

DOCKET NO.: X07-HHD-CV-18-6090558-S	:	
	:	SUPERIOR COURT
WILLIAM & LAURIE PAETZOLD;	:	
ANDREW PINKOWSKI	:	COMPLEX LITIGATION
	:	
v.	:	J.D. OF HARTFORD
	:	
METROPOLITAN DISTRICT	:	AT HARTFORD
COMMISSION	:	
	:	October 17, 2018

AMENDED COMPLAINT

Pursuant to Practice Book § 10-44, Plaintiffs substitute their Complaint with this Amended Complaint.

INTRODUCTION

The Metropolitan District Commission ("MDC") wrongfully charged water customers in East Granby, Farmington, Glastonbury, South Windsor an unlawful surcharge that it labeled a "Water NMT Surcharge" ("Surcharge"). The Connecticut Supreme Court announced its decision on March 2, 2018 in *Town of Glastonbury v. Metropolitan District Commission* (SC 19843), affirming a Superior Court decision that held that the Surcharge was illegal from its inception up until October 1, 2014, when a state law took effect governing the Surcharge going forward from that date. Before concluding that the Surcharges were illegal, the Superior Court stated: "There is no question that if the surcharges are unlawful, then the plaintiff can demonstrate damages for those years the surcharges were imposed." This is a class action to recover those many millions of dollars of damages that the MDC unlawfully billed customers before October 1, 2014.

THE PARTIES

1. The MDC is a quasi-municipal corporation, established in 1929 by the Connecticut General Assembly, with its headquarters in Hartford, Connecticut.
2. The MDC supplies water and sewer services to residents in its member towns.
3. The MDC's member towns are Bloomfield, East Hartford, Hartford, Newington, Rocky Hill, West Hartford, Wethersfield and Windsor.
4. East Granby, Farmington, Glastonbury, South Windsor are non-member towns.
5. The MDC provides water, but not sewer service, to approximately 9,000 customers in the non-member towns.
6. As a creation of the General Assembly, the MDC can only impose charges that are authorized in its enabling and governing statutes.
7. The MDC's provision of water to paying customers is a proprietary function and not subject to governmental immunity. *Blonski v. Met. Dist. Comm'n*, 309 Conn. 282, 290-93 (2013).
8. Plaintiffs Laurie and William Paetzold are residents of and property owners in Glastonbury and South Glastonbury, including during the entire time-

period covered by this complaint. At all relevant times they jointly owned, and paid the MDC for water provided at 2230 Main Street in Glastonbury. William Paetzold also paid for water provided by MDC at their residence at 72 Stockade Road in South Glastonbury.

9. Plaintiff Andrew Pinkowski is a resident of and property owner in Glastonbury, including during the entire time-period covered by this complaint. At all relevant times he paid the MDC for water provided at 1717 Main Street in Glastonbury.

MDC'S WRONGFUL SURCHARGE

10. The MDC imposed its Surcharge on every customer in East Granby, Farmington, Glastonbury, South Windsor ("Harmed Customers").

11. The MDC claimed through March of 2018 that it had a legal right to impose its Surcharge when it did not.

12. The annual Surcharges for Plaintiffs and every Harmed Customer were as follows:

2006: \$41.40

2007: \$43.92

2008: \$49.56

2009: \$46.44

2010: \$47.52

2011: \$52.68

2012: \$158.16

2013: \$423.00

2014: \$198.96

13. On March 2, 2018, the Connecticut Supreme Court announced its decision in *Town of Glastonbury v. Metropolitan District Commission* (SC 19843) that summarily affirmed a trial court decision declaring the Surcharge unlawful.

14. The decision declared the Surcharge unlawful, but it did not provide monetary relief to the more than 9,000 Harmed Customers.

15. The Supreme Court decision is *res judicata* as to the illegality of its Surcharge. Defendant is barred by the doctrine of collateral estoppel from re-litigating this issue.

CLASS ACTION ALLEGATIONS

16. Plaintiffs bring this case as a class action pursuant to Sections 9-7 and 9-8 of the Practice Book on behalf of themselves and the following class of those similarly situated:

All persons in East Granby, Farmington, Glastonbury and South Windsor who were customers of the Metropolitan District Commission between January 1, 2006, and October 1, 2014 and who paid a non-member town surcharge. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or person controlled by Defendant; Defendant's officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

17. Plaintiffs reserve the right, as might be necessary or appropriate, to modify or amend the definition of the proposed Class and/or add Subclasses, when Plaintiffs file their motion for class certification.

