

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ELIJAH MELVIN, JOSE PATINO, JOSE	:	IN THE SUPERIOR COURT OF
MANCILLA, JOSE CAMPOS, AND	:	PENNSYLVANIA
LEOBARDO CAMPOS, AND EMPLOYEES	:	
SIMILARLY SITUATED,	:	
	:	
Appellants	:	
	:	
v.	:	
	:	
RANGER FIRE, INC. AND DANIEL	:	
SHIPMAN, CLAY SHIPMAN, AND PATRICK	:	
BOAZ,	:	
	:	
	:	No. 1551 WDA 2012

Appeal from the Order entered August 28, 2012,
in the Court of Common Pleas of Erie County,
Civil Division, at No(s): GD No. 14136-11.

BEFORE: SHOGAN, OTT, and STRASSBURGER*, JJ.

MEMORANDUM BY STRASSBURGER, J.: FILED: May 2, 2013

Elijah Melvin, Jose Patino, Jose Mancilla, Jose Campos, Leobardo Campos, and employees similarly situated (Appellants) appeal from the order of the trial court which denied class certification for their claims against Ranger Fire, Inc., Daniel Shipman, Clay Shipman, and Patrick Boaz (Appellees).¹ After careful review, we affirm.

The trial court found the following facts in denying class certification to Appellants.

¹ We note that the denial of class certification is a final, appealable order. **See *Haft v. U.S. Steel Corp.***, 451 A.2d 445, 447 n.2 (Pa. Super. 1982).

* Retired Senior Judge assigned to the Superior Court.

1. [Appellee] Ranger Fire was the sprinkler installation contractor on an Edinboro University Foundation Privatized Housing Project.
2. [Appellants] were hired as sprinkler fitter workmen to work on this project.
3. [Appellants] worked on this project periodically from December 2010 through May 2011.
4. [T]he total prevailing minimum wage rate for sprinkler fitters working on the Edinboro University Project ... was \$51.45 per hour.
5. The \$51.45 prevailing minimum wage rate ... [was] comprised of an hourly wage rate of \$33.85, plus an hourly fringe benefit contribution rate of \$17.60.
6. While working on this project, [Appellants] were not paid the proper hourly wage rate, overtime, or the hourly fringe benefit.
7. [Appellant] Jose Mancilla still works for [Appellees].
8. [Appellants] filed a Motion for Certification of Class Action seeking certification of the following class: all current and former employees of Range Fire that performed installation, maintenance, and/or repair work on automatic fire protection systems for Ranger Fire on the Edinboro University [Foundation Privatized Housing Project] in Edinboro, Pennsylvania.
9. [Appellees] have challenged only the numerosity^[2] prerequisite of this Motion.

² Pennsylvania Rule of Civil Procedure 1702 sets out the prerequisites which must be satisfied for class certification:

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

(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;

10. Currently, there are five named Plaintiffs in this action.

Trial Court Opinion, 8/28/2012, at 1-3 (internal quotations, citations to the record, and footnotes omitted).

The trial court further concluded that “[t]here are a total of thirteen additional putative class members[,]” and all of those members live in Texas and addresses have been provided. *Id.* at 3. After considering whether “the class is so numerous that joinder of all members is impracticable[,]” the trial court concluded that “it would not be impracticable for the remaining potential plaintiffs to join this lawsuit on an individual basis.” Trial Court Opinion, 8/28/2012, at 7. Accordingly, the trial court denied class certification on this basis.

Appellants filed a timely notice of appeal, and the trial court did not require compliance with Pa.R.A.P. 1925.

This Court set forth the relevant standards for reviewing class action certification, as follows:

(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 Rule 1709; and

(5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708.

Pa.R.C.P. 1702.

It is the strong and oft-repeated policy of this Commonwealth that, in applying the rules for class certification, decisions should be made liberally and in favor of maintaining a class action. This is because such suits enable the assertion of claims that, in all likelihood, would not otherwise be litigated. The court may alter, modify, or revoke the certification if later developments in the litigation reveal that some prerequisite to certification is not satisfied.

