

STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

MACOMB RETAIL CENTER LLC, and
TWELVE MILE COMMERCIAL LLC, both
individually and as representatives of a class
of similarly-situated persons and entities

Plaintiffs,

vs.

Case No. 19-5299-CZ

CITY OF ROSEVILLE,

Defendant.

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OPINION AND ORDER

Plaintiffs Macomb Retail Center, LLC and Twelve Mile Commercial, LLC (“Plaintiffs”) have filed a motion for class certification.

Factual and Procedural History

This action arises out of Plaintiffs’ claim challenging a mandatory stormwater service charge (“Stormwater Charge”) imposed by defendant City of Roseville (“the City”) on real property owners in the City. The City has a sewer system that includes a combined and separated system. The stormwater from the separated system flows into Lake St. Clair while the stormwater from the combined system is treated at Great Lakes Water Authority or flows into the Chapaton Combined Sewer Overflow facility. In May 2018, the City adopted its Storm Water Utility Fee Ordinance and began collecting the Stormwater Charge to finance the City’s stormwater management expenses in January 2019.

On December 30, 2019, Plaintiffs filed their complaint alleging count I- violation of the Headlee Amendment; count II- assumpsit for money had and received, violation of MCL 141.19;

and count III-unjust enrichment, violation of MCL 141.19. On April 17, 2020, Plaintiffs filed the instant unopposed motion for class certification. Plaintiffs request that the Court certify a class consisting of all persons and entities that have paid or incurred the Stormwater Charge at any time during the period of January 2019 through the pendency of this action. The Court has taken the matter under advisement and is now ready to render its opinion.

Law and Analysis

“Pursuant to MCR 3.501(A)(1), members of a class may only sue or be sued as a representative party of all class members if the prerequisites dictated by the court rule are met.” *Henry v Dow Chemical Co*, 484 Mich 483, 496; 772 NW2d 301 (2009). The court rule provides:

- (1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:
 - (a) the class is so numerous that joinder of all members is impracticable;
 - (b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;
 - (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
 - (d) the representative parties will fairly and adequately assert and protect the interests of the class; and
 - (e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. MCL 3.501(A)(1).

“These prerequisites are often referred to as numerosity, commonality, typicality, adequacy, and superiority.” *Henry*, 484 Mich at 488. “The burden of establishing that the requirements for a certifiable class are satisfied is on the party seeking to maintain the certification.” *Michigan Ass’n of Chiropractors v Blue Cross Blue Shield of Mich*, 300 Mich App 577, 586; 834 NW2d 138 (2013). The certifying court may not simply “rubber stamp” a

party's allegations that the class certification prerequisites are met. *Henry*, 484 Mich at 502. The court is to independently determine that the plaintiff has at least alleged a statement of basic facts and law that are adequate to support the prerequisites. *Id.* at 505. The court is to "analyze any asserted facts, claims, defenses, or relevant law without questioning the actual merits of the case." *Id.* at 504.

Numerosity

This factor was addressed in *Zine v Chrysler Corp*, 236 Mich App 261, 287-288; 600 NW2d 384 (1999):

There is no particular minimum number of members necessary to meet the numerosity requirement, and the exact number of members need not be known as long as general knowledge and common sense indicate that the class is large. Because the court cannot determine if joinder of the class members would be impracticable unless it knows the approximate number of members, the plaintiffs must adequately define the class so potential members can be identified and must present some evidence of the number of class members or otherwise establish by reasonable estimate the number of class members. (citations omitted).

Here, the City has more than 48,000 residents. *See* Plaintiffs' Exhibit 19, p.3, Stormwater Asset Management Plan. Plaintiffs propose to define the class to include all persons and entities who/which have paid or incurred the Stormwater Charge at any time since January 1, 2019 or who have paid or incurred the Stormwater Charge during the pendency of this action. Plaintiffs present evidence that the City has records regarding the imposition and collection of the Stormwater Charge for each of the property owners in the City. *See* Plaintiffs' Exhibit 21, Billing record examples. Thus, the Court finds that Plaintiffs have adequately defined the class so potential members can be identified and have presented evidence to establish by reasonable estimate the number of class members. *See Zine* 236 Mich App at 287-288. Therefore, the Court finds that Plaintiffs have met their burden to establish that the class is so numerous that joinder of all members is impracticable and have met the numerosity requirement.