18. The proposed Class meets all requirements for class certification. The class consists of at least 9,000 members. As a result, joinder of all class members in a single action is impracticable. On information and belief, Class members can be identified through the MDC's business records.

19. The common legal issue in this case was resolved in *Town of Glastonbury v. Metropolitan District Commission*, No. HHD-CV-146049007S (Peck, J.), *affirmed* SC 19843, declaring the Surcharge illegal. The only factual questions, common to all class members, are (1) whether they had a contract by which they were charged the unlawful Surcharge and (2) whether the MDC was unjustly enriched to their detriment. These questions of fact are common to the Class and those questions predominate over any questions that may affect individual class members only.

20. Plaintiffs are adequate representatives for the Class because they are members of the Class and their interests do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have retained experienced counsel who have extensive experience prosecuting complex cases, including nationwide and multistate class action lawsuits, in state and federal court.

21. Plaintiffs' claims are typical of the claims of the Class because they arise out of the same conduct, policies and practices of the MDC with respect the

Surcharge. Plaintiffs have suffered the injury alleged and have no interests antagonistic to the interests of any other putative Class member.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages sustained by each Class member, while substantial, are much smaller than the cost that will be entailed in litigating the case. Moreover, multiple lawsuits will place a substantial and unnecessary burden on courts and could result in inconsistent verdicts. Accordingly, a class action will most fairly, equitably and efficiently resolve the controversy.

23. Notice can be provided to Class members by using techniques and forms of notice similar to those customarily used in other class action cases.

COUNT 1: BREACH OF CONTRACT

24. Each Plaintiff and Harmed Customer had a contract with MDC.

25. The material terms of the contract were that the MDC agreed to deliver potable water to the Plaintiffs and every other Harmed Customer at authorized rates and the Plaintiffs and every Harmed Customer agreed to pay and did pay billed charges for the delivery of the potable water.

26. The MDC's authorized rates were limited by statute to "rates uniform to those charged within [the] district." Special Act 77-62.

27. The MDC breached the contracts by imposing the unlawful Surcharge on the Plaintiffs and the Harmed Customers.

28. The Plaintiffs and every Harmed Customer substantially performed their obligations under the contracts by paying their MDC bills.

29. As a result of the MDC's breach, the Plaintiffs and every Harmed Customer have suffered damages.

COUNT 2: BREACH OF GOOD FAITH AND FAIR DEALING

30. The foregoing allegations are incorporated into this Count 2.

31. Every contract, including the contracts between the MDC and the Plaintiffs and Harmed Customers, imposes a duty of good faith and fair dealing on the parties.

32. Defendant has discretion to set the price for water. Section 5-4 of the MDC's Charter grants the MDC water bureau the "power to establish rates for the use of water, subject to the approval of the district board." The MDC must exercise its discretion and set the price for water reasonably and in good faith.

33. In exercising its discretion to set the price for water for Plaintiffs and the proposed Class, Defendant also must set rates that are "uniform with those charged within [the] district" as required by Special Act 77-62. By setting prices for Non-Member-town customers that were not uniform with Member-town customers, Defendant abused its water rate-setting discretion, set an unreasonable rate, and breached the duty of good faith and fair dealing.

34. The MDC had no good faith basis to exercise such discretion nor to impose the Surcharge and, in fact, imposed the Surcharge for the improper purpose of compelling customers in non-member towns to subsidize customers in member towns.

35. The magnitude of the rate increases imposed on Plaintiffs and the proposed Class members in Non-Member Towns evidence the MDC's bad faith and improper purpose of gouging those customers to improperly benefit customers in Member Towns. The MDC's "interested" motive and the lack of an "honest mistake" was revealed when it increased the NMT Surcharges by "nearly 300% in 2012 and nearly 800% in 2013." See *Glastonbury v. Metropolitan Dist. Comm'n*, HHD-CV-146049007S, 2016 WL 3179757 at *7 (Conn. Super. May 12, 2016), *aff'd*, *Glastonbury v. Metropolitan Dist. Comm'n*, 328 Conn. 326 (2018).

36. The MDC's unreasonable exercise of discretion in imposing exorbitant NMT Surcharges also is revealed in legislation that expressly capped the NMT Surcharges and put an end to bad faith increases of up to 800%. See Spec. Act 14-21.

