

SUMMONS IN A CIVIL ACTION COURT OF COMMON PLEAS, CUYAHOGA COUNTY JUSTICE CENTER
CLEVELAND, OHIO 44113

CASE NO.
CV15842397

D1 FX

SUMMONS NO.
25736118

Rule 4 (B) Ohio

Rules of Civil
Procedure

RECEIVED
MAR 31 2015
SUMMONS
LEGAL DEPARTMENT
OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

MELISSA A. ULLMO
VS
OHIO TURNPIKE AND INFRASTRUCTURE
COMMISSION

PLAINTIFF

DEFENDANT

OHIO TURNPIKE AND INFRASTRUCTURE
COMMISSION
RICK HODGES, EXECUTIVE DIRECTOR
682 PROSPECT STREET
BEREA OH 44017

You have been named defendant in a complaint
(copy attached hereto) filed in Cuyahoga County
Court of Common Pleas, Cuyahoga County Justice
Center, Cleveland, Ohio 44113, by the plaintiff
named herein.

You are hereby summoned and required to
answer the complaint within 28 days after service
of this summons upon you, exclusive of the day of
service.

Said answer is required to be served on Plaintiff's
Attorney (Address denoted by arrow at left.)

Your answer must also be filed with the court
within 3 days after service of said answer on
plaintiff's attorney.

If you fail to do so, judgment by default will be
rendered against you for the relief demanded in the
complaint.

Said answer is required to be served on:



Plaintiff's Attorney

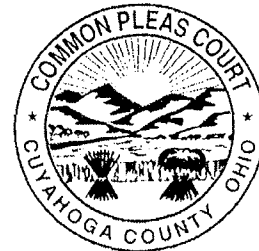
JAMES A DEROCHÉ
1600 MIDLAND BUILDING

101 WEST PROSPECT AVENUE
CLEVELAND, OH 44115-0000

Case has been assigned to Judge:

MICHAEL E JACKSON
Do not contact judge. Judge's name is given for
attorney's reference only.

NAILAH K. BYRD
Clerk of the Court of Common Pleas



DATE
Mar 26, 2015

By

Deputy

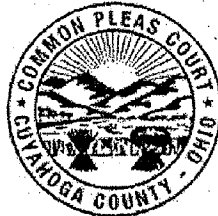
COMPLAINT FILED 03/20/2015



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MAR 31 2015

LEGAL DEPARTMENT
OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed:
March 20, 2015 14:27

By: JAMES A. DEROCHE 0055613

Confirmation Nbr. 391480

MELISSA A. ULLMO

CV 15 842397

VRS.

Judge:

OHIO TURNPIKE AND INFRASTRUCTURE
COMMISSION

MICHAEL E. JACKSON

Pages Filed: 15

RECEIVED
MAR 31 2015
LEGAL DEPARTMENT
OHIO TURNPIKE AND INFRASTRUCTURE COMMISSION

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

Melissa A. Ullmo
c/o S.E. Bennett Co.
27629 Chagrin Blvd, No. 204
Cleveland, Ohio 44122

Plaintiff,

-vs-

**Ohio Turnpike and
Infrastructure Commission**
C/O Rick Hodges, Exec. Director
682 Prospect Street
Berea, Ohio 44017-2799

Defendant.

CIVIL ACTION NO.

JUDGE

CLASS ACTION COMPLAINT

Plaintiff Melissa A. Ullmo, for her Class Action Complaint against Defendant Ohio Turnpike and Infrastructure Commission ("Defendant"), states as follows:

I. Introduction.

1. Ohio Turnpike tolls have always been charged to fund Turnpike operations, and imposing tolls for that specific purpose was a fair bargain for drivers who enjoyed the use of Turnpike facilities. Defendant violated that long-standing bargain as of January 1, 2014, by diverting Turnpike toll revenue for purposes entirely unrelated to Turnpike operations, an unlawful and politically expedient gimmick designed to avoid increasing taxes of general application. This lawsuit seeks to halt that unlawful practice. And since Turnpike drivers have paid millions of dollars in excess charges due to Ohio's unlawful scheme, this lawsuit also seeks return of those overcharges.

