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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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KENNETH J. KING
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U.S. DISTRICT COURT
SOUTHERN DISTRICT
EAST. DIV. OHIO

OWNER OPERATOR INDEPENDENT
DRIVERS ASSOCIATION, INC., et al,
Plaintiffs,

v.

ARCTIC EXPRESS, INC., et al,
Defendants.

Helmer,
Martins & Morgan Co, L.P.A.
Case No. 97-CV-750
JUDGE ALGENON L. MARBLEY
Magistrate Judge King

OPINION AND ORDER

I. INTRODUCTION

This matter is before the Court on the Defendants' Motion for Reconsideration of this Court's September 6, 2001 Order Granting Plaintiffs' Motion for Class Certification. The Motion for Reconsideration was filed on September 19, 2001. For the following reasons, the Defendants' Motion is DENIED.

II. FACTS AND PROCEDURAL HISTORY

The Court hereby incorporates the facts and procedural history as presented in its September 6, 2001 Opinion and Order. A summary and additional facts as they relate to the Defendants' Motion are as follows.

Defendant Arctic Express, Inc. ("Arctic") is a regulated motor carrier engaged in the business of providing temporary services to the shipping public. Defendant D & A Associates, Ltd. ("D & A") is a non-carrier company that operates a business of leasing truck tractor units to independent owner-operators. Arctic and D&A are commonly owned and controlled. Plaintiff OOIDA is comprised of individuals and entities who own and operate motor vehicle equipment.

The three individual Plaintiffs, Carl Harp, Garvin Kieth Roberts, and Micheal Wiese, are independent owner-operators who entered into an "Independent Contractor Motor Vehicle Lease Agreement" with Arctic, and also a "Lease/Purchase Option at Termination" agreement with D & A.

Under the terms of the Lease/Purchase Agreement with D&A, each Plaintiff who leased a motor vehicle was required to make weekly rental payments, along with maintenance payments that were based on mileage. The maintenance payments were collected in a "maintenance fund" and deducted weekly by Arctic from the Plaintiff's compensation. The unused maintenance fund monies were refundable if the lease ran its terms, unless the owner-operator decided to exercise his or her purchase option before the term expired.

After two of the individual Plaintiffs' commercial driver's licences were canceled or suspended, they notified Arctic and their equipment leases were terminated. All of the Plaintiffs then voluntarily cancelled their equipment leases with Arctic. At that point, because the leases of the Plaintiffs had not expired nor had they exercised their purchase option, Arctic did not refund any maintenance fund monies to them.

On June 30, 1997, Plaintiffs filed a Complaint against Arctic and D&A alleging: (1) a violation of 49 C.F.R. § 376.12(l), unauthorized deduction of purchase or rental payments, and (2) a violation of 49 C.F.R. § 376.12(k), unauthorized deduction and non-return of escrow funds. This Court subsequently granted the Defendants' Motion for Summary Judgement as to the alleged violation of 49 C.F.R. § 376.12(l), leaving only the Plaintiffs' second claim. See *Owner-Operator Independent Drivers Association, Inc. v. Arctic Express, Inc.*, 87 F. Supp. 2d 820 (S.D. Ohio 2000).

On June 9, 2000, the Plaintiffs filed a Renewed Motion for Certification of Class. A hearing was held on the motion on August 9, 2001. In an order dated September 6, 2001, this Court granted the Plaintiffs' Renewed Motion, and a certified a class defined as:

All independent truck owner-operators who have (1) entered into agreements with Defendant D& A Associates, Ltd. which purport to lease, with the option to purchase, trucking equipment under the terms of D& A equipment lease/purchase agreement, and (2) leased that equipment to Defendant Arctic Express, Inc. under the terms of Arctic's federally-regulated motor carrier lease agreement.

Currently, the class consists of approximately 2,000 members.

In certifying the class pursuant to Rule 23(b)(3), the Court found that common issues predominate the action, and that the predominance is not destroyed by the counter-claims brought by the Defendants against the named Plaintiffs. The Court held that the Defendants' counterclaims against unnamed class members are not compulsory because the unnamed class members are not "opposing parties" against whom the Defendants would be required to assert any claims. See FED. R. Civ. P. 13(a) ("A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party"). Therefore, the Court held that the Defendants' counter-claims do not destroy predominance in the class. The Court also recognized that, if necessary, at a later time, it could certify a subclass of Plaintiffs who would be subject to the Defendants' counter-claims.

On September 19, 2001, the Defendants filed a Motion for Reconsideration. The Defendants argue that: (1) D& A's counterclaims against Plaintiffs Roberts, Harp, and Weise are applicable against absent members class members; (2) a subclass does not cure individual issues of predominance with D&A's counterclaims since those counterclaims are applicable against the entire class; (3) the Court's September 6, 2001 Order does not address the individual issues raised by the Defendants' defense of setoff, identical in proof to the counterclaims; (4) the

Court's order does not address how a class representative who cannot be found by class counsel is adequate; and (5) OOIDA's claim for injunctive relief does not satisfy typicality for the class' claim for damages.

III. ANALYSIS

As a general principle, motions for reconsideration are granted if the moving party demonstrates: (1) a clear error of law; (2) newly discovered evidence which was not available previously to the parties; or (3) an intervening change in controlling law. *Gencorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999); *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Motions for reconsideration do not allow the losing party "to repeat old arguments previously considered and rejected, or to raise new legal theories that should have been raised earlier." *National Metal Finishing Co. v. Barclays American/Commercial Inc.*, 899 F.2d 119, 123 (1st Cir. 1990); *In re Salem Mortgage Co.*, 791 F.2d 456, 459 (6th Cir. 1986); *Brewery District Society v. Federal Highway Admin.*, No. C2-98-75 (S.D. Ohio March 23, 1999).

