

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEAST DIVISION

LINDA GAMBLE, RUBY COPELAND and))	Civil Action No.
ROGER COPELAND on behalf of themselves))	
and all others similarly situated,))	
)	
Plaintiffs,))	
)	
)	
v.))	
)	
CITY OF COOKEVILLE, TENNESSEE,))	
)	
Defendant))	JURY TRIAL
)	DEMANDED

VERIFIED COMPLAINT - CLASS ACTION

I. INTRODUCTION

1. This is a class action for damages, declaratory, and injunctive relief brought by the plaintiffs for Defendant's violations of 42 U.S.C. § 1983. This action is brought as a civil rights action because the Defendant acted under color of law in threatening the termination of utility services without providing adequate and timely notice of any hearing procedures available before termination of utility services. The Defendant also failed to provide any meaningful hearing procedures. Furthermore, the method of delivery of the notice of termination of utilities was constitutionally inadequate. Plaintiff Gamble has a separate cause of action for violation of her substantive due process rights and equal protection in that the Defendant terminated

her utilities for over six days because she would not pay for a third party's bill. The class also has state law claims pursuant to the Tennessee Consumer Protection Act and breach of contract for the Defendant's misrepresentation of the class's legal rights as well as the deceptive imposition of a ten dollar charge for delivery of the inadequate notice of delinquency and termination.

II. JURISDICTION

2. Jurisdiction of this Court arises under 42 U.S.C. § 1983 as federal questions are presented herein regarding the violation of a federal statutes as well as rights to which Plaintiffs are entitled under the Fourteenth Amendment to the United States Constitution. Supplemental jurisdiction arises pursuant to 28 U.S.C. § 1367.

III. PARTIES

3. Plaintiff, Linda Gamble is a resident of Cookeville, Tennessee in Putnam County, Tennessee; she is a current customer of the Defendant's utility service.

4. The Plaintiffs, Ruby and Roger Copeland are former residents of Cookeville, Tennessee, and currently reside in the Middle District of Tennessee.

5. The Defendant City of Cookeville Tennessee ("City") is a municipality located in Putnam County, Tennessee engaged in the operation of a public utility service and acts under color of law at all times relevant to this action.

6. The City of Cookeville provides a notice on an orange hang tag whenever a current customer of its utility service is delinquent on any bill owed for utilities. The language in the body of the notice reads as follows:

We have left this notice as a reminder that your utility bill, according to our records has not been paid. The City Employee that left this notice is not authorized to collect payments. You will need to come to the city municipal building to settle your account within three (3) days or your service will be discontinued. **Your account has been charged \$10.00 to cover the cost of the trip to leave this notice.** To avoid further service charges payment should be made on this account within time period specified above. Utility service will be cut off without notification on any returned checks that are to cover this past due amount.

7. The procedures for notice and termination of utility services as practiced by the City of Cookeville as set forth in this Complaint, are part of their regular, authorized practices for all customers for whom the Defendant believes are delinquent on a utility bill. The notice and termination of utilities as set forth in this complaint were not a random nor unauthorized occurrence.

8. The City of Cookeville has no written policy/procedure for having a hearing to dispute delinquency notices for utility bills.

9. The City of Cookeville has never held a hearing regarding a disputed utility bill.

10. The notice also referred to as the orange hang tag does not adequately inform the recipient that the bill can be disputed and the recipient is entitled to a

hearing.

11. The City of Cookeville does not inform customers threatened with discontinuation of services that it allows three business days to pay a bill before have service shut off, frightening customers who receive an orange tag into hurrying to the city municipal building and paying the bill without question.

12. The Defendant arbitrarily chose the term of three days to settle the account before discontinuance of service, rather than “three business days.”

13. Three days, and even three business days, is insufficient time for a notice recipient to have an opportunity for a meaningful hearing in that the recipient may not actually see the orange hang tag on the first day it is placed on a door, the recipient may not be able to schedule a hearing or even a visit to the city municipal building within that time frame, nor is sufficient time for a recipient to seek and obtain legal representation within that time period before the losing electricity and water, which are fundamental necessities of modern life.

14. Hanging the orange hang tag notifying an alleged delinquent account of termination of utility service is an insufficient method for insuring notice of the possible loss of services.

15. The Defendant does not actually incur expenses that even closely approximate \$10.00 for the delivery of the orange hang tag to a customer’s home.