2. Plaintiff Melissa A. Ullmo, seeks a judgment declaring that toll increases on the Ohio Turnpike, effective January 1, 2014 ("Unlawful Tolls"), violate the Commerce Clause of the United States Constitution, U.S. Const. Art. I, §8, the Right to

Travel under the United States Constitution, the Right to Travel under the Ohio Constitution, and the Equal Protection guarantee under Section 2, Article I of the Ohio Constitution and the Fourteenth Amendment of the United States Constitution.

3. On behalf of herself and the proposed plaintiff class, Plaintiff seeks judgment against Defendant in the full amount of the Unlawful Tolls collected by Defendant since January 1, 2014, to the date of judgment.

4. Since 1956 the Ohio Turnpike has served as an important resource for interstate and intrastate transportation through the Northeast Ohio corridor, almost entirely funded by tolls paid by Turnpike users.

5. The maintenance, operation, and security of the Ohio Turnpike are funded almost exclusively through tolls collected from Turnpike users.

6. Drivers who do not use the Turnpike do not pay Turnpike tolls and do not pay for its maintenance, operation, and security.

7. Turnpike users also pay taxes, for example taxes on gasoline, used to pay for other roads and interstates, but not the Turnpike.

8. In addition to paying gasoline taxes, as of January 1, 2014, Turnpike users are subject to toll increases on the Turnpike, the proceeds of which are being diverted to fund unrelated infrastructure projects that are not part of the Turnpike system (the "Unlawful Infrastructure Projects").

9. None of the Unlawful Infrastructure Projects are functionally related to the Turnpike.

10. For example, the increased tolls will be used to provide \$39 million in funding for the Opportunity Corridor in Cleveland. The Opportunity Corridor will be a

landscaped urban boulevard, with a bike-pedestrian path and pedestrian bridges, none of which bear any relationship to the Turnpike system.

11. Another \$12.9 million in Turnpike tolls will be used for improvements on U.S. 250 between downtown Sandusky and Bogart Road. This entire project is located more than 5 miles from the Turnpike and the maintenance of U.S. 250 is the responsibility of the Ohio Department of Transportation or local government, not the Ohio Turnpike and Infrastructure Commission.

12. The Ohio Turnpike and Infrastructure Commission agreed to use Turnpike tolls to fund \$930 million in such Unlawful Infrastructure Projects, which are not part of the Turnpike system.

13. Although Defendant purports to base infrastructure funding decisions on a supposed “nexus” between the proposed project and the Ohio Turnpike, in reality the Unlawful Infrastructure Projects bear no functional relationship to the Turnpike and Defendant’s lip service to the contrary is nothing more than a farce designed to avoid the claims asserted herein.

14. Because the increased Turnpike tolls, which are being used to fund non-Turnpike projects, are (1) not based on a fair approximation of use or privilege for use of the facilities for whose benefit they are imposed; and (2) excessive in comparison with the government benefit conferred, they violate the Commerce Clause and are unlawful.

II. Parties.

15. Plaintiff Melissa A. Ullmo is an individual and resident of Cuyahoga County, Ohio, who regularly travels on the Ohio Turnpike and pays the tolls by means of

the E-ZPass system, for which a record of payment is maintained by or on behalf of Defendant.

16. Plaintiff regularly pays Turnpike tolls, and has paid increased tolls since January 1, 2014.

17. Defendant, Ohio Turnpike and Infrastructure Commission, is responsible for the maintenance of the Turnpike.

18. Defendant implemented a Turnpike toll increase on January 1, 2014 for the purpose of paying for non-Turnpike projects.

19. The January 1, 2014 toll increase is the first of ten toll increases that the Defendant will implement to pay for non-Turnpike projects.

III. Jurisdiction & Venue.

20. This Court has jurisdiction over this matter as the claims asserted herein fall within the general jurisdiction of this Court. Venue is proper here because the unlawful fees were collected in whole or in part within the territorial jurisdiction of this Court, and Defendant is headquartered within the territorial jurisdiction of this Court.

IV. Facts.

21. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

22. Since January 1, 2014, Plaintiff has paid increased tolls on the Turnpike.

23. The toll increase resulted from Defendant's diversion of over \$900 million in funding for non-Turnpike endeavors.

24. The toll increase does not reflect a fair approximation of the use of the facilities for whose benefit they are imposed.

25. The toll increase was imposed for the benefit of \$930 million in non-Turnpike expenditures, which will not benefit Plaintiff or other Turnpike users as Turnpike users.

26. The funds generated by the increased tolls will not be used for Turnpike projects. Instead, they will be used for improvements on roads that are the responsibility of the Ohio Department of Transportation and local governments, or other unrelated infrastructure projects.

27. There is no correlation between the increased tolls paid by the Plaintiff and her use of the non-Turnpike projects being funded with these additional revenues.

28. With respect to all of the infrastructure projects that the increased tolls will be funding, Turnpike users will receive no greater benefit from those projects than other motorists in Ohio.

29. The Turnpike and the non-Turnpike projects are not part of an integrated transportation system and there is no benefit confirmed on Turnpike users, as Turnpike users, by the unrelated non-Turnpike projects funded with the increased tolls.

30. The increased tolls are also excessive relative to the costs incurred by the Defendant in maintaining and operating the Turnpike.

31. By increasing the tolls paid by Plaintiff and other Turnpike motorists, the Defendant seeks to raise at least \$930 million that will fund non-Turnpike endeavors.

32. Because the \$930 million in additional revenue is intended for uses unrelated to the Turnpike, it is clear that the costs to the Defendant of operating the Turnpike, and the benefit to Plaintiff of using the Turnpike, is far less than the total amount of tolls collected by the Defendant from Plaintiff.

V. Class Allegations.

33. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

34. Plaintiff brings this action on behalf of herself and all other Turnpike users who have paid tolls since January 1, 2014, on the Ohio Turnpike using the E-ZPass system and/or a credit card or debit card associated with a major credit card, excluding E-ZPass users whose trip was less than 30 miles (the "Class").

35. Defendant maintains a computerized record of all toll payments and charges paid by the individual Class members, and so the Class members and the amount owed to each are easily identified by reference to those computerized records.

36. This class numbers are in the thousands and is so numerous that joinder of all members is impracticable. It is also impracticable to bring all such persons before this Court.

37. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the class as a whole.

38. Defendant has engaged in the same wrongful conduct regarding all of the other members of the class asserted in this suit.

39. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses and injuries of the entire class, and the claims, defenses and injuries of each class member are typical of those of the entire class.

40. Plaintiff will fully and adequately protect and represent the entire class, and all of its putative members.

41. The identity of members of this class cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendant and others, and through the class notice process.

42. The prosecution of separate actions by each member of this class would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the class that would establish incompatible standards of conduct for Defendant.

43. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class, which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

VI. Claims for Relief.

FIRST CLAIM FOR RELIEF (Declaratory Relief)

44. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

45. An actual controversy exists between Plaintiff and Defendant, which is within the jurisdiction of this Court and is justiciable in character.

46. The Defendant has violated the Commerce Clause of the United States Constitution by (1) increasing tolls for Plaintiff, for the purpose of paying for the Unlawful Infrastructure Projects, in an amount that is not a fair approximation of Plaintiff's use of Turnpike, and (2) charging Plaintiff tolls that are excessive in

comparison to the benefit conferred on the Plaintiff by use of the Turnpike and in relation to the costs incurred by the Defendant in operating the Turnpike.

47. Plaintiff seeks a declaratory judgment from this court finding that the increased tolls imposed by Defendant in order to pay for the Unlawful Infrastructure Projects violate the Commerce Clause of the United States Constitution.

48. There exists a real and justiciable controversy between the parties that will continue absent a declaratory ruling from this Court, and this Court's ruling will resolve that controversy.

SECOND CLAIM FOR RELIEF
(Violation of Commerce Clause of United States Constitution)

49. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

50. The Commerce Clause of the United States Constitution, U.S. Const., Art. I, §8, clause 3, provides in relevant part that "The Congress shall have Power ... To regulate Commerce among the several States...."

51. In order to comply with the Commerce Clause, a tax or fee imposed for the use of interstate travel facilities must, among other requirements (a) not discriminate against interstate commerce, and (b) be fairly related to the services provided in exchange for the tax or fee.

52. The Unlawful Tolls, including the manner in which the Unlawful Tolls are applied by the Defendant, discriminates against interstate commerce.

53. The busiest toll booth locations on the turnpike are the east gate and the west gate, indicating that many out-of-state travelers use the turnpike, and most of those travelers receive no benefit from the Unlawful Infrastructure Projects.

54. The amounts of and collections under the Unlawful Tolls are not fairly related to the services provided to Plaintiff or the class members by Defendant.

55. By reason thereof, the Unlawful Tolls imposed and/or sought to be imposed by the Defendant are excessive and otherwise violate the Commerce Clause of United State Constitution.

56. Because the Unlawful Tolls violate the Commerce Clause of United State Constitution they are an unlawful exaction and Defendant must refund those monies to Plaintiff and the class members.

57. By reason of its violation of the Commerce Clause, Defendant's violation of Plaintiff's rights is actionable under 42 U.S.C. § 1983.

58. Plaintiff seeks restitution of all Unlawful Tolls collected by Defendant prior to and during that time that this lawsuit is pending.

**THIRD CLAIM FOR RELIEF
(Unjust Enrichment)**

59. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

60. Because the toll increase effective January 1, 2014 violates the Commerce Clause, the Defendant's collection and retention of those excessive tolls was and is wrongful.

61. Plaintiff has conferred a benefit on the Defendant in the form of excess toll payments, the Defendant has knowledge of that benefit, the Defendant has retained that benefit, and it is unjust for the Defendant to retain that benefit because it collected that benefit in violation of the Commerce Clause and state law.

62. Plaintiff and her fellow class members are entitled to restitution from the Defendant, and this Court is empowered in equity to order repayment of said amounts.

FOURTH CLAIM FOR RELIEF
(Violation of Right to Travel under the United States Constitution)

63. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

64. The right to travel is a fundamental right under the United States Constitution's Commerce Clause, U.S. Const., Art. I, § 8, clause 3, and/or under the Privileges and Immunities Clause, U.S. Const., Amend. XIV, § 1.

65. A tax or similar charge imposed on citizens engaged in interstate travel violates their right to travel if it is not based upon a fair approximation of use, or is excessive in relation to the cost of the benefits conferred.

66. The Unlawful Tolls, including the manner in which the Unlawful Tolls are applied by the Defendant, violate the right to interstate commerce.

67. The amounts of and collections under the Unlawful Tolls are not based upon a fair approximation of the use of Turnpike facilities by Plaintiff or the class members.

68. The Unlawful Tolls are excessive in relation to the cost of the benefits Defendant confers on Plaintiff and the class members.

69. The Unlawful Tolls imposed and/or sought to be imposed by the Defendant are excessive and otherwise violate the right to travel, which is a fundamental right as well as a privilege and immunity of national citizenship under the United States Constitution.

70. Plaintiff and the class members have been damaged by Defendant's violation of their fundamental right to travel, and they are entitled to recover from Defendant the full amount of the Unlawful Tolls.

FIFTH CLAIM FOR RELIEF
(Violation of Right to Travel Under the Ohio Constitution)

71. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

72. The right to intrastate travel is a fundamental right under the Ohio Constitution, the deprivation of which is permitted only if narrowly tailored to further a compelling state interest.

73. The Unlawful Tolls, including the manner in which the Unlawful Tolls are applied by the Defendant, imposes a burden on drivers using the Ohio Turnpike for intrastate travel, including Plaintiff and the class members, discriminating against them by forcing them to pay for infrastructure projects that bear no relation to the Turnpike and that benefit the general public and not Turnpike users in particular.

74. The amounts of and collections under the Unlawful Tolls are not based upon a fair approximation of the use of Turnpike facilities by Plaintiff or the class members, unfairly infringing their fundamental right to intrastate travel.

