2004 WL 290743
United States District Court,
M.D. Florida.

Paul GAGNON, individually and through class Representation on behalf of a class consisting of all other similarly situated owner-operators, Plaintiff,
v.
SERVICE TRUCKING, INC., a Florida Corporation, Defendant.

No. 5:02-CV-342-OC-10GRJ. | Feb. 3, 2004.

Attorneys and Law Firms

Lennon E. Bowen, III, Jason M. Radson, Derek A. Schroth, Bowen & Campione, P.A., Eustis, FL, for plaintiff.

Pedro Raul Alvarez, Jr., Mark Howard Ruff, Alvarez, Sambol, Winthrop & Madson, P.A., Orlando, FL, for defendant.

Opinion

ORDER

HODGES, J.

***1** This action was heard on January 21, 2004 in accordance with this Court's order entered December 11, 2003 and pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to approve the settlement of this class action ("fairness hearing"). The Court has conducted the fairness hearing and finds that:

A. The parties entered into a Settlement Agreement dated September 10, 2003.

B. The Settlement Agreement is fair, adequate and reasonable and is not the product of collusion between the parties. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir.1977). In making this finding the court has considered the standards established in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir.1984).

C. The Court finds that there was a fair likelihood of success on several issues but only for what has been described as *de minimus* amounts for technical violations with the probability of some equitable relief, which has been satisfied by the Settlement Agreement. The amount of the potential recovery on these issues does not justify the time, expense, and risk necessary to bring this action to trial. This is complex litigation that would be expensive and protracted. The Defendant is a relatively small concern in relation to the expense of the litigation. The maximum number in the class would be 166 members, all of whom were provided notice as required by the Court's December 11, 2003 Order. No objection to the settlement was filed, and the Court therefore concludes there is no opposition to the settlement.

D. There is no dispute that the form of lease between the Defendant and the class members violated Title 49 C.F.R. Section 376 popularly known as the Federal Truth in Leasing Law. As a result of this action the Defendant has been brought into compliance with Section 376.

E. United States Magistrate Judge, Gary Jones, entered a Report and Recommendation that Defendant's Motion to Compel Arbitration be denied. This Court adopted and confirmed the Magistrate's Report and Recommendation by Order entered May 1, 2003. The Settlement Agreement between the parties states in paragraph 10 that: "The parties agree that once this settlement is approved by the Court, the Order entered May 1, 2003 by Judge Terrell Hodges, in this case should be vacated." This Court has considered the Settlement Agreement and finds that no prejudice shall be done by vacating the Order.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement between the parties dated September 10, 2003 is adopted and approved by the Court, and the parties are ordered to comply with the Settlement Agreement.

2. Pursuant to the parties Settlement Agreement, the Court's Order entered May 1, 2003 is hereby vacated.

Parallel Citations

17 Fla. L. Weekly Fed. D 458

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