

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DAVID BIBLE AND BRIAN ROGERS,
INDIVIDUALLY, AND ON BEHALF OF
ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

CITY OF ROSWELL, GEORGIA

Defendant.

CIVIL ACTION FILE NO:

2017CV294723

**ORDER DENYING DEFENDANT'S MOTION TO STRIKE PLAINTIFFS'
DECLARATIONS, AND TO SUPPRESS ERRATA**

This matter was argued before the Court on October 15, 2018. Defendant asserts that the Plaintiffs' breach of contract claim fails to meet the statutory requirements to be certified as a class action lawsuit. Defendant also argues that the issues of individual class members predominate over class issues. Further, Defendant asserts that, even if Plaintiffs establish they meet the requirements of class certification, they waited too long to assert the claim.

Rule of Law

This action is governed by O.C.G.A. § 9-11-23(a) and (b)(3), the pertinent statutory provisions regarding class action certification:

- (a) One or more members of a class may sue or be sued as representative parties on behalf of all 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 class.

O.C.G.A. § 9-11-23(a).

(b) An action may be maintained as a class action if the prerequisites of subsection (a) of this Code section are satisfied, and, in addition:

(3) The Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy...

O.C.G.A. § 9-11-23(b)(3).

Discussion

On or about August 29, 2017, Plaintiffs filed a breach of contract class action lawsuit against Defendant asserting that firefighters employed by, or formerly employed by the City of Roswell, during the operative period of August 29, 2011 to August 29, 2017, who worked 40 or more hours per standard work week, should have been classified as full-time employees, pursuant to the City of Roswell Human Resources Policies and Procedures Manual (the “Policy Manual”), and, thereby entitled to receive the benefits conferred upon such employees. Rather, Plaintiffs argue that while those firefighters would qualify as full-time employees under the express language of the policy manual, they were, in fact, classified as part-time employees, not entitled to those benefits exclusively reserved for full-time employees. Nearly 122 of the City of Roswell’s 140 fire employees are classified as “part-timers.” (“Part Timers Dominate Roswell Fire Department,” Ralph Ellis, Atlanta Journal Constitution (November 7, 2010)). Plaintiffs’ estimate that the class is comprised of up to 149 persons. (October 15, 2018, Court Transcript, p.30, paragraph 1).

On December 1, 2017, Defendant filed a response to the complaint. Defendant subsequently filed a *Motion to Strike Plaintiffs’ Declarations, and to Suppress Errata*, asserting

that Plaintiffs failed to meet the class action certification requirements to qualify as a class. The alternative argument was also made, that, even if Plaintiffs could demonstrate that they qualified for the benefits they seek, they waited too long to assert the claim. At the, October 15, 2018, hearing, Defendants argued that the claims of the class members were primarily individualized claims; that, if grouped together, would produce a more cumbersome case management dilemma than if brought individually in separate proceedings. In fact, the claims in this case are limited in scope, because they arise out of a single contract, the Policy Manual. These claims correlate to the express language of the manual, which stipulates that persons employed by the City of Roswell who work 40 hours or more in a standard work week are considered full-time employees, endowed with all the rights and benefits of full-time employees. Plaintiffs' in this case are limited to only those employees who worked 40 or more hours per week, but were classified as part-time employees. Further, class members had to be employed with the City of Roswell during the time period of August 29, 2011 to August 29, 2017.

In its argument that class issues must predominate over the issues of individual class members, Defendant cited (*Sacred Heart Health Systems, et.al., v. Humana Military Healthcare Services*, 601 F.3d. 1159 (2010)). In that case the Eleventh Circuit Court of Appeals examined the issue of class certification, where class members consisted of approximately 260 hospitals in six states, which claimed they were systematically underpaid for medical services rendered to veterans under a federal program. *Id.* In that case, Humana entered into individual contracts with several healthcare providers. *Id.* During the three day evidentiary hearing, more than 300 contracts were submitted to the Court as evidence. *Id.* The Court, in that case, held that managing the variations among payment provisions, coupled with the substantial variations

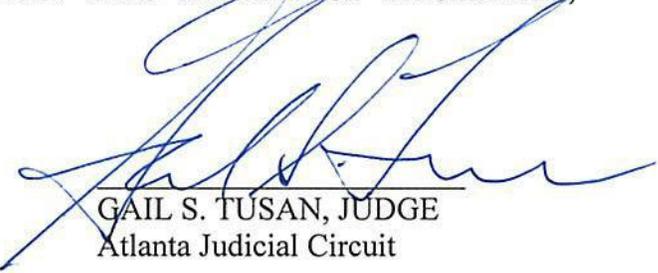
among the six bodies of state law, at issue, would require the Court to evaluate significant quantities of individualized extrinsic evidence. *Id.* In the present case, there is a single contract, the Policy Manual, which applies only to City of Roswell employees. Additionally, within that single document, Plaintiffs are only examining those provisions regarding benefits to full-time employees.

With regards to the issue of whether Plaintiffs' waived their right to assert a claim due to untimeliness, Defendant asserts Plaintiffs endured alleged violations of their right to full-time employee benefits for several years before deciding to bring their claims. The period of examination with regards to this action is not concerned with the total breadth of time Plaintiffs' were employed with the City of Roswell, rather it is specifically focused on the period between August 29, 2011 and August 29, 2017. In fact, Plaintiffs' assert that their claims were ongoing at the time of filing of the present complaint.

It is the finding of this Court that Plaintiffs have met their burden of establishing that they should be certified as a class. The four requirements of O.C.G.A. § 9-11-23(a) have been satisfied: (1) sufficient numerosity - up to 149 potential plaintiffs; (2) commonality - all class members are employees or former employees, employed during a specified period of time, who were classified as part-time employees, while working 40 or more hours per standard week; (3) claims of member representatives are representative of the class as a whole – all class members allege they were denied full-time employee benefits they were entitled to; and (4) representative parties fairly and adequately protect the interests of class as a whole. Moreover, because the claims were ongoing at the time of filing of the lawsuit, Plaintiffs did not waive their right to assert a claim due to the doctrine of laches.

FOR THE AFOREMENTIONED REASONS, Defendant's *Motion to Strike Plaintiffs' Declarations, and to Suppress ERRATA* is **HEREBY DENIED.**

SO ORDERED, ADJUDGED AND DECREED THIS 6th DAY OF DECEMBER, 2018.



GAIL S. TUSAN, JUDGE
Atlanta Judicial Circuit