

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO		DATE FILED: July 21, 2021 3:02 PM CASE NUMBER: 2019CV112
Court Address: 7325 S POTOMAC ST, CENTENNIAL, CO, 80112		
ECHELON PROPERTY GROUP LLC v. BOBBY SALANDY		
		△ COURT USE ONLY △ Case Number: 2019CV112 Division: 21 Courtroom:
Order Re: Motion for Class Certification		

THE COURT, being duly advised in these premises after consideration of Defendant/Counterclaim Plaintiff Bobby Salandy's Motion For Class Certification (the Motion), the response and reply thereto hereby finds and orders as follows:

1. Statement of the Case:

a. This case arises from Echelon Property Group, LLC's (Echelon) Forcible Entry and Detainer complaint against defendant Bobby Salandy (Salandy) filed in the County Court for Arapahoe County (Case No. 2019C37058).

b. Salandy filed an Answer, Class Action Counterclaims, And Jury Demand challenging the fees stated in paragraph 9 of Echelon's form lease agreement (the "Form Lease"), specifically the "Late Fees", "Notice Posting Fees," and "Eviction Legal Fees" which Echelon assesses against Salandy, as, allegedly Echelon charges all of its tenants (the Fees).

c. The case was removed to the District Court for Arapahoe County.

d. On July 11, 2019 this Court struck the demand for a jury trial, and on August 5, 2019 granted possession of the disputed premises to Echelon. In furtherance of that Order, on August 7, 2019 a Writ Of Restitution issued.

e. On February 25, 2021 Salandy filed the Motion.

f. Neither party has requested a hearing on the Motion.

2. The Motion requests certification to a class seeking appropriate injunctive relief, including the cessation for all pending collection actions based on the Fees under Rule 23(b)(2), and a class certification under Rule 23(b)(3) seeking damages in the amounts of all Fees charged. Specifically, the Motion alleges in relevant part:

a. Salandy and all other Echelon tenants were subject to the Form Lease without the ability to negotiate any terms.

b. From April 2016, to early 2021, 2,007 tenants were charged the Fees and, like Salandy, had actions filed against them by Echelon for forcible entry and detainer (Motion, Exhibit E).

c. Salandy seeks to certify a Class defined as: All persons in the State of Colorado who (1) from the date three years prior to the filing of this Complaint through the date notice is sent to the Class; (2) leased an apartment from Echelon using Defendant's Form Lease; (3) who Defendant caused to be charged any or all of the fees set forth in Paragraph 9 of the Form Lease (an initial late fee of \$75 plus additional late fees of \$10 per day, a \$20 notice posting fee, and/or \$295 in eviction legal fees for the filing of an FED action).

3. The response states Salandy's proposed class is impermissibly broad because Salandy cannot prove whether an individual tenant was "damaged"; Salandy is an inadequate class representative; and, the Fees make up 0.71% of Echelon's overall income.

4. The reply states that Salandy can satisfy each of the requirements of Rules 23(a) as well as Rule 23(b)(2) and 23(b)(3).

5. The Court finds:

a. As a function of case management procedures, recognizing that Colorado has a policy of liberally construing C.R.C.P. 23 in favor of class certification, the trial court must conduct a "rigorous analysis" of the evidence "with the burden on the 'class action advocate' -supporting each C.R.C.P. 23 requirement and may look beyond the pleadings by conducting 'some inquiry into the plaintiff's theory of the case' before making findings pursuant to C.R.C.P. 23(b)(3) regarding the factual predicates of each class certification requirement; *Jackson v. Unocal Corp.*, 262 P.3d 874 (Colo. 2011) relying on *Farmers Ins. Exchange v. Benzing*, 206 P.3d 812 (Colo. 2009).

b. Because "C.R.C.P. 23 should be liberally construed in light of its policy favoring the maintenance of class actions" trial courts generally should accept the plaintiff's allegations in support of certification, and not screen out only those claims that will prevail on the merits. C.R.C.P. 23(c)(1), *supra* at 885.

c. However, prior to analyzing the C.R.C.P. 23 criteria, a court must determine whether the proposed class definition "specif[ies] a particular group that was harmed during a particular time frame," and "facilitate[s] a court's ability to ascertain [the class's] membership in some objective manner"; *supra* at 887, quoting *Bentley v. Honeywell Int'l, Inc.*, 223 F.R.D. 471, 477 (S.D.Ohio 2004).

d. Further, to certify a class under C.R.C.P. 23(b)(3), a trial court must find that common questions "predominate over any questions affecting only individual members" meaning "whether the plaintiff advances a theory by which to prove or disprove 'an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member's individual position.' " *supra*, at 889. In doing so, courts should consider claims and defenses and the fact that some affirmative defenses are particular to an individual class member does not defeat certification or require a finding, as a matter of law, that individual issues predominate; *supra*, at 890.

e. *Jackson v. Unocal Corp.* distinguished C.R.C.P. Rule 23 from its federal counterpart in several significant ways noting the federal rule had been amended and differed from the Colorado rule. Rather, *Jackson* set forth clear criteria to be used by Colorado trial courts.

f. Rule 23(a) requires a member of a class who seeks to sue as a representative party on behalf of all other members 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;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

g. C.R.C.P. Rule 23(b) further requires findings that:

- (1) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole;

or

- (2) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

5. The Court concludes:

a. The Court concludes that the class membership consists of the tenants who from April 2016, to the date of the order for possession against Salandy -August 5, 2019 - were charged the Fees and, like Salandy, had actions filed against them by Echelon for forcible entry and detainer.

b. The Court notes that Echelon argues on the one hand that Salandy cannot meet the numerosity requirement, and then, inconsistently argues that the Court should deny the Motion because it will be overwhelmed by the number of individual counterclaims that will be filed. The Court finds " based on the five years of data disclosed by Echelon (Motion, Exhibit E) - that Echelon has essentially conceded that the class numbers for the time period noted above is in the hundreds if not over a thousand people and is so numerous that joinder of all members is impracticable.

c. The Court finds that there are questions of law or fact common to the class as defined by the Court.

d. The Court finds that Salandy's claims or defenses are typical of the claims or defenses of the class and presents common questions which predominate over any questions affecting only individual members" and "obviates the need to examine each class member's individual position.' "

e. The Court finds that Salandy will fairly and adequately protect the interests of the class.

f. The Court finds that Echelon has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole, that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

6. Accordingly, the Motion is GRANTED WITH AMENDMENTS, and class certification is granted consistent with the findings and conclusions noted above.

7. All other requests for relief are DENIED.

Issue Date: 7/21/2021



PETER FREDERICK MICHAELSON
District Court Judge