The Defendants have not presented either an intervening change in controlling law, or newly discovered evidence that was not previously available to them. Therefore, reconsideration will be appropriate if necessary to correct a clear error of law upon which the Court based its September 6, 2001 Order granting class certification. When reconsidering class certifications, in particular, a court may decertify a class if there is a subsequent showing that the grounds for granting certification no longer exist or never existed. *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 160 (1982).

A. Applicability of D & A's Counterclaims Against Absent Class Members

The Defendants assert that the Court's September 6, 2001 ruling eliminates their counterclaims, which are applicable against absent class members because "when defendants

timely filed their answer and counterclaims on April 11, 2000, no class existed against whom counterclaims could have been filed." The Defendants contend that, since the Court's Order of September 6, 2001 granted class certification, the absent class members are now subject to the same compulsory counterclaims as the named Plaintiffs, but that the Court's Order prohibited such counter-claims from being asserted.

As the Defendants themselves acknowledge numerous times in their Motion for Reconsideration, the arguments upon which they rely for this motion are the same arguments that they presented to the Court in opposition to the Plaintiffs' Motion for Class Certification. They have repeated their arguments, while failing to present new grounds upon which this Court might conclude that its September 6, 2001 Order was premised on a clear error of law. Furthermore, despite the Defendants' contention that the Court's order improperly eliminated their counter-claims against absent class members, in fact, the Court explicitly discussed how it might handle such counter-claims (i.e. through the creation of a subclass of Plaintiffs who would be subject to the counter-claims), and found that, regardless of the existence of such claims, certification of the class at this time is proper.

Therefore, because Defendants simply rehash old arguments, and fail to demonstrate a clear error of law, the Court **DENIES** the Defendants' Motion for Reconsideration on this basis.

B. Creation of a Subclass to Retain Predominance

The Defendants argue that the creation of a subclass would not cure the fact that individual issues predominate D&A's counterclaims, because the counterclaims are applicable against the entire class. The Defendants contend that the Court's discussion of creating a subclass if necessary, identical in membership, fails to address how the Court will be able to manage the individual factual issues that pertain to each counterclaim.

The Defendants' arguments with regard to the Court's failure to address the manner in which it will manage the counterclaims seems to amount to nothing more than a disagreement with the Court's decision. A motion predicated on such tenuous legal basis is inappropriate and insufficient to support a motion for reconsideration, and is a waste of judicial resources.

Therefore, the Court finds no clear error of law in this regard and **DENIES** the Defendants' Motion for Reconsideration on this basis.

C. Defense of Setoff

Arctic contends that the Court must reconsider its September 6, 2001 Order because it failed to consider how the affirmative defense of setoff would be managed in the class action. The Defendants contend that in order to calculate the appropriate amount for setoff, they would have to be aware of each individual class member's liability.

Again, the Defendants' argument amounts to little more than an assertion that this Court erred in its decision, without presenting a legal basis for finding that the Court committed clear error of law. At the time this Court handed down its September 6, 2001 Order, it was aware of the affirmative defenses being asserted by the Defendants. Thus, the fact that the Court did not specifically discuss how these defenses will be managed is irrelevant to the Court's finding that common issues predominate the class claims.

As the Defendant has cited neither statutory nor precedential support for its contention that the Court should have addressed the defense of setoff in the September 6, 2001 Order, the Court finds that it committed no clear error of law, and **DENIES** the Defendants' Motion for Reconsideration on that basis.

D. Adequacy of Class Representation

In support of its Motion for Reconsideration, Arctic argues that neither during the class certification hearing nor any other proceedings did the named Plaintiffs provide evidence to demonstrate that Plaintiffs Roberts, Harp, and Wiese could prove damages. Based on these failures, the Defendant contends that the individual Plaintiffs cannot adequately represent the class. It is Arctic's belief that this Court may have assumed the allegations of the Plaintiffs' Complaints to be true, without having any basis for that assumption in the evidence presented.

The Court finds the Defendants' contentions to be without merit. This Court's decision was not based on unfounded evidence or assumptions. Rather, the Court properly considered reasonable inferences based on the pleadings presented to the Court. *See Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 (6th Cir. 1976) (finding that "in ruling in a class action a judge may consider reasonable inferences drawn from facts before him at that stage of the proceedings"). Contrary to the Defendants' assertions, this Court has not merely speculated as to the basis for the Plaintiffs' class certification.

As the arguments presented by the Defendants fail to demonstrate that a clear error of law was committed by the Court, the Court DENIES the Defendants' Motion for Reconsideration on this basis.

E. Typicality

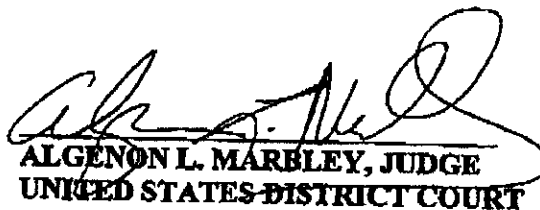
Finally, Arctic has argued that OOIDA has no claim for damages, so it cannot prove the damages claim that it must to meet the Fed. R. Civ. P. 23 requirement of typicality.

The Defendants' argument, however, is without merit. As stated in this Court's Order issued September 6, 2001, OOIDA has met the standards for typicality, including standing. As a party with associational standing, OOIDA stands in the shoes of its members, and can prove the damages claims of its members.

Therefore, the Court finds that it committed no clear error of law in finding typicality, and DENIES the Defendants' Motion for Reconsideration on this basis.

V. CONCLUSION

For the foregoing reasons, the Defendants' Motion for Reconsideration is DENIED.
IT IS SO ORDERED.


ALGENON L. MARBLEY, JUDGE
UNITED STATES DISTRICT COURT

DATED: February 13, 2002