37. Public outcry over the MDC's conduct also evidences the "interested" motive of the MDC. According to statements in a Joint Favorable Report of the Planning and Development Committee ("Report") drafted in favor of Bill SB-332, the MDC exercised its discretion to not only charge an improper surcharge but had significantly increased this surcharge year after year.

38. The statements in the Report document how the huge increases of unlawful surcharges caused Class members financial hardship. For example, a Glastonbury resident suffered financial hardship when the surcharge increased 51% in one year. A South Windsor couple, who live off of Social Security, explained that, while they had expected their April 2014 bill to be the usual amount of \$45 to \$50, the bill was \$171.33. Another Glastonbury resident was appalled at the huge increases and said that, due to such increases, she would not be able to afford her most basic human need, water. A Windsor condominium community of 55+ adults complained that the surcharges for its clubhouse and sprinkler system exceeded \$580 even though neither the clubhouse nor sprinkler system is used in the winter.

39. As held by the Superior Court in *Town of Glastonbury v. Metropolitan District Commission*, before the 2014 state law governing surcharges took effect, the MDC had no implicit authority to charge such surcharges.

40. The MDC breached the duty of good faith and fair dealing by imposing and egregiously increasing the unlawful Surcharge on the Plaintiffs and the Harmed Customers.

41. As a result of the MDC's breach, the Plaintiffs and every Harmed Customer have suffered damages.

Plaintiffs seek the following judgment:

1. Compensatory damages exceeding \$15,000.00;
2. Interest for monies wrongfully withheld pursuant to Conn. Gen. Stat § 37-3a;
3. Such other relief as this Court may deem just and proper.

Respectfully submitted,

PLAINTIFFS

By */s/ Craig A. Raabe*

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	:	JUDICIAL DISTRICT
v.	:	HARTFORD
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METROPOLITAN DISTRICT	:	AT HARTFORD
COMMISSION	:	
	:	October 17, 2018

STATEMENT OF AMOUNT IN DEMAND

Wherefore, the Plaintiffs hereby claim monetary damages in excess of fifteen thousand dollars and this matter is within the jurisdiction of this Court.

Respectfully submitted,

PLAINTIFFS

By /s/ Craig A. Raabe

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Redlined version showing additions and deletions

RETURN DATE: ~~APRIL 3, 2018~~

~~WILLIAM & LAURIE PAETZOLD;
ANDREW PINKOWSKI~~

~~SUPERIOR COURT~~

~~v.~~

~~JUDICIAL DISTRICT
HARTFORD~~

~~METROPOLITAN DISTRICT
COMMISSION~~

~~AT HARTFORD~~

~~March 6, 2018~~

~~DOCKET NO.: X07-HHD-CV-18-6090558-S~~

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ANDREW PINKOWSKI~~

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INTRODUCTION

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state law took effect governing the Surcharge going forward from that date. Before concluding that the Surcharges were illegal, the Superior Court stated: "There is no question that if the surcharges are unlawful, then the plaintiff can demonstrate damages for those years the surcharges were imposed." This is a class action to recover those many millions of dollars of damages that the MDC unlawfully billed customers before October 1, 2014.

THE PARTIES

1. The MDC is a quasi-municipal corporation, established in 1929 by the Connecticut General Assembly, with its headquarters in Hartford, Connecticut.

2. The MDC supplies water and sewer services to residents in its member towns.

3. The MDC's member towns are Bloomfield, East Hartford, Hartford, Newington, Rocky Hill, West Hartford, Wethersfield and Windsor.

4. East Granby, Farmington, Glastonbury, South Windsor are non-member towns.

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6. As a creation of the General Assembly, the MDC can only impose charges that are authorized in its enabling and governing statutes.

7. The MDC's provision of water to paying customers is a proprietary function and not subject to governmental immunity. *Blonski v. Met. Dist. Comm'n*, 309 Conn. 282, 290-93 (2013).

8. Plaintiffs Laurie and William Paetzold are residents of and property owners in Glastonbury and South Glastonbury, including during the entire time-period covered by this complaint. At all relevant times they jointly owned, and paid the MDC for water provided at 2230 Main Street in Glastonbury. William Paetzold also paid for water provided by MDC at their residence at 72 Stockade Road in South Glastonbury.

9. Plaintiff Andrew Pinkowski is a resident of and property owner in Glastonbury, including during the entire time-period covered by this complaint. At all relevant times he paid the MDC for water provided at 1717 Main Street in Glastonbury.

MDC'S WRONGFUL SURCHARGE

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11. The MDC claimed through March of 2018 that it had a legal right to impose its Surcharge when it did not.

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All persons in East Granby, Farmington, Glastonbury and South Windsor who were customers of the Metropolitan District Commission between January 1, 2006, and October 1, 2014 and who paid a non-member town surcharge. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or person controlled by Defendant; Defendant's officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families.

17. Plaintiffs reserve the right, as might be necessary or appropriate, to modify or amend the definition of the proposed Class and/or add Subclasses, when Plaintiffs file their motion for class certification.

18. The proposed Class meets all requirements for class certification. The class consists of at least 9,000 members. As a result, joinder of all class members in a single action is impracticable. On information and belief, Class members can be identified through the MDC's business records.

19. The common legal issue in this case was resolved in *Town of Glastonbury v. Metropolitan District Commission*, No. HHD-CV-146049007S (Peck, J.), *affirmed* SC 19843, declaring the Surcharge illegal. The only factual questions,

common to all class members, are (1) whether they had a contract by which they were charged the unlawful Surcharge and (2) whether the MDC was unjustly enriched to their detriment. These questions of fact are common to the Class and those questions predominate over any questions that may affect individual class members only.

20. Plaintiffs are adequate representatives for the Class because they are members of the Class and their interests do not conflict with the interests of the members of the Class they seek to represent. Plaintiffs have retained experienced counsel who have extensive experience prosecuting complex cases, including nationwide and multistate class action lawsuits, in state and federal court.

21. Plaintiffs' claims are typical of the claims of the Class because they arise out of the same conduct, policies and practices of the MDC with respect the Surcharge. Plaintiffs have suffered the injury alleged and have no interests antagonistic to the interests of any other putative Class member.

22. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages sustained by each Class member, while substantial, are much smaller than the cost that will be entailed in litigating the case. Moreover, multiple lawsuits will place a substantial and unnecessary burden on courts and could result in inconsistent verdicts. Accordingly, a class action will most fairly, equitably and efficiently resolve the controversy.

23. Notice can be provided to Class members by using techniques and forms of notice similar to those customarily used in other class action cases.

COUNT 1: BREACH OF CONTRACT

24. Each Plaintiff and Harmed Customer had a contract with MDC.

25. The material terms of the contract were that the MDC agreed to deliver potable water to the Plaintiffs and every other Harmed Customer at authorized rates and the Plaintiffs and every Harmed Customer agreed to pay and did pay billed charges for the delivery of the potable water.

26. The MDC's authorized rates were limited by statute to "rates uniform to those charged within [the] district." Special Act 77-62.

27. The MDC breached the contracts by imposing the unlawful Surcharge on the Plaintiffs and the Harmed Customers.

28. The Plaintiffs and every Harmed Customer substantially performed their obligations under the contracts by paying their MDC bills.

29. As a result of the MDC's breach, the Plaintiffs and every Harmed Customer have suffered damages.

COUNT 2: BREACH OF GOOD FAITH AND FAIR DEALING

30. The foregoing allegations are incorporated into this Count 2.

31. Every contract, including the contracts between the MDC and the Plaintiffs and Harmed Customers, imposes a duty of good faith and fair dealing on the parties.

~~32. The MDC exercised discretion to impose its unlawful Surcharge.~~

32. Defendant has discretion to set the price for water. Section 5-4 of the MDC's Charter grants the MDC water bureau the "power to establish rates for the use of water, subject to the approval of the district board." The MDC must exercise its discretion and set the price for water reasonably and in good faith.

33. In exercising its discretion to set the price for water for Plaintiffs and the proposed Class, Defendant also must set rates that are "uniform with those charged within [the] district" as required by Special Act 77-62. By setting prices for Non-Member-town customers that were not uniform with Member-town customers, Defendant abused its water rate-setting discretion, set an unreasonable rate, and breached the duty of good faith and fair dealing.

~~33,34.~~ The MDC had no good faith basis to exercise such discretion nor to impose the Surcharge and, in fact, imposed the Surcharge for the improper purpose of compelling customers in non-member towns to subsidize customers in member towns.

35. The magnitude of the rate increases imposed on Plaintiffs and the proposed Class members in Non-Member Towns evidence the MDC's bad faith and

improper purpose of gouging those customers to improperly benefit customers in Member Towns. The MDC's "interested" motive and the lack of an "honest mistake" was revealed when it increased the NMT Surcharges by "nearly 300% in 2012 and nearly 800% in 2013." See *Glastonbury v. Metropolitan Dist. Comm'n*, HHD-CV-146049007S, 2016 WL 3179757 at *7 (Conn. Super. May 12, 2016), *aff'd*, *Glastonbury v. Metropolitan Dist. Comm'n*, 328 Conn. 326 (2018).

36. The MDC's unreasonable exercise of discretion in imposing exorbitant NMT Surcharges also is revealed in legislation that expressly capped the NMT Surcharges and put an end to bad faith increases of up to 800%. See Spec. Act 14-21.

37. Public outcry over the MDC's conduct also evidences the "interested" motive of the MDC. According to statements in a Joint Favorable Report of the Planning and Development Committee ("Report") drafted in favor of Bill SB-332, the MDC exercised its discretion to not only charge an improper surcharge but had significantly increased this surcharge year after year.

38. The statements in the Report document how the huge increases of unlawful surcharges caused Class members financial hardship. For example, a Glastonbury resident suffered financial hardship when the surcharge increased 51% in one year. A South Windsor couple, who live off of Social Security, explained that, while they had expected their April 2014 bill to be the usual amount of \$45 to \$50, the bill was \$171.33. Another Glastonbury resident was appalled at the huge

increases and said that, due to such increases, she would not be able to afford her most basic human need, water. A Windsor condominium community of 55+ adults complained that the surcharges for its clubhouse and sprinkler system exceeded \$580 even though neither the clubhouse nor sprinkler system is used in the winter.

39. As held by the Superior Court in *Town of Glastonbury v. Metropolitan District Commission*, before the 2014 state law governing surcharges took effect, the MDC had no implicit authority to charge such surcharges.

34,40. The MDC breached the duty of good faith and fair dealing by imposing and egregiously increasing the unlawful Surcharge on the Plaintiffs and the Harmed Customers.

35,41. As a result of the MDC's breach, the Plaintiffs and every Harmed Customer have suffered damages.

COUNT 3: UNJUST ENRICHMENT (Pled in the alternative)

36. The foregoing allegations are incorporated into this Count 3.

37. If the relationship between the Plaintiffs and the MDC is found not to be governed by contract, Plaintiffs are entitled to recover under the doctrine of unjust enrichment.

38. The MDC had statutory authority to provide water and to charge only authorized rates to Plaintiff's and Harmed Customers.

~~39. The MDC's Surcharges were unauthorized and the MDC benefitted from Plaintiffs' and every Harmed Customers' payment of the unlawful Surcharges.~~

~~40. The MDC's unlawful Surcharges were not for the provision of potable water at "rates uniform to those charged within [the] district" or for any other authorized service.~~

~~41. The Surcharges were imposed to the detriment of Plaintiffs and all Harmed Customers and they all suffered damages.~~

~~42. Equity and the interests of justice mandate that Plaintiffs and all Harmed Customers receive reimbursement of the unlawful Surcharges imposed from January 1, 2006, to October 1, 2014, plus interest.~~

Plaintiffs seek the following judgment:

1. Compensatory damages exceeding \$15,000.00;
2. Interest for monies wrongfully withheld pursuant to Conn. Gen. Stat § 37-3a;
3. Such other relief as this Court may deem just and proper.

Respectfully submitted,

PLAINTIFFS

By /s/ Craig A. Raabe

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RETURN DATE: ~~APRIL 3, 2018~~

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~~SUPERIOR COURT~~

~~v.~~

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~~AT HARTFORD~~

~~March 6, 2018~~

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SUPERIOR COURT

WILLIAM & LAURIE PAETZOLD;

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METROPOLITAN DISTRICT
COMMISSION

AT HARTFORD

October 17, 2018

STATEMENT OF AMOUNT IN DEMAND

Wherefore, the Plaintiffs hereby claim monetary damages in excess of fifteen thousand dollars and this matter is within the jurisdiction of this Court.

Respectfully submitted,

PLAINTIFFS

By /s/ Craig A. Raabe

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