY THE COURT

Moukawsher, J.