

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL**

TY OEHRTMAN, et al.,	:	MAY TERM, 2010	
	:		
Plaintiffs,	:	NO. 02410	DOCKETED
	:		
v.	:	CLASS ACTION	APR 3 2012
	:		
FAIRFIELD HENRY LLC, et al.,	:	Control No.: 10121138	CLASSIFICATION
	:		
Defendants.	:		

ORDER

AND NOW, this 3rd day of April, 2011, upon consideration of plaintiffs' Motion for Class Certification, the responses thereto, and all other matters of record, after a hearing and oral argument on the Motion, and in accord with the Opinion issued simultaneously, it is **ORDERED** that, upon the submission of proof that the plaintiffs have or can acquire adequate financial resources to continue to prosecute this action as a class, the following class will be

CERTIFIED:

All persons who currently reside at Henry on the Park Apartment and who seek to have the current landlord provide additional security at Henry on the Park Apartments.¹

Plaintiffs shall submit proof of adequate financial resources within thirty (30) days from the date of entry of this Order. The remainder of the Motion for Class Certification is **DENIED**.

Oehrtman Etal Vs Fairfield Henry Lic, D/B/A -ORDOP



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¹ In the event the proof is submitted and the class is certified, every member of the class shall be included in the class unless a member requests exclusion pursuant to the procedures to be set forth more fully in the Notice to be provided to the class members.

It is further **ORDERED** that plaintiffs' claims for damages are **SEVERED** and plaintiffs may re-file them in separate, individual actions.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Arnold L. New, J.", is written above a horizontal line.

ARNOLD L. NEW, J.

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FINDINGS OF FACT

1. Henry on the Park Apartments (“HoP”) is a seven building, 421 unit apartment complex in Philadelphia.

2. Several of the named plaintiffs are currently tenants of HoP, and they represent a class of the current residents of HoP.²

3. It appears that defendant Connecticut General Life Insurance Company (“CGLIC”) currently holds some ownership interest in HoP.³

4. Defendants Project Transition and Y.A.P.A. Apartment Living Program, Inc. (collectively “Project Transition”) rent approximately 17 apartments at HoP. Project Transition houses a number of its psychiatric patients in those apartments.

5. Plaintiffs allege there have been numerous safety and security problems at HoP since the Project Transition patients began living there, including a fire in one of the Project Transition apartments which caused damage to nearby apartments.

²At least one of the named plaintiffs is a former resident of HoP, so he is not a proper representative of the class being certified.

³Several of the claims against the other defendants have been dismissed for failure to join indispensable parties. The remaining claims against the other defendants must be severed because they are not suitable for resolution on a class-wide basis. As a result, CGLIC is the only potentially viable defendant left in this action. In order to proceed on the class’ remaining claim for equitable relief, the class may need to add other defendants.

CONCLUSIONS OF LAW

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of law and fact common to the class with respect to plaintiffs' remaining equitable claim against the Landlord.
3. A class action is a fair and representative method for adjudication of plaintiffs' remaining equitable claim against the Landlord.
4. A class action is not a fair and representative method of adjudicating plaintiffs' damages claims against the defendants, and those claims must be filed and tried on an individual basis.
5. Plaintiffs' equitable claim against the Landlord is typical of the class.
6. Plaintiffs have not yet shown that they can adequately represent the class on the one remaining equitable claim against the Landlord.

DISCUSSION

The court may certify this action as a class action only if the following requirements are met:

- (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;
- (4) The representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pa. R. Civ. P.] 1709; and
- (5) A class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pa. R. Civ. P.] 1708.⁴

“The proponent of the class bears the burden to establish that the Rule 1702 prerequisites [a]re met. The burden is not heavy at the preliminary stage of the case. Indeed, evidence supporting a prima facie case will suffice unless the class opponent comes forward with contrary evidence; if

⁴ Pa. R. Civ. P. 1702.

there is an actual conflict on an essential fact, the proponent bears the risk of non-persuasion. It is essential that the proponent of the class establish requisite underlying facts sufficient to persuade the court that the Rule 1702 prerequisites were met.”⁵