At a class certification hearing, the burden of proof lies with the proponent; however, since the hearing is akin to a preliminary hearing, it is not a heavy burden. The proponent need only present evidence sufficient to make out a prima facie case from which the court can conclude that the five class certification requirements are met. This will suffice unless the class opponent comes forward with contrary evidence; if there is an actual conflict on an essential fact, the proponent bears the risk of non-persuasion. Requiring an "affirmative showing" that the requirements have been met for class certification is, however, inappropriate, because the stage of proceedings at which the class certification is to be initially determined and the trial court's extensive supervisory powers over class actions obviate the need for a strict burden of proof.

Trial Courts are vested with broad discretion in making such decisions. Accordingly, the lower court's order denying class certification will not be disturbed on appeal, unless the court neglected to consider the requirements of the rules or abused its discretion in applying them.

Debbs v. Chrysler Corp., 810 A.2d 137, 153-54 (Pa. Super. 2002) (quoting ***Weinberg v. Sun Co.***, 740 A.2d 1152, 1162-1163 (Pa. Super. 1999), reversed in part on other grounds, 565 Pa. 612, 777 A.2d 442 (2001)) (internal quotations and citations omitted).

On appeal, Appellants take issue with the trial court's factual finding that only the "thirteen employees it listed ... made up the entire class."

Appellants' Brief at 6. Instead, Appellants contend that they never conceded that this was the entirety of the class, and prior to the filing of the lawsuit, they "sought the certified payroll from the Edinboro University Project from Edinboro University as well as [Appellees]." *Id.* at 7. That was never provided. Thus, Appellants contend the trial court should have granted "conditional certification" pursuant to Pa.R.C.P. 1710(d). *Id.*

In their Motion for Class Certification, Appellants asserted that the class they "seek to represent is unknown at this time as [Appellants] have been unable to obtain payroll records from Edinboro University or [Appellees] which would enable them to identify all class members who worked on the Edinboro University Project." Motion for Class Certification, 5/11/2012, at ¶ 4. In their response, Appellees asserted that there are only thirteen potential plaintiffs. Brief in Opposition to Class Certification, 6/4/2012, at 2 (unnumbered). At argument, Appellants asked that the trial court grant conditional certification and provide leave for them to ascertain "the entirety of the class" with some limited discovery. N.T., 7/30/2012, at 3. Appellees stated that to the best of their understanding, the thirteen names it provided represented the entirety of the class. *Id.* at 7. At the close of arguments, Appellants asserted that the trial court would have "the ability to revoke or rescind class certification later in the case should further facts come to light that show it's not appropriate." *Id.* at 10.

Pennsylvania Rule of Civil Procedure 1710(d) provides the following:

An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party. Any such supplemental order shall be accompanied by a memorandum of the reasons therefor.

Id. The comment to that section reads, in relevant part: "Subdivision (d) empowers the court to enter a conditional order of certification. It also permits the court to revoke, alter or amend an order of certification prior to a decision on the merits. The court may do this on its own motion or on motion of any party." *Id.*


Here, the trial court could have entered a conditional order as requested by Appellants, but we hold that the trial court did not abuse its discretion by not doing so. Appellants were aware that Appellees' position was that there were only thirteen potential plaintiffs when they filed their response to the motion for class certification on June 4, 2012. While Appellants assert that they asked Appellees for discovery, at no point did they file a motion with the trial court to obtain that discovery. At the hearing, which was conducted almost two months later, Appellants did not request a continuance until the discovery could be obtained.

Furthermore, if it comes to light that there are additional plaintiffs, the rules do not prevent Appellants from requesting the trial court reconsider its order denying class certification. Thus, in light of the facts in this case, we cannot say the trial court abused its discretion in denying Appellants' motion.

Order affirmed.

J. S19036/13

Judgment Entered

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Deputy Prothonotary

Date: 5/2/2013