Furthermore, there is no legal nor contractual authority for charging customer a fee for the delivery of the orange hang tag.

IV. FACTUAL ALLEGATIONS PERTAINING TO LINDA GAMBLE

16. During the fall of 2000, Plaintiff Linda Gamble applied for and began receiving utility services from the Defendant's Electric, Water, and Gas Departments for her residence at 13 Garrett Road in Cookeville, Tennessee.

17. Ms. Gamble received her first bill for account number 290-0290-5 which was payable by a due date of November 5, 2000.

18. On October 27, 2000 around noon, while Ms. Gamble was at work, the electricity was terminated at her residence. Ms. Gamble was informed of the termination of electricity over the telephone by her houseguest. There were two children living at 13 Garrett at the time whose ages were 2 years and one and a half months.

19. Completing her shift during the early afternoon of October 27, 2000, Ms. Gamble immediately contacted the City of Cookeville to find out the reason for the electricity termination.

20. An employee of the Defendant told Ms. Gamble that her utilities were being terminated because of an old utility bill for a customer from the address of 2170 Summerfield in Cookeville, Tennessee.

21. Ms. Gamble had resided at 2170 Summerfield but had never contracted for

utility services with the City of Cookeville nor was she liable for any old utility bills. Ms. Gamble told these facts to the employee of the Defendant. The employee had a harsh tone and insisted on telling Ms. Gamble the names of persons in Ms. Gamble's household. When Ms. Gamble raised objections to the cut-off, she was told she would be better off going back to New York.

22. The Defendant said that she failed to respond within three days of being served with notice of a delinquent bill and that there was nothing that could be done. The Defendant stated that an orange hang tag had been placed on her front door by an employee of the Defendant. Ms. Gamble informed the employee that no one at that residence used the front door and therefore no one at the residence ever saw the hang tag (a copy of which is attached hereto as Exhibit A and is incorporated herein by reference).

23. After the phone call, Ms. Gamble retrieved the hang tag from the front door.

24. On Friday evening, Ms. Gamble had supper at McDonald's restaurant and went home and sat in the dark. Ms. Gamble showered at a friend's house although she was highly embarrassed to make such a request of her friends. Although the water was not shut off on Friday, October 27, 2000, without electricity the water was cold in her house at 13 Garrett. Ms. Gamble's houseguest and the young children had to move from the house that evening as the temperatures were very cool that autumn

evening.

25. On Monday, October 30, 2000, the Defendant terminated the water service to Ms. Gamble's residence. As a result, Ms. Gamble could not clean, cook, nor use the toilet in her house. She continued to impose upon her friends for showers and toilet needs to her shame until she could find a way to resolve the matter.

26 On the evening of November 1, 2000, Ms. Gamble had a meeting with an attorney to explain her situation with the Defendant and her lack of utility service.

27. On November 2, 2000, a letter (a copy of which is attached hereto as Exhibit B and which is incorporated herein by reference) was sent to the City of Cookeville requesting a hearing and immediate restoration of utilities. Ms. Gamble's utilities were restored that afternoon.

28. Ms. Gamble has never received a hearing regarding the bill and termination of her utilities as she requested.

29. Ms. Gamble never contracted nor received notice of any obligation to pay a \$10.00 charge to cover the cost of the Defendant's purported attempt to notify her that she owed any delinquent bill.

30. As a result of the acts alleged above, Ms. Gamble suffered damages including, but not limited to, embarrassment, frustration, mental anguish, humiliation, loss of dignity, loss of time in attempting to resolve these issues, and loss of the use of

her home and enjoyment of life as well as suffering the fear being rendered homeless by constructive eviction due to the loss of utility service.

V. FACTUAL ALLEGATIONS PERTAINING TO ROGER AND RUBY COPELAND

31. Over ten years ago, Roger Copeland contracted with the City of Cookeville for utility services for his family's residence at 1431 South Jefferson, #2. 32.

At some point in time Mr. Copeland as the result of economic hardship fell behind on his payment to the Defendant for services received. The Defendant through its agent, AAA Collection and Counseling Service, Inc., obtained a judgment against Roger Copeland and his wife, Ruby Copeland, in the early 1990's.

33. The Copelands moved from Cookeville, Tennessee, but were never able financially to pay the judgment which was based on a bill for an amount just under \$550.00.