I. The Numerosity Requirement Is Satisfied

Whether the number [of potential class members] is so large as to make joinder impracticable is dependent not upon an arbitrary limit, but rather upon the circumstances surrounding each case. . . . The class representative need not plead or prove the number of class members so long as [it] is able to define the class with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join.⁶

Plaintiffs purport to represent a class of all the current residents of HoP.⁷ Since there are over 400 apartments in HoP, there are at least 400 current residents of HoP. Therefore, the numerosity requirement is satisfied.

II. The Common Questions Requirement Is Satisfied With Respect To Only One Of Plaintiffs’ Claims.

To establish the commonality requirement, [plaintiffs have] to identify common questions of law and fact -- a common source of liability. Simply contending that all putative members of a class have a complaint is not sufficient if the complaints are disparate personal allegations arising from different circumstances and requiring different evidence. . . . The critical inquiry for the certifying court is whether the material facts and issues of law are substantially the same for all class members. The court should be able to envision that the common issues could be tried such that proof as to one claimant would be proof as to all members of the class.⁸

⁵ Samuel-Bassett v. Kia Motors Am., Inc., 34 A.3d 1, 16 (Pa. 2011).

⁶ Janicik v. Prudential Insurance Co. of America, 305 Pa. Super. 120, 131, 451 A.2d 451, 456 (1982).

⁷ The named plaintiffs purport to represent former residents with respect to their damages claims . As set forth below, the damages claims are not suitable for class treatment, so the former residents will not be included in the class that is certified.

⁸ Samuel-Bassett , 34 A.3d at 22.

Plaintiffs assert claims against the Landlord⁹ for:

1. Three separate breaches of the lease based on the warranty of habitability, the covenant of quiet enjoyment, and a requirement to provide adequate security at HoP;
2. Two counts of negligence based on failure to screen tenants and lack of adequate security at HoP;
3. Violation of the Landlord Tenant Act based on failure to exercise reasonable care for tenant safety at HoP;
4. Violation of the Unfair Trade Practices and Consumer Protection Law for promising safety and security but not providing it; and
5. Infliction of emotional distress.

Plaintiffs assert claims against Project Transition for:

1. Negligence for failing to properly screen, select, retain and supervise its patients;
2. Nuisance for allowing a dangerous condition to exist at HoP; and
3. Infliction of emotional distress.

Plaintiffs seek the following relief based on these claims:

1. Damages including overpayment of rent, loss of personal property, relocation expenses, mental pain and suffering, physical injuries and emotional damages; and
2. A mandamus order requiring the Landlord to provide better security.¹⁰

Plaintiffs' claims for damages do not satisfy the commonality requirements. The extent to which each resident suffered emotional distress due to one or more acts of Project Transition's patients is an individualized inquiry. The amount of rent each tenant overpaid due to safety concerns, the personal property, if any, each resident lost, the moving expenses, if any, each paid, and the physical injuries, if any, each suffered are all individualized inquiries.

Furthermore, the habitability of each tenant's apartment, and each tenant's quiet enjoyment of it, are different based on the proximity of each tenant's apartment to: the fire; the areas where the patients allegedly congregate; and the patients' apartments. The extent to which

⁹ Plaintiffs assert claims against three entities, all of whom it refers to as Landlord. Since the court has limited the class' claims to a request that the current Landlord provide additional security, only the current owner(s) and manager(s) of HoP are proper defendants.

¹⁰ The court dismissed plaintiffs' other equitable claims enjoining the Landlord from leasing units to Project Transition patients, requiring the Landlord to screen and evict Project Transition patients, and requiring Project Transition to vet, monitor and supervise its patients better.

each tenant heard/read and relied upon statements made by the Landlord regarding safety and security is also an individualized inquiry.

“When appropriate . . . the court may order that . . . the action be maintained as a class action limited to particular issues or forms of relief.”¹¹ In this case, “the individual damages issues [would be] especially difficult and burdensome on the trial court”¹² to resolve with respect to each of the more than 400 class members, so the tenants’ damages claims cannot be asserted as class claims.

The claim against the current Landlord for additional security raises issues common to each class member, such as whether the Landlord is obligated to provide additional security under the lease or statute and what, if any, additional security is appropriate to protect the residents of HoP from one another and from outsiders. Such limited issues are appropriate for resolution in a class action.

III. The Typicality Requirement Is Satisfied With Respect Only One Of Plaintiffs’ Claims.

The purpose of the typicality requirement is to ensure that the class representative’s overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members. Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. But, typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.¹³

¹¹ Pa. R. Civ. P. 1710(c)(1).

¹² Samuel-Bassett, 34 A.3d at 29.

¹³ *Id.*, 34 A.3d at 30-31.

The class representatives' claim requesting additional security is typical of the class. However, the class representatives' damages claims are not. One named plaintiff claimed at the hearing to have suffered damages for which she sought monetary compensation - for theft of a handbag by an unknown person and for emotional distress. Another claimed she was entitled to a rent rebate for the period during which she felt unsafe at HoP. A third suffered significant property damage as a result of the fire; however he testified that all but approximately \$750 of it was covered by his renter's insurance. Each plaintiff claims subjective harm unique to him/her, not damages similar to those of the other class members.¹⁴ Therefore, the class representatives' claims for monetary damages from the Landlord and Project Transition are not typical of the class.

IV. The Adequacy of Representation Requirement Is Not Satisfied.

Plaintiffs must show they "will fairly and adequately assert and protect the interests of the absent class members."¹⁵ In order to make this determination, the court must consider:

- 1) whether the attorney for the representative parties will adequately represent the interests of the class;
- 2) whether the representative parties have a conflict of interest in the maintenance of the class action; and
- 3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.¹⁶

In this case, class counsel are experienced attorneys who will adequately represent the class.

There is no evidence plaintiffs have a conflict of interest with the other class members.

However, plaintiffs have not explained to the court how they intend to pay for counsel's services

¹⁴ At the hearing, several representative plaintiffs did not claim to have suffered any monetary damages and desired equitable relief only.

¹⁵ Pa. R. Civ. P. 1702(4).

¹⁶ *Id.* at 1709.

in prosecuting the class' remaining equitable claim separate from their damages claims.

Plaintiffs will be given thirty days to submit proof they have adequate resources to proceed.

V. The Fair and Efficient Method Requirement Is Satisfied With Respect To Only One Of Plaintiffs' Claims.

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider:

- 1) whether common questions of law or fact predominate over any question affecting only individual members;
- 2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
- 3) 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 which would confront the party opposing the class with incompatible standards of conduct;

* * *

- 4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;
- 5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
- 6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
- 7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.¹⁷

This action implicates the first consideration and to a lesser extent the fourth and sixth.

1. Predominance Of Common Questions.

The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. Thus, a class consisting of members for whom most essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals for whom resolution of such elements does not advance the interests of the entire class.¹⁸

¹⁷ Pa. R. Civ. P. 1708.

¹⁸ Samuel-Bassett, 34 A.3d at 23.

When the class' damages claims are considered, the individual issues clearly outweigh the issues that can be resolved on a class-wide basis. However, if the damages claims are severed from the remaining equitable claim for increased security, then the individual issues predominate.

- 4. **Other Litigation.**
- 6. **Separate Claims.**

Several members of the putative class have already asserted their individual damages claims in separate actions against the defendants. Clearly, the separate claims of at least some of the individual class members are sufficient in amount to support separate actions.

A class action is a fair and efficient method to adjudicate plaintiffs' one remaining equitable claim against the Landlord for additional security, but it is not a fair and efficient method with respect to plaintiffs' damages claims.

CONCLUSION

For all the foregoing reasons, the Motion for Class Certification is granted in part and denied in part.

BY THE COURT:



ARNOLD L. NEW, J.