

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN AND
FOR LAKE COUNTY, FLORIDA

JAMES RICHARDSON, individually,
and as a representative of a class of all
similarly situated others, and MICHAEL
HOWARD and NANCY HOWARD, his
wife, individually and as a representative
of a class of all similarly situated others,

Plaintiff,

v.

CITY OF FRUITLAND PARK, FLORIDA
a political subdivision of the State of Florida

Defendants.

CASE NO: 2013 CA 400

2013 SEP 13 AM 11:15
CLERK OF CIRCUIT
AND COUNTY COURT
LAKE COUNTY
TAVARES, FLORIDA



ORDER ON PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

THIS matter is before the Court upon Plaintiffs' request for "class certification" pursuant to Florida Rule of Civil Procedure 1.220. Present were counsel for all parties, as well as, the Plaintiffs. Having considered the evidence and arguments presented, both written and oral, reviewed the file and being otherwise duly advised in the premises, the Court finds as follows:

1. The Plaintiffs, Michael and Nancy Howard (hereafter HOWARD), are husband and wife, and residents of the "City of Fruitland Park." They are customers of the city's water utility and the fee owners of the real property upon which they reside, which is the same property to which the city provides them water utility service.

2. The Plaintiffs, HOWARD, are, and have been billed by the Defendant a monthly "flat fee," that originated in the amount of \$2.00, and has periodically increased to its present rate of \$4.00 per month, as part of their "City of Fruitland Park Utility" bill.

3. The "flat fees" that are now the subject of this lawsuit originated pursuant to the Defendant, City of Fruitland Park's (hereafter CITY) duly enacted ORDINANCE 2009-

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014, wherein the ordinance states, "A police service fee of \$2.00 per month..." and a "fire service fee of \$2.00 per month..." are both to be "charged to each property receiving a utility bill within the City of Fruitland Park." Thus, a total "flat fee" of \$4.00 for police and fire services (when combined) was created by Ordinance 2009-014. The flat fee amounts were subsequently increased by duly enacted Ordinances 2010-005, and by Ordinance 2011-01, to its present rate, \$8.00 per month for both, police and fire services, i.e. \$4.00 per month for each.

4. Consistent with its Ordinance, the CITY has billed over 1,800 of its utility customers the police and fire fees enacted by its Ordinances.

5. The flat fees for police and fire protection are furnished to the CITY'S Utility customers as part of the "City of Fruitland Park Utility bill," in the same manner as they are furnished to the Plaintiffs' HOWARD. (At least up to the time suit was filed). The CITY'S Utility bills state on their face that, "WATER SERVICE WILL BE SHUT OFF...IF THE BILL IS NOT PAID BY..." The CITY never mailed any notice to its utility customers receiving said bills to inform them that police and fire fees were to be considered "voluntary" or "donations."

6. Plaintiffs' complaint challenges the legality of the CITY'S police and fire fees charged to its utility bill recipients.

7. The CITY is a political sub-division of the State of Florida, authorized to act under the authorities of Article VIII, Section 2(b) of the Florida Constitution, and Chapter 166, of Florida's Statutes.

8. Plaintiffs' request for class certification is well taken in that:

- A) Members of the proposed class are so numerous that separate joinder of each member is impractical;
- B) The questions of law, and fact, raised by the complaint are common

to all class members;

- C) Plaintiffs HOWARD claims are typical of each class member; and
- D) Plaintiffs HOWARD are able to fairly and adequately represent the entire class.

Thus, the Court finds Plaintiff's request for class certification as to all, "City of Fruitland Park Utility customers that have paid to the CITY police, fire or both, police and fire fees since the enactment of Ordinance 2009-014," is appropriate, as such properly constitutes a "class" within the contemplation of Florida Rule of Civil procedure 1.220(a).

