NORTH CAROLINA

MECKLENBURG COUNTY

ROBERT WRIGHT, MARK MICHALEC, and SCOTT SHIPMAN, individually and on behalf of all others similarly situated,

Plaintiffs

v.

CITY OF CHARLOTTE,

Defendant.

FILED
2023 JAN -9 P 1:53
MECKLENBURG CO., C.S.C
BY _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 4063

ORDER ON PLAINTIFFS' RULE 23 MOTION FOR CERTIFICATION OF CLASS ACTION, APPOINTMENT OF CLASS COUNSEL, AND APPOINTMENT OF CLASS REPRSENTATIVES

Plaintiffs' Rule 23 Motion for Certification of Class, Appointment of Class Counsel, and Appointment of Class Representatives ("Motion") came on for hearing on January 6, 2023, before the Honorable R. Gregory Horne, Superior Court Judge assigned to preside over this case pursuant to Rule 2.1 of the North Carolina Rules of General Practice with Daniel R. Taylor, Jr. and E. Winslow Taylor, Taylor & Taylor, Attorneys at Law, PLLC and W. Ellis Boyle, Knott & Boyle, representing the Plaintiffs and Daniel E. Petterson, Parker Poe Adams & Bernstein, Attorneys & Counselors at Law representing the defendant. After hearing from counsel for the Parties and reviewing the Motion, the Court believes that the Motion should be granted.

NATURE OF THE CASE

1. Plaintiffs, on behalf of themselves and others similarly situated ("Class Members"), seek to recover deductions from their weekly pay in furtherance of the Charlotte Mecklenburg Voluntary Police Pledge Fund ("Pledge Fund"), the deductions for which they contend were "ultra-vires" having been taken by Defendant City of Charlotte without authority from the North Carolina General Assembly.

PROCEDURAL HISTORY

2. On March 16, 2021, Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman filed this putative class action against the City of Charlotte asserting that Defendant breached its fiduciary duty and was engaged in negligent misrepresentations in offering and administering a pledge fund for retirement purposes. Subsequently, Plaintiffs amended their complaint alternatively alleging that the offering and administration of the Pledge Fund was "ultra-vires" in that the defendant did not have the requisite authority from the North Carolina General Assembly to authorize or administer a Pledge Fund and further alternatively alleged that the City was negligent in offering a plan that was not sustainable.

3. After engaging in substantial investigations, discovery (formal and informal) and the exchange of information, the parties engaged in three rounds of mediation before retired Superior Court Judge James L. Gale commencing December 16, 2021 with following mediation sessions on May 13, 2022, and September 7, 2022. At the conclusion of the September 7, 2022, mediation session the parties executed a Memorandum of Settlement which recognized the existence of a Class and how the net proceeds of the Settlement, less attorneys' fees, costs, and expenses, would be distributed.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Requirement for Findings of Fact

4. "Findings of fact are required by the trial court when rendering a judgment granting or denying class certification … Such findings must be made with sufficient specificity to allow effective appellate review." *Nobles v. First Carolina Communications, Inc.*, 108 N.C. App. 127, 133 (1992) (internal citations omitted). Given that the Memorandum of Settlement recognizes a Class, and that the motion for Class Certification is unopposed, the Court could perhaps forego careful analysis; however, prudence dictates the Motion be fully considered.

Four Prerequisites to Class Certification

5. There are four requirements for class certification; (1) the existence of a class, *Crow v. Citicorp Acceptance Co.,* 319 N.D. 274, 282 (1987); *Pitts v. Am. Sec. Ins. Co.* 144 N.C.App. 1, 10 (2001): (2) that the named class representatives will fairly and adequately represent the class *Id.* (3) that the proposed class members are so numerous that it is impractical to bring them all before the court *Crow* at 283; *Pitts* at 10, and (4) a class action is superior to other available methods for adjudicating the controversy.

A Class Exists

6. A class exists when the members each have an interest in either the same issue of law or fact, and that the issue predominates over other issues affecting the individual class members. *Crow* at 280; *Pitts* at 10.