75. The Unlawful Tolls are excessive in relation to the cost of the benefits Defendant confers on Plaintiff and the class members, unfairly infringing their fundamental right to intrastate travel.

76. The Unlawful Tolls imposed and/or sought to be imposed by the Defendant are excessive and otherwise violate the right to travel, which is a fundamental right.

77. Plaintiff and the class members have been damaged by Defendant's infringement of their fundamental right to intrastate travel, and they are entitled to recover from Defendant the full amount of the Unlawful Tolls.

SIXTH CLAIM FOR RELIEF
(Unlawful Tax or User Fee Under Ohio Law)

78. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

79. The Unlawful Tolls are not imposed in furtherance of a regulatory measure and are not designed to offset a liability owed by the Turnpike users under statute.

80. The funds received by Defendant through collection of the Unlawful Tolls are used for purposes unrelated to the operation of the Ohio Turnpike but rather used for general public purposes.

81. The revenue Defendant generates from the Unlawful Tolls substantially exceeds both (a) the value of the facilities and services Defendant provided to the Plaintiff and the class members, and (b) Defendant's legitimate operating costs.

82. Accordingly, the Unlawful Tolls constitute, in whole or in part, a tax rather than a user fee.

83. Under Ohio law, the Defendant is not authorized to levy taxes. Accordingly, the Unlawful Tolls are illegal to the extent that they constitute a tax.

84. Alternatively, if or to the extent that the Unlawful Tolls were deemed to be a user fee rather than a tax, then it would also be illegal, in whole or in part, because the revenue Defendant generates from the Unlawful Tolls substantially exceeds both (a) the

value of the facilities and services Defendant provides to Plaintiff and the class members, and (b) Defendant's legitimate operating costs.

**SEVENTH CLAIM FOR RELIEF
(Violation of Equal Protection)**

85. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

86. The Unlawful Tolls constitute a tax used to generate revenue for general public purposes.

87. The Unlawful Tolls are only imposed on Turnpike users and are not imposed on others who benefit from the funds generated by the Unlawful Tolls.

88. The Unlawful Tolls single out a discrete group, users of the Ohio Turnpike as opposed to all other drivers, to bear a wholly disproportionate burden of providing funds to make infrastructure improvements enjoyed by the general public, without a rational basis for the classification.

89. Plaintiff and all members of the plaintiff class are members of the discrete group singled out to suffer the burden of paying for infrastructure improvements that benefit members of the public generally.

90. Because the Unlawful Tolls constitute a tax that is imposed on a discrete group instead of the general public, the Unlawful Tolls violate Plaintiff's right to Equal Protection guaranteed under Section 2, Article I of the Ohio Constitution and the Fourteenth Amendment of the United States Constitution.

WHEREFORE, Plaintiff demands, on behalf of herself and the plaintiff class members, judgment against Defendant granting the following relief:

1) Certifying this action as a class action pursuant to Rule 23(b)(2) & (b)(3) of the Ohio Rules of Civil Procedure;

2) Entering a declaratory judgment finding that the Ohio Turnpike toll increases effective January 1, 2014 and imposed thereafter violate the Commerce Clause of the United States Constitution, Right to Travel under the United States Constitution, Right to Travel under the Ohio Constitution, and the Equal Protection guarantee under Section 2, Article I of the Ohio Constitution and the Fourteenth Amendment of the United States Constitution;

3) Entering an Order preliminarily and/or permanently enjoining Defendant from collecting the unlawful tolls complained of herein;

4) Entering judgment in favor of Plaintiff and the plaintiff class, requiring Defendant to repay to Plaintiff and the class members all excessive tolls collected by Defendant since January 1, 2014;

5) Award attorneys' fees to Plaintiff and the plaintiff class pursuant to 42 U.S.C. § 1988; and

6) Granting such other and further relief in favor of Plaintiff and the plaintiff class as this Court finds just and proper.

/s/ James A. DeRoche

James A. DeRoche (#0055613)

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Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby demands a trial by jury comprised of the maximum number of jurors
allowed by law.

/s James A. DeRoche
James A. DeRoche (#0055613)
Garson Johnson, LLC

Counsel for Plaintiff