Commonality

Under this factor, Plaintiffs must establish that “all members of the class had a common inquiry that could be demonstrated with generalized proof, rather than evidence unique to each class member.” *A&M Supply Co v Microsoft Corp*, 252 Mich App 580, 599; 654 NW2d 572 (2002). In other words, Plaintiffs must show that issues of fact and law common to the class predominate over issues subject to only individualized proof. *Duskin v Dep’t of Human Services*, 304 Mich App 645, 654; 848 NW2d 455 (2014).

In this case, the common facts relevant to the class are that each member paid or incurred the Stormwater Charge imposed by the City. The common issues of law are whether the Stormwater Charge violates the Headlee Amendment and MCL 141.91. If the Stormwater Charge is unlawful then it is unlawful as to each member of the class. Thus, the Court finds that Plaintiffs have demonstrated that there are predominate questions of law and fact that are common to the members of the class. Therefore, the Court finds that the commonality factor has been met.

Typicality

Under the typicality factor, the class representatives’ claims must have the same “essential characteristics” as the claims of the other members of the class. *Neal v James*, 252 Mich App 12, 21; 651 NW2d 181 (2002), overruled in part on other grounds by *Henry*, 484 Mich at 505 n 39. The claims, even if based on the same legal theory, must all contain a common “core of allegation.” *Neal*, 252 Mich App at 21. Here, Plaintiffs claims and the claims of the class arise from the common course of conduct of the City. Specifically, claims that the City imposed an unlawful tax on the property owners within the City. Accordingly, the Court finds that the typicality requirement has been met.

Adequacy

This factor requires a showing that the class representatives “can fairly and adequately represent the interests of the class as a whole.” *Neal*, 252 Mich App at 22. There must be a showing that there are no conflicts of interest between the representative plaintiffs and the class and that there is a likelihood of vigorous prosecution of the case by competent counsel. *Id.* Here, there is no evidence of any conflicts of interest between Plaintiffs and the class. Further, the Court is satisfied that Plaintiffs’ counsel is well qualified and will adequately represent the class. *See* Plaintiff’s Exhibit 22, Listing of certified class actions in which Kickham Hanley acted as class counsel. Thus, the Court finds that the adequacy requirement has been met.

Superiority

This factor requires Plaintiffs to demonstrate that “maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.” MCR 3.501(A)(1)(e). “In deciding this factor, the court may consider the practical problems that can arise if the class action is allowed to proceed.” *A&M Supply*, 252 Mich App at 601. The relevant concern is whether “the issues are so disparate” that the class action would be unmanageable. *Id.* at 602. Furthermore, under MCR 3.501(A)(2), the Court is to consider the following factors:

(a) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or

(ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(b) whether final equitable or declaratory relief might be appropriate with respect to the class;

(c) whether the action will be manageable as a class action;

(d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action; and

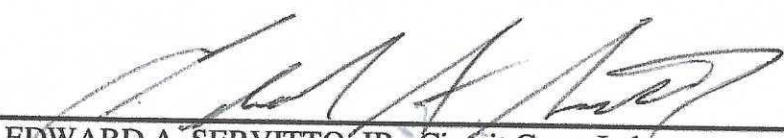
(f) whether members of the class have a significant interest in controlling the prosecution or defense of separate actions.

Plaintiff claims that a class action is the only practical way to resolve the claims of the putative class. First, separate adjudication of each individual member of the class would be dispositive of the interests of other members of the class since each class member has the same claim that the Stormwater Charge is unlawful. Further, under these circumstances, the amount recovered by individual class members will likely not be large enough in relation to the expense and effort of administering individual actions against the City. Additionally, the claims of all class members have the same factual and legal basis. Thus, the Court finds that Plaintiffs have met the superiority requirement.

Conclusion

For the reasons stated above, Plaintiffs' motion for class certification is GRANTED. Until all matters are resolved, this case remains OPEN. MCR. 2.602(A)(3).

IT IS SO ORDERED.



EDWARD A. SERVITTO, JR., Circuit Court Judge

Dated: 6/1/2020

Cc: Gregory Hanley, Attorney for Plaintiff
Joseph Colaianne, Attorney for Defendant