34. When the Copelands moved back to Cookeville, Tennessee in February, 2000, Ruby Copeland obtained utilities with the help of a friend, Bill Tharpe, who agreed to act as a guarantor for the utility bill with Mrs. Copeland being a beneficiary of his agreement with the Defendant.

35. On March 21, 2001, a employee of the Defendant hung an orange hang tag (a copy of which is attached as Exhibit C and incorporated herein by reference) on the door of the Copeland's home at 214 East 15th Street in Cookeville, Tennessee.

36. Although the Copeland's actually received the notice on their door on March 21, 2001, they were unable to respond to the notice within the stated three days before service would be discontinued because of time constraints due to work and the care of their children. The Copelands did obtain an appointment with legal counsel, but the appointment would not take place until March 27, 2001. The Copelands were unaware that the notice allowed three business days, but it would not have mattered as they could not obtain legal representation within the unreasonably short time allowed.

37. Because Ms. Copeland could not arrange for legal help before the termination of utilities date set forth on the orange hang tag, the Copelands had no choice but to move from their home at 214 East 15th Street. The Copelands have a child with asthma who requires heat and a fan for health reasons.

38. On March 27, 2001, the Defendant terminated utility services at the Copeland home.

39. On March 27, 2001, Ruby Copeland telephoned the City of Cookeville "Customer Service Department" to dispute the amount of the utility bill and the termination of services.

40. Mrs. Copeland spoke with a customer service representative and Donna Dennis regarding the dispute. She informed the Defendant of her child's health

consideration and that she disputed the amount of the bill. Mrs. Copeland requested a hearing, and this request was denied. Mrs. Copeland was told she would have to pay a substantial portion of the \$1,335.50 bill that the Defendant says is now owing before she would have utilities restored in addition to a \$20.00 re-connect fee.

41. Mrs. Copeland asked to speak with someone with authority to consider her request for utility services to be restored, but Ms. Dennis refused Mrs. Copeland the opportunity to speak with someone outside of the collection department. The Copelands never received a meaningful notice nor a meaningful hearing within a reasonable time period.

42. As a result of the acts alleged above, the Copelands suffered damages including, but not limited to, embarrassment, frustration, mental anguish, humiliation, loss of dignity, loss of time in attempting to resolve these issues, and loss of the use of their home and enjoyment of life as well as suffering the fear being rendered homeless in Cookeville by actual eviction due to the loss of utility service. Furthermore, the Copelands are *de facto* banned from living within Cookeville city limits until they pay for utility service incurred more than ten years ago which is now \$1,335.50.

VI. CLASS ALLEGATIONS

43. This action is brought as a class action. Plaintiffs tentatively define the

class as all persons who, during the one year prior to the filing of this complaint, were given notices similar to Exhibit A to this Complaint. Plaintiff may subsequently refine the class definition in light of discovery.

44. The class is so numerous that joinder of all members is impractical. On information and belief, letters similar to Exhibit A have been sent to hundreds of customers of the Defendant.

45. There are questions of law and fact common to the class, which predominate over any questions affecting only individual class members. The principal question is whether defendant's conduct in failing to provide notice of termination of utility services that is constitutionally adequate pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution and whether the charge of \$10.00 for placement of the orange hang tag on the class members' doors is an unfair and deceptive charge in violation of the Tennessee Consumer Protection Act.

46. There are no individual questions, other than whether a class member actually received one of the offending notices, to the determination of the class. The members of the class can be determined by ministerial inspection of defendant's records.

47. Named Plaintiffs will fairly and adequately protect the interests of the class.

They are committed to vigorously litigating this matter. They are greatly annoyed at being the victim of defendant's illegal practices and wish to see that the wrong is remedied. To that end, they has retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither plaintiff nor their counsel have any interests which might cause them not to vigorously pursue this claim.

48. Plaintiff's claim is typical of the claims of the class, which all arise from the same operative facts and are based on the same legal theories.

49. A class action is a superior method for the fair and efficient adjudication of this controversy. Most of the consumers who receive Exhibit A undoubtedly believe that they have no opportunity to object to the alleged delinquent bill before the discontinuance of services, and that the Defendant is legally authorized to charge a \$10.00 late charge. The interest of class members in individually controlling the prosecution of separate claims against defendant is small because the maximum damages in an individual action are \$5,000. Management of this class claim is likely to present significantly fewer difficulties than those presented in many class claims, *e.g.*, for securities fraud.

