

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

PHILIP AMOR and BRITTANY AMOR,
ET UX.

Plaintiffs,

NO. CVCV075753

vs.

ORDER

BRADFORD HOUSER, RIVER RIDGE
PLACE, LLC, and HOUSER ENTERPRISES,
INC.,

Defendants.

On April 21, 2014, the above-captioned matter came on for hearing on both parties' request or Motion to Certify this case as a class action proceeding pursuant to Rule 1.261, et al., of the Iowa Rules of Civil Procedure. At the time scheduled for hearing, the Plaintiffs appeared through their counsel of record, Christopher Warnock, and Christine Boyer. All Defendants appeared through their counsel of record, Richard Fehseke III. All parties presented oral argument referable to their respective positions. The Court, having reviewed the file and the respective motions and resistances thereto, and having heard the statements and arguments of counsel, finds as follows:

The Plaintiffs in this case filed their "Petition at Law and Equity" on or about August 2, 2013, requesting a declaratory judgment as to the legality of the landlord/tenant leases used by the Defendants. The prayer requests actual damages, punitive damages, attorney fees and the costs of this action. In addition, the Plaintiffs prayed for injunctive relief prohibiting the Defendant from utilizing the illegal provisions in its leases or from enforcing the illegal lease provisions. On the same date, August 2, 2013, the Plaintiff filed its first Motion to Certify this as a class action. In November of 2013, the Defendants filed their Resistance to the Plaintiffs' "First Motion for Declaratory Judgment and First Motion to Certify Class Action." On February 21, 2014, however, Defendants River Ridge Place, LLC, and Houser Enterprises, Inc., filed their own Motion for Certification of a class action for the limited purpose of the entry of declaratory and injunctive relief regarding particular issues.

A district court may certify a class action if tenants meet four basic requirements: (1) Numerosity – the class is so numerous or so constituted that joinder is impractical; (2) A common issue of law or fact exists; (3) Certification should be permitted for the fair and efficient adjudication of the controversy; and (4) The representative parties will protect the class's interests fairly and adequately. Iowa Rules of Civil Procedure 1.261 and 1.262(2). See also unpublished decision of the Iowa Court of Appeals in Staley v. Barkalow, 834 N.W.2d 873 (Table), 2013 WL 2368825 (Iowa App.).

One of the purposes of class action procedures “is to provide small claimants an economically viable vehicle for redress in court.” Martin v. Amana Refrigeration, Inc., 435 N.W.2d 364, 366 (Iowa 1989). “Class actions are also favored as achieving judicial economy while preserving . . . the rights of litigants.” *Id.* Due to the remedial nature of class action rules, these rules are “liberally construed” in favor of the maintenance of class actions. Comes v. Microsoft Corporation, 696 N.W.2d 318, 320 (Iowa 2005).

As previously recited, in the case at bar, both the Plaintiffs and Defendants River Ridge Place, LLC, and Houser Enterprises, Inc., request that a class be certified in the above-captioned case. Specifically, both parties agree that the Plaintiffs in this action have met the numerosity requirement, the common issue of law or fact requirement, and agree that certification would provide for the fair and efficient adjudication of the controversy. Further, both parties agree that the current Plaintiffs would be adequate and fair representatives of the class so long as the class is only seeking injunctive relief to prohibit the Defendants from utilizing in the future, or enforcing in current leases, certain provisions which allegedly violate Chapter 262A of the Iowa Code, the Iowa Uniform Residential Landlord and Tenant Act (IURLTA). The Plaintiffs further contend, however, that Philip Amor and Brittany Amor are representative parties who will protect the class’s interests fairly and adequately for all purposes, regardless of the type of remedy being sought against the Defendants.

Class representatives should “fairly and adequately . . . protect the interests of the class.” See Rule 1.262(2)(c) of the Iowa Rules Civil Procedure. In making this determination, courts consider whether (1) The attorney named for the parties will adequately represent the interests of the class; (2) The named parties “do not have a conflict of interest in the maintenance of the class action; and (3) The named parties “have or can acquire sufficient financial resources to guarantee that the class interests will not be harmed. See Iowa Rules of Civil Procedure 1.263(2).

In the case at bar, it does not appear that the Defendants are contesting either criteria number 1 or 3 as set forth above. Rather, they argue that these Plaintiffs, because they are current tenants of the Defendant, have not yet had the alleged prohibited provisions used against them, and consequently they do not “have a stake” in the proceeding vis-à-vis any claim for damages. In other words, they have a “stake” in the proceeding only to the extent of injunctive or declaratory relief prohibiting the Defendants from utilizing the contested provisions against them in the future. As a result, the Defendants appear to suggest that the current Plaintiffs then have a “conflict of interest” with those members of the class who have actually had the contested and allegedly prohibited provisions used against them, such that they would be entitled to request monetary damages. Such a position, while creative, is utterly without merit. Iowa courts have recognized that it is unnecessary for Plaintiffs’ individual claims in a class action be “carbon copies” of each other. Vignaroli v. Blue Cross, 360 N.W.2d 741, 745 (Iowa 1985). Rather, the conflict must be “fundamental, going to the specific issues and controversies.” Kragnes v. City of Des Moines, 810 N.W.2d 492, 498 (Iowa 2012). A “complete identity” of facts relating to all class members in a class action proceeding is not necessary so long as there is a “common nucleus of operative facts.” Vignaroli v. Blue Cross, 360 N.W.2d 741, 745.

In the case at bar, the Court specifically finds that the Plaintiffs “have a stake” in the entirety of this proceeding. They may not have exactly the “same stake” as some of the other class members, but there is clearly a common nucleus or thread which is common to all class members. Certainly, there is no conflict of interest of these proposed class representatives vis-à-vis other class members. Any different damage determinations “will arise, if at all, during the claims administration process after a trial of the liability and class-wide injury issues.” Anderson Contracting, Inc., v. DSM Copolymers, Inc., 776 N.W.2d 846, 851 (Iowa 2009). Additionally, in the event that it is later determined that some of the requested damages are prohibited as the Defendants claim, then the class can always be modified to change the relief sought or available, or establish subclasses as provided for in Rule 1.265 of the Iowa Rules of Civil Procedure.

IT IS THEREFORE ORDERED that the Plaintiffs’ and Defendants’ respective Motion to Certify the above-captioned case as a class action is hereby granted and sustained. Defendants’ Motion for Certification is overruled and denied only as to their request that the class be certified only to the extent of requesting injunctive and declaratory relief.

IT IS FURTHER ORDERED that this class certification pursuant to Rule 1.264(1) of the Iowa Rules of Civil Procedure establishes a class which shall consist of all of the Defendants’ tenants with the same or substantially similar standard leases and lease rules; the class representatives shall be Philip and Brittany Amor; counsel for the class shall be Christopher Warnock and Christine Boyer; the requested relief of the class shall, at this time, consist of a declaratory judgment, actual and punitive damages, injunction relief and attorney fees; and that the issues to be dealt with in the context of the class action shall be: (1) Did the landlords’ lease violate the Iowa Uniform Residential Landlord Tenant Act (Chapter 562A, Code of Iowa)? And (2) Did the landlord knowingly and willfully use a rental agreement containing prohibited provisions?

IT IS FURTHER ORDERED that Plaintiffs’ motion for summary and declaratory judgment shall come on for hearing on **June 25, 2014, at 9:00 a.m.**, at the Johnson County Courthouse, Iowa City, Iowa. One hour shall be set aside for this hearing. If either party believes that additional time will be required, they shall immediately contact Court Administration to secure an alternate hearing date.

ALL OF THE ABOVE IS SO ORDERED this 24th day of April, 2014.

Clerk to notify.

Dated: April 24, 2014

MITCHELL E. TURNER, JUDGE
SIXTH JUDICIAL DISTRICT OF IOWA