9. The Court further finds class certification appropriate pursuant to Florida Rule of Civil Procedure 1.220(b). If tried separately, inconsistent or "varying" adjudications would cause the CITY to treat individual utility customers differently with respect to its billing. Thus, incompatible standards of conduct by which the CITY would have to employ its ordinance(s) would be created. Fla.R.Civ.P 1.220(b)(1)(A). Furthermore, as espoused by Plaintiffs, final declaratory relief concerning the class as a whole is appropriate given the fact that the CITY has acted in precisely the same manner against every member of the proposed class. Pursuant to its Ordinances, bills containing the flat fee assessment for police and fire services have been mailed to all utility customers. In response to those bills the CITY intends to receive payment - which payments were subsequently made by the members of the class, i.e., "...customers that have paid to the CITY..."

10. The propriety of class certification is obvious. The CITY'S Ordinance is but one(1) document uniformly employed against every member of the proposed class. One adjudication should resolve the issue for all customers of the CITY being billed pursuant to the CITY'S ordinance(s), and will bring the issue to a final close. Otherwise, not only are potential inconsistent adjudications invited, endless trial Court litigation, with virtually no end in sight, is invited as new utility users commence receiving their bills. Plaintiff's request

for class certification pursuant to Florida Rule of Civil Procedure 1.220(b)(2) is appropriate, and therefore, granted.

11. The Plaintiff Richardson's request to be recognized as a class representative requires analysis of additional facts beyond those stated *supra*:

- A. Plaintiff Richardson is in a rather unique position of having served as a counsel member, and having both argued, and voted, for the police and fire "flat fees" now challenged in this proceeding;
- B. In addition, Plaintiff Richardson is the lone Plaintiff to Count I of the original action, that is now proceeding separately in Federal Court as the Plaintiff Richardson's lawsuit against the Defendant alleging 42 USC§1983 violations of his civil rights for "1st Amendment Retaliation." One of the various and sundry violations alleged by Mr. Richardson addresses the very ordinances at issue in this proceeding;
- C. Richardson claims to have suffered over one-hundred thousand (\$100,000.00) dollars of economic damages alone, in his federal case; and seeks additional damages to compensate for his "mental anguish" caused by the CITY;
- D. The damages sued for in Richardson's pending, separate Federal Court action against the CITY far exceed any monetary compensation Richardson could reasonably expect to receive in this case.

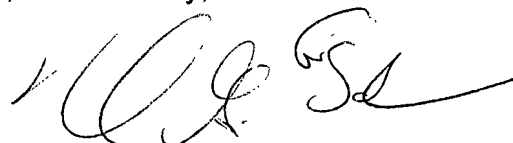
12. It is this Court's conclusion that all of the unique facts applicable to Plaintiff Richardson make his claims, and Defendant's defenses against those claims, atypical, which is to say not typical of the class; and that his ability to "fairly and adequately protect and represent the interest of each member of the class," is not shown by the evidence.

Indeed, Richardson's own personal financial interest in this case is far outweighed by his claims made in his own lawsuit against the City, which alone would make the Court hesitant to find he is an appropriate class representative. Therefore, the Court agrees with Defendant that Plaintiff Richardson has a "conflict of interest," and the Court finds that Plaintiff, Richardson is not suitable to serve as a class representative in this case.

WHEREFORE, it is hereby ORDERED and ADJUDGED that;

1. The Plaintiffs', HOWARD, Motion for Class Certification is granted;
2. Plaintiffs HOWARD shall proceed as the representatives of the class defined as "all those City of Fruitland Park Utility Customers that have paid to the City police, fire or both, police and fire fees since the enactment of Ordinance 2009-014," pursuant to Florida Rule of Civil Procedure 1.220(b)(2);
3. Plaintiffs Howard shall notify all members of the class in the same manner contemplated, and as required by; Florida Rule of Civil Procedure 1.220(d)(2).

DONE AND ORDERED in Tavares, Lake County, Florida 32778 on this 12th day of September, 2013.



MICHAEL G. TAKAC
Circuit Judge

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