

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GARY and ANNA-MARIE CUPPELS, :
individually and on behalf of all others :
similarly situated, : C. A. No.: S18C-06-009 CAK
:
Plaintiffs, :
:
v. :
:
MOUNTAIRE CORPORATION, an :
Arkansas corporation, MOUNTAIRE :
FARMS, INC., a Delaware corporation, and :
MOUNTAIRE FARMS OF DELAWARE, :
INC., a Delaware corporation, :
:
Defendants. :

Submitted: September 28, 2020
Decided: October 8, 2020

MEMORANDUM OPINION AND ORDER

*Upon Defendant's Motion to Strike
the Reply Brief of Plaintiff's in Support
of their Motion for Class Certification*

DENIED WITH CERTAIN CONDITIONS

Chase T. Brockstedt, Esquire, Stephen A. Spence, Esquire, Baird Mandalas
Brockstedt, 1413 Savannah Road, Ste. 1, Lewes, Delaware 19958, Attorneys for
Plaintiffs.

Philip C. Federico, Esquire, Brent Ceryes, Esquire, Schochor, Federico and Staton,
P.A., 1211 Paul Street, Baltimore, Maryland 21202, Attorneys for Plaintiffs.

F. Michael Parkowski, Esquire, Michael W. Teichman, Esquire, Parkowski, Guerke & Swayze, P.A., 1105 North Market Street, 19th Floor, Wilmington, Delaware 19801, Attorneys for Defendants.

Lisa C. McLaughlin, Esquire, Todd L. Goodman, Esquire, John C. Phillips, Jr., Esquire, Phillips, Goldman, McLaughlin & Hall, P.A., 1200 North Broom Street, Wilmington, DE 19806, Attorneys for Defendants.

James R. Wedeking, Esquire, Timothy K. Webster, Esquire, Gordon D. Todd, Esquire; Erika L. Maley, Esquire; Daniel J. Hay, Esquire, Sidley Austin, LLP, 1501 K Street, N.W. Washington, DC 20005, Attorney for Defendants.

KARSNITZ, J.

I initially considered denying this motion by order. My predilection is, however, to always give parties my reasoning. The complexity of the case and the press of other business strains my ability to follow my personal preference. I provide my reasons to my action as succinctly and as timely as possible.

I need not detail the facts of the case. Suffice it to say this is a multi-party tort claims case concerning allegations of water and air based pollution emanating from Defendant's chicken processing plant located outside of Millsboro, Delaware. Plaintiff seeks to proceed as a class action pursuant to Superior Court Rule 23 in an effort to conserve resources. Defendants oppose Plaintiffs' motion to certify the class. The case scheduling order allowed a substantial period of time after the filing of Plaintiffs' motion to certify the class for discovery on the issues the motion raised. Briefing followed and was to have been completed with the filing of Plaintiffs' Reply Brief on September 15, 2020. Defendants claim in its motion to strike the Rely Brief that Plaintiffs have raised new issues, offered new evidence, and changed the nature of the claims.

I have carefully reviewed the original motion for certification, Defendants' response, Plaintiffs' Reply Brief and Defendants' motion to strike it. While I find some merit in Defendants' contentions, I do not see the remedy they suggest as workable. Defendants want me to extend the class certification

discovery period for an unidentified length of time, then allow further briefing. For me what Plaintiffs have done is respond to the understandable and common evolving nature of the case. However, the changes in Plaintiffs' approach are in my view modest, and can be properly addressed by Defendants through further briefing. I am also mindful that the added time suggested by Defendant would place further proceedings in the case, including the trial date, in jeopardy.

I am also unsure if Defendants' motion to strike, which includes striking certain new expert reports, is an effort on their part to forever exclude the evidence. If it is, I am unwilling to do so.

I am denying the motion to strike. However, I will allow additional briefing on the motion for class certification as follows:

- (1) Defendants may file a response to Plaintiffs' Reply Brief in Support of Plaintiffs' Motion for Class Certification by October 21, 2020 (a Sur Reply Brief)
- (2) Plaintiffs may file their final Brief on the Motion on October 28, 2020 (a Sur Sur Reply Brief)

IT IS SO ORDERED:



Craig A. Karsnitz

CAK/lms

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SUSSEX COUNTY
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