7. Here plaintiffs have abandoned all claims except claim three - that the taking of the Pledge Fund deductions was ultra-vires – for which the statute of limitations is ten (10) years and for which the doctrine of continuing tort and perhaps equitable estoppel is arguably applicable for participants where at least one deduction was experienced within the statutory period, on or after March 16, 2011, and as a result the class is defined as

> Any Charlotte-Mecklenburg Police Department employee who had a payroll deduction from their paycheck to participate in the Charlotte Mecklenburg Voluntary Police Pledge Fund on or after March 16, 2011 and who did not receive a payout from the Pledge Fund upon a qualifying separating event from the Pledge Fund, which individuals shall be entitled to a prorated share of the net settlement proceeds, less attorneys' fees, costs, and expenses, based on all payroll deductions for the Pledge Fund, including any taken prior to March 16, 2011.

8. As the core issue in this dispute is whether the 'taking" of the deductions was ultra-vires, there is but one central issue and the requirement of a class is easily met.

Counsel and Named Plaintiffs will Fairly and Adequately Represent the Class

9. To fairly and adequately represent the members of the class, the Class Representative must (a) have no conflict of interest with the class members, (b) have a genuine personal interest in the outcome of the case and (c) adequately represent Class Members inside and outside the state. *Pitts* at 10; *Crow* at 282-283.

10. There is no conflict of interest between the named Plaintiffs and the other Class Members. The Plaintiffs, like all Class Members, experienced Pledge Fund deductions taken from their pay and Plaintiffs, like all other Class Members, will recover through the settlement a prorated share of the deductions taken after attorneys' fees, costs, and expenses.

Plaintiffs and Counsel have and will Fairly and Adequately Represent all Class Members

11. The evidence is clear that Plaintiffs and Counsel have fairly and adequately represented the class and there is no reason to suggest that similar representation will not continue through the conclusion of this matter. When the settlement funds of $1,999,000 to be paid by Defendant City of Charlotte are increased by the $174,173 held by the Court in *Katrina Graue et. al. v. The Charlotte-Mecklenburg Voluntary Police Pledge Fund*, 19-CVS-13137 (Mecklenburg County), the recovery to be obtained by the Class Members, before attorneys' fees, costs, and expenses, should approach 50% of the purported ultra-vires deductions. This recovery seems reasonable and appropriate for a unique case where there would be either no recovery or recovery of 100% of the deductions, but only after additional costs associated with additional years of litigation and appeal that would no doubt follow.

Numerosity is Satisfied

12. Information provided by Defendant pursuant to the Freedom of Information Act indicates that there are approximately 1,100 - 1,500 class members, thus the class is so numerous that it is impractical to bring them before the court individually.

Class Action is Superior to Other

Methods of Adjudication

13. A class action should be permitted where it is likely to serve a useful purpose such as preventing a multiplicity of suits or inconsistent results. *Pitts* at 11. Given the large number of class members and the relatively small amount recoverable per Class Member, a Class Action in this instance serves a useful purpose.

Proper Notice Will be Sent to the Class

14. The actual manner and form of the notice is largely within the discretion of the Trial Court and will be the addressed in response to Plaintiffs' Motion For Preliminary Approval of Class Settlement, Appointment of Class Administrator, and Class Notice Plan.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Plaintiffs' Rule 23 Motion for Class Certification, Appointment of Class Counsel, and Appointment of Class Representatives is GRANTED.

2. This case is CERTIFIED as an opt-out class action pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, with the class being defined as follows;

> Any Charlotte-Mecklenburg Police Department employee who had a payroll deduction from their paycheck to participate in the Charlotte Mecklenburg Voluntary Police Pledge Fund on or after March 16, 2011 and who did not receive a payout from the Pledge Fund upon a qualifying separating event from the Pledge Fund, which individuals shall be entitled to a prorated share of the net settlement proceeds, less attorneys' fees, costs, and expenses, based on all payroll deductions for the Pledge Fund, including any taken prior to March 16, 2011.

3. The following attorneys are appointed as Class Counsel to represent the Class

Daniel R. Taylor, Jr., and E. Winslow Taylor, Taylor & Taylor, Attorneys at Law, PLLC, and

W. Ellis Boyle of the law firm Knott and Boyle, PLLC

4. Named Plaintiffs Robert Wright, Mark Michalec, and Scott Shipman are appointed as the Class Representatives.

5. Plaintiffs shall engage a company that regularly engages in the business of administrating class actions and thereafter move the Court for Appointment of Class Administrator and Approval of a Class Notice Plan.

This the 6th day of January, 2023

The Honorable R. Gregory Horne
Superior Court Judge Presiding