[Cite as *Lycan v. Cleveland*, 2010-Ohio-6021.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94353

JANINE LYCAN, ET AL.

PLAINTIFFS-APPELLANTS

vs.

CITY OF CLEVELAND

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED IN PART, REVERSED
IN PART AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-686044

BEFORE: Rocco, P.J., Boyle, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 9, 2010

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KENNETH A. ROCCO, P.J.:

Plaintiffs-appellants, Janine Lycan, Thomas Pavlish, Jeanne Task, Lindsay Charna, Ken Fogle, and John T. Murphy, appeal from a common pleas court order granting the defendant city of Cleveland's motion for judgment on the pleadings and denying plaintiffs' motion for class certification. Appellants argue that the court erred by dismissing their claims on the pleadings and abused its discretion by denying class certification. We affirm the grant of judgment on the pleadings as to appellants' claim for injunctive relief. We reverse the judgment on the remainder of appellants' claims and remand for further proceedings.

The amended complaint in this case asserted that each of the appellants had received a notice of liability from the city's Parking Violations Bureau that asserted that a vehicle leased by the appellant was photographed by an automatic enforcement camera committing a traffic offense. Each appellant except Jeanne Task paid the $100 civil fine without challenging it. Task did not pay the fine and was assessed additional penalties as a result. The appellants sought certification of a class of plaintiffs consisting of all persons who were assessed a fine under Cleveland Codified Ordinances 413.031(p)(3) even though they were not a "vehicle owner" under the terms of the ordinance. They asked the court (a) to return the fines they paid "under the doctrine of restitution and other principles of

equity," (b) to enjoin the city from continuing to enforce the ordinance against individuals who are not the registered owners of vehicles, and (c) to declare the parties' rights and obligations. They also filed a motion for class certification.

The city answered and also filed a motion for judgment on the pleadings. After extensive briefing by the parties, the court granted the city's motion, holding that the appellants waived their right to contest the fine by paying it without filing a notice of appeal from the citation.[1] The court further held that the appellants had not met the requirements for class certification.

In their first assignment of error, appellants challenge the court's order granting judgment on the pleadings. We review an order granting judgment on the pleadings de novo, applying the same standard of review the trial court used. *Coleman v. Beachwood*, Cuyahoga App. No. 92399, 2009-Ohio-5560, ¶15; *Vinicky v. Pristas*, 163 Ohio App.3d 508, 2005-Ohio-5196, 839 N.E.2d 88, ¶3. "The determination of a motion for judgment on the pleadings is limited solely to the allegations in the pleadings and any writings attached to the pleadings. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165, 297 N.E.2d

[1]The trial court's decision focuses on the appellants' claim for restitution of the fines they paid. It does not explicitly address appellants' claims for injunctive or declaratory relief. Nevertheless, the court granted the city's motion for judgment on the pleadings, which asked the court to dismiss the complaint. Therefore, we construe the court's order as dismissing all of appellants' claims.

113. Pursuant to Civ.R. 12(C), 'dismissal is appropriate where a court (1) construes the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true, and (2) finds beyond doubt that the plaintiff could prove no set of facts in support of his claim that would entitle him to relief.' *State ex rel. Midwest Pride IV, Inc. v. Pontious* (1996), 75 Ohio St.3d 565, 569, 664 N.E.2d 931." *Vinicky*, supra.

Appellant's first claim for relief seeks "disgorgement of the unlawfully collected and retained funds which rightfully belong to them in good conscience," "under the doctrine of restitution and other principles of equity." Appellants expressly disclaim any intent to seek damages in tort that would be subject to immunity under R.C. Chapter 2744. Therefore, we assume that appellants do not claim fraud or conversion, but rather seek recovery under a theory of unjust enrichment.

Appellants vehemently deny that they are seeking "money damages" for unjust enrichment, and argue instead that they are seeking equitable restitution. Restitution is a remedy, not a cause of action; we do not perceive any other basis for appellants to obtain "equitable" restitution other than through a claim of unjust enrichment. Cf. *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, ¶13, quoting *Great*

W. Life & Annuity Ins. Co. v. Knudson (2002), 534 U.S. 204, 214, 122 S.Ct. 708, 151 L.Ed.2d 635.

The elements of an unjust enrichment claim are as follows: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *L & H Leasing Co. v. Dutton* (1992), 82 Ohio App.3d 528, 534, 612 N.E.2d 787, citing *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St.3d 179, 183, 465 N.E.2d 1298. See, also, *Sammartino v. Eiselstein*, Mahoning App. No. 08 MA 211, 2009-Ohio-2641, ¶14.

Appellants conferred a benefit on the city and the city had knowledge of that benefit. The question before us, then, is whether appellants can prove any set of facts demonstrating that it would be unjust for the city to retain the fines appellants paid. While we recognize that the appellants had the opportunity to challenge the imposition of the fines before they paid them, this opportunity does not necessarily foreclose any right to equitable relief. The law governing restitution allows the court to consider myriad factors in determining whether the retention of a benefit is unjust. See Restatement of the Law, Restitution (1937). We cannot say, on the face of the complaint, that the appellants can prove no set of facts entitling them to relief. Among other things, the question whether appellants were induced to pay the fines

by a mistake of fact or law and whether they were coerced to pay by a threat of additional penalties may be relevant to this question. Consequently, we reverse the judgment on the pleadings on appellants' claim for restitution.

Appellants' complaint also asked the court to enjoin the city from "continuing to enforce former Cleveland Codified Ordinances 413.031 against individuals who are not the 'registered owners' of the motor vehicles depicted in the photographs." This claim contains its own answer. The city cannot "continue" to enforce a "former" ordinance, because the former ordinance has been repealed. Consequently, an injunction would serve no purpose. Appellants can prove no set of facts demonstrating that they are entitled to the injunctive relief they request in their complaint. Therefore, the court properly granted judgment on the pleadings on this count of the complaint.

Appellants' complaint finally demands a declaratory judgment on the question whether (a) they knowingly and voluntarily waived their right to classwide recovery in the event that the city's collection of the civil fine was determined to be unlawful; (b) the city deprived them of a meaningful and effective review procedure by imposing additional penalties; (c) the city's enforcement practices deprived appellants of substantive and procedural due process; and (d) the city is obligated to return funds collected from persons who were not vehicle owners. We cannot say as a matter of law that the appellants can prove no set of facts entitling them to a declaration on these

subjects. The equities in this case are not clear-cut and cannot be decided on the pleadings. Therefore, we reverse the judgment on the pleadings on this count of the complaint.

Appellants' second assignment of error contends that the court abused its discretion by refusing to certify a class. The trial court denied appellants' motion for class certification because it found that appellants could not maintain an action to recover their payments. We have determined that the appellants may be able to maintain such an action. Accordingly, we reverse and remand for further proceedings on the question of class certification.

Affirmed in part, reversed in part, and remanded for further proceedings.

It is ordered that each party shall bear his, her, or its own costs.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR