

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, OHIO

APRIL STERN

Plaintiff

-vs-

THE CITY OF STEUBENVILLE,
and TRAFFIPAX, INC.

Defendants

FILED
IN COMMON PLEAS COURT
JEFFERSON COUNTY, OHIO

FEB 15 2006

JOHN A. CORRIGAN
OHIO CLERK:

Case No. 05 CV 524

CERTIFICATION AS
CLASS ACTION

Plaintiff's motion for certification as a class action, having come on for hearing on Monday, February 13, 2006, with Attorney Gary M. Stern appearing on behalf of the plaintiff, Attorneys Shannon Shoaff and John Solomon appearing on behalf of defendant Traffipax, Inc., and Attorney Costa Mastros appearing on behalf of the City of Steubenville. The Court then heard arguments of counsel on behalf of the parties and further considered the memorandums submitted by each of the parties.

The Court finds that there exists an identifiable class (those individuals who have been issued citations) and that April Stern is a member of that class.

The Court finds that the plaintiffs have satisfied the requirements of Ohio Rule of Civil Procedure 23(A) as to the prerequisites for a class action. The Court further finds that the plaintiff has satisfied the requirements of Rule 23(B) as separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to the individual members of the class which would establish incompatible standards of conduct for the party opposing the class; individual adjudications would, as a practical matter, be dispositive of the interest of all other members; the party opposing the class action has acted on grounds generally applicable to all members of the class, making final injunctive or declaratory relief appropriate for the whole class, and that the questions of law or fact

common to the members of the class predominate over any questions affecting any individual members. Therefore, the action is maintainable as a class action.

Defendant's claim that those individuals who have already paid their citations issued under the ordinance in question should be excluded from the class action under the "voluntary payment doctrine" is not persuasive.

"What amounts to a voluntary payment has been and still is a vexed question in many cases, and it is difficult to lay down a rule by which to determine, in the numerous cases that may arise, whether a payment has been made voluntarily or under compulsion."

73 O.Jur 3d, Payment and Tender, §64.
Ratterman v American Exp. Co., 49 Ohio State 608 (1892)

Therefore, "voluntary" versus "involuntary" must be decided upon the facts and circumstances surrounding the matter in controversy. No evidence was presented to the Court by the defendants as to the particulars or circumstances under which any of the traffic citations were paid. Therefore, the defendant's claimed "voluntary payment doctrine" does not preclude any of the members of the class from being included within the class.

Under Ohio Rules of Civil Procedure, Rule 23(C)(4)(b), the Court finds that it is appropriate that the class be divided into subclasses and that each subclass be treated as a class with Subclass A being those individuals to whom citations have been issued and who have not paid such citations, and Subclass B being those individuals to whom citations have been issued and who have paid such citations.

IT IS HEREBY ORDERED that this matter shall be certified as a class action and that this matter shall proceed as a class action in accordance with the provisions of Ohio Rules of Civil Procedure Rule 23, with the designated class represented by April Stern



DAVID E. HENDERSON, JUDGE

cc: Gary M. Stern, Esq., Costa Mastros, Esq., John Solomon, Esq., Shannon Shoaff, Esq.