50. This class action is maintainable pursuant to Rule 23 (b) (2) of the Federal Rules of Civil Procedure in that the Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief or

corresponding declaratory relief with respect to the class as a whole.

VII. COUNT I – DEFENDANT’S VIOLATION OF PLAINTIFFS’ RIGHTS TO PROCEDURAL DUE PROCESS AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION PURSUANT TO 42 U.S.C. § 1983

51. Electric utility and water service are necessities of modern life.

52. The City is obligated to provide services to all its customers equally without discrimination and may not arbitrarily terminate utility services without good and sufficient cause.

53. The City violated plaintiffs’ right to due process by its failure to give plaintiffs a reasonable period of time for a meaningful opportunity to be heard.

54. The City had no valid governmental interest in threatening the termination of utility services without providing an adequate notice and opportunity to be heard regarding alleged delinquent utility accounts.

55. The aforementioned actions violate the procedural due process and equal protection of law encompassed within the Fourteenth Amendment of the United States Constitution.

VIII. COUNT II – DEFENDANT’S VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT

56. The foregoing acts and omissions, in particular the arbitrary charging of \$10.00 without statutory or contractual basis for the delivery of the orange hang tag

and the charging of an arbitrary amount with no basis in fact supporting said amount constitutes an unfair or deceptive trade practice made unlawful pursuant to Tenn. Code Ann. § 47-18-101 et seq.

57. Plaintiffs are entitled to recover their actual damages, actual damages trebled, plus reasonable attorney fees, and litigation costs.

IX. COUNT III – LINDA GAMBLE’S CLAIM FOR THE DEFENDANT’S VIOLATION OF HER SUBSTANTIVE DUE PROCESS RIGHTS PURSUANT TO 42 U.S.C. § 1983

58. The irrational, unreasonable, and irrelevant basis for terminating utility services based on another party’s unpaid bill is violative of the equal protection of the law and due process of the law under the Fourteenth Amendment of the United States Constitution.

WHEREFORE, plaintiffs respectfully prays that the following relief be granted:

- (a) judgment for actual damages in the amount to be proven at trial;
- (b) declaratory relief that the practice of allowing only three days to resolve utility bill disputes be declared unconstitutional in that said time period prevents the opportunity for a meaningful hearing;
- (c) declaratory relief that the practice of delivering notice of termination of utility services by hanging a notice on the customer’s door rather than sending notice by first class mail be declared unconstitutional

(d) issue a temporary restraining order be issued by the Court as soon as possible ordering the Defendant to cease termination of utility services without providing at least seven days notice before termination, to notify the notice recipient of hearing procedures to dispute the bill and termination of the utility service, to actually provide reasonable hearing procedures for those notice recipients who request an opportunity to be heard, and to cease the practice of charging an arbitrary amount for delivery of any notice;

(e) issue a preliminary and permanent injunction ordering the Defendant to cease termination of utility services without providing at least seven days notice before termination, to notify the notice recipient of hearing procedures to dispute the bill and termination of the utility service, to actually provide reasonable hearing procedures for those notice recipients who request an opportunity to be heard, and to cease the practice of charging an arbitrary amount for delivery of any notice;

(f) award damages and treble damages pursuant to the Tennessee Consumer Protection Act;

(g) award litigation expenses and costs and reasonable attorney's fees as allowed for the prevailing party in an action brought under 42 U.S.C. § 1983 and the Tennessee Consumer Protection Act;

(h) certify this case as a class action for Counts I and II set forth above;

(i) For such other and further relief as may be just and proper including a trial by a jury.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS

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VERIFICATION BY PLAINTIFFS

We, the named Plaintiffs in the foregoing Complaint, Linda Gamble, Ruby Copeland, and Roger Copeland hereby certify that the facts contained in the foregoing Complaint are true and correct to the best of our knowledge, information, and belief. We further state under oath and affidavit that we have personal knowledge of the factual allegations set forth in the section of this Verified Complaint that relates to the facts relative to our personal facts in this case and that we would testify as to their truth if called as a witness at trial.

LINDA GAMBLE

RUBY COPELAND

ROGER COPELAND

STATE OF TENNESSEE

COUNTY OF PUTNAM

I, a Notary Public, hereby state that the foregoing verification was sworn to and subscribed under oath before me, by Linda Gamble, Ruby Copeland, Roger Copeland, this _____ day of April, 2001.

Notary Public

My Commission Expires: