UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT





BETTY LUNDQUIST,
-Plaintiff

- v -

CIV. NO. 5:91-754(TFGD)

SECURITY PACIFIC
AUTOMOTIVE FINANCIAL
SERVICES CORPORATION,
-Defendant



**MAGISTRATE'S OPINION**

Plaintiff, Betty Lundquist, moves to certify a class action pursuant to Fed. R. Civ. P. 23 against defendant Security Pacific Automotive Financial Service Corporation ("Security Pacific"). Plaintiff alleges violations of the Consumer Leasing Act, 15 U.S.C. §§ 1667-1667e and implementing regulations, 12 C.F.R. §§ 213.1-213.8 as well as state law relating to deceptive practices. The magistrate's recent opinion regarding defendant's motion to dismiss discusses the allegations of the complaint, and familiarity with them is presumed. For the following reasons, plaintiff's motion for class certification should be denied.

DISCUSSION

A party seeking class certification must comply with the four conjunctive requirements of Fed. R. Civ. P.

23(a) and one of the three subdivisions of Rule 23(b). Eisen v. Carlisle and Jacquelin, 417 U.S. 156, 163 (1974). In determining whether the prerequisites have been met, the court must undertake a rigorous analysis and may not presume their existence. McKernan v. United Technologies Corp., 120 F.R.D. 452, 453 (D. Conn. 1988) (citing General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 161 (1982)). Because the plaintiff has failed to satisfy the stringent requirements of both Rule 23(a) and Rule 23(b), the pending motion for class certification must be denied.

Rule 23(a) provides:

> Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (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.

The plaintiff defines her class to include all persons who signed contracts with Security Pacific using forms similar to the one she signed. The District Court of Connecticut has recently ruled on a motion for class certification nearly identical to the one in question here. McCarthy v. PNC Credit Corp., Civil No. H-91-854 (D.Conn. May 27, 1992). McCarthy, like the present case, concerned automobile leases alleged to violate the Truth in Lending Act. In both cases the class

definition, relief sought, plaintiff's and defendant's respective counsel, and large portions of the memoranda supporting and opposing class certification were identical.

The McCarthy court acknowledged that the plaintiff satisfied the Rule 23(a)(1) numerosity requirement, but concluded that the class was defined too broadly to meet the (a)(2) commonality requirement and the (a)(3) typicality requirement:

> [H]ere there is a high likelihood that the circumstances of each transaction may be disparate at best and perhaps substantially dissimilar from that of the named plaintiff. Plaintiff offers no indication that members of the class defaulted under similar circumstances; whether they incurred excess mileage charges; or were in some other way harmed by the alleged illegality of the lease form in question. Id., at 4.

Although Lundquist, unlike the plaintiff in McCarthy, did not default on her lease, this distinction is too minuscule to compel a different result here.

Even if the plaintiff were to tailor the class definition to conform to the requirements of Rule 23(a), her motion for class certification also is vulnerable to denial on grounds of lack of necessity under Rule 23(b). The plaintiff seeks to maintain her class action under Rule 23(b)(2), or alternatively Rule 23(b)(3). Rule 23(b) provides:

> Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied and in addition...:

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds 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 matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Although necessity is not an explicit requirement to maintain a class action, the Second Circuit and the District of Connecticut have long read such a requirement into Rule 23. Galvan v. Levine, 490 F.2d 1255 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974); Bridgeport Guardians, Inc. v. Members of Bridgeport Civil Serv. Comm'n, 354 F. Supp. 778 (D. Conn. 1973), aff'd in part & rev'd in part, 482 F. 2d 1333 (2d Cir. 1973), cert. denied, 421 U.S. 991 (1975).

Courts have varied, however, in their application of the necessity requirement, selecting one of three approaches. Most frequently, courts have viewed necessity as a requirement to maintain a class action

under each of the Rule 23(b) numbered options. Davis v. Smith, 607 F.2d 535 (2d. Cir. 1978); Ruiz v. Blum, 549 F. Supp. 871 (S.D.N.Y. 1982); Bridgeport Guardians, supra. Alternatively, some courts have required necessity only where a party seeks to maintain a class action pursuant to Rule 23(b)(2). Dionne v. Bowley, 757 F.2d 1344 (1st Cir. 1985); Doe v. Coughlin, 697 F. Supp. 1234 (N.D.N.Y. 1988); Rios v. Marshall, 100 F.R.D. 395 (S.D.N.Y 1983). In rare instances, courts have viewed necessity as an additional requirement for class certification separate from Rule 23(b). Koster v. Perales, 108 F.R.D. 46 (E.D.N.Y. 1985). Because necessity is a factor in deciding whether a class action is "appropriate" pursuant to Rule 23(b)(1) and "superior" pursuant to Rule 23(b)(2), and because requiring necessity outside of Rule 23(b) would therefore be redundant, the first option above should apply.

Courts have usually invoked lack of necessity to deny a motion for class certification where the benefits of declaratory judgment and injunctive relief will inure to all members of the proposed class, rendering class certification a mere formality. Davis v. Smith, supra, 607 F.2d at 540; Feld v. Burger, 424 F. Supp. 1356, 1363 (S.D.N.Y. 1976). Although most of these cases have involved actions against government officials, where the

court expects the judgment to be applied equally to all persons situated similarly to the plaintiff, Ruiz v. Blum, supra, 549 F.Supp. at 878, necessity must be demonstrated in private actions as well. Gray v. International Brotherhood of Elec. Workers, 73 F.R.D. 638, 640-1 (D.D.C. 1977); Kuck v. Berkey Photo, Inc., 81 F.R.D. 736, 739 (S.D.N.Y. 1979) (No necessity for extending class action to future workers who will benefit from an injunction); Velez v. Amenta, 370 F. Supp. 1250, 1255 (D. Conn. 1974) (Certifying class, but addressing issue of necessity).

Lundquist has not demonstrated a need for class certification. The plaintiff seeks, primarily, a declaration that a lessee can terminate its auto lease without incurring a substantial penalty and an injunction prohibiting the defendant from acting to collect the penalty. (Plaintiff's Reply Memorandum at 19). The injunction, if granted, would bar Security Pacific from collecting penalties from any person who signed the auto lease in question, regardless of class certification. Similarly, any declaratory relief granted to the plaintiff would apply to all lessees. Since the requested relief would benefit the entire proposed class, a class action would be superfluous here. Stanton v. Board of Educ. of Norwich, 581 F. Supp. 190 (N.D.N.Y. 1983). Lundquist also seeks monetary

damages, but, again, a class action is not warranted. The plaintiff could opt for a "test case" approach which would likely yield the same result as a class action under principles of collateral estoppel. Windham v. American Brands, Inc., 565 F. 2d 59, 69 (4th Cir. 1977), cert. denied, 435 U.S. 968 (1978).

Additionally, there is no reason that the plaintiff could not continue this suit absent class certification. Id.; Stoudt v. E. F. Hutton & Co., Inc., 121 F.R.D. 36, 38 (S.D.N.Y. 1988). There is no evidence of impoverishment or the inability of any putative plaintiff to pursue an action independently. Moreover, the Truth in Lending Act requires a creditor who fails to comply with the Act to pay to the plaintiff the costs of the plaintiff's action as well as a reasonable attorney's fee. 15 U.S.C. §1640(a)(3). An unsuccessful creditor may avoid paying these fees only in the most unusual circumstances. DeJesus v. Banco Popular de Puerto Rico, 918 F. 2d 232, 234 (1st Cir. 1990). The assurance of reimbursement upon success provides the plaintiff with ample incentive to continue her suit.

Finally, still another reason militating against class certification in this case is the unwarranted burden that certification would impose on Connecticut's already limited judicial resources. As of June 30, 1991, over 460 cases per judge were pending in the

District of Connecticut, making it the district with the fifth heaviest caseload among the 92 United States district courts in the nation. 1991 Federal Court Management Statistics, 45. During roughly the same period, Connecticut had the seventh greatest increase in filings among U.S. District Courts nationwide.

In light of the foregoing, to certify this as a class action would place a needless strain on scarce judicial resources. Given the ubiquity of the defendant's auto lease form, it would not be surprising if the proposed class included residents of most of the American states and territories. As a result, state claims alone could well require fracturing the class into upwards of fifty subclasses. Factual disparities between class members would add to the confusion. "Rule 23 is designed as an instrument of convenience, and should not be permitted to impose an unjustified burden upon judicial resources." Kassover v. Computer Depot, Inc., 691 F. Supp. 1205, 1213 (D. Minn. 1987). To certify a class action here would contravene the public interest served by Rule 23. Schaffner v. Chemical Bank, 339 F. Supp. 329, 337 (S.D.N.Y. 1972).

Dated at Hartford, Connecticut, this 9th day of June, 1992.

Thomas P. Smith

THOMAS P. SMITH
U. S. MAGISTRATE JUDGE