

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RAYMOND SAGER, ANTOINE)
RANDLOPH, GARY WEST and)
WILLIAM DUERR, individually)
and on behalf of a class of) Civil Action No.: _____
similarly-situated)
individuals,)
)
Plaintiffs,)
)
v.)
)
CITY OF PITTSBURGH,)
)
Defendant.)
_____)

VERIFIED CLASS ACTION COMPLAINT

A. INTRODUCTION

1. Plaintiffs in this class action lawsuit are homeless persons living in the City of Pittsburgh ("City"). Plaintiffs bring this suit on behalf of themselves and similarly-situated persons for declaratory and injunctive relief (preliminary and permanent thereafter) to enjoin the City's pattern, practice and/or policy of conducting "sweeps" of homeless people's personal property, whereby City employees unlawfully seize and destroy personal property, without adequate notice or other requisite procedural due process and without just compensation, in violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Plaintiffs also seek damages, costs and attorneys' fees.

B. JURISDICTION

2. This action seeks to vindicate rights protected by the Fourth and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. §1983. The Court has jurisdiction over this civil rights action pursuant to 28 U.S.C. §1331(a) and §1343(a)(3) and (4). This Court has jurisdiction pursuant to 28 U.S.C. §§2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

C. PARTIES

3. Plaintiff Raymond Sager is an unsheltered homeless person living in the City of Pittsburgh, Allegheny County, Pennsylvania. See Declaration of Raymond Sager, attached hereto as Exhibit 1.

4. Plaintiff Antoine Randolph is an unsheltered homeless person living in the City of Pittsburgh, Allegheny County, Pennsylvania. See Declaration of Antoine Randolph, attached hereto as Exhibit 2.

5. Plaintiff Gary West is an unsheltered homeless person living in the City of Pittsburgh, Allegheny County, Pennsylvania. See Declaration of Gary West, attached hereto as Exhibit 3.

6. Plaintiff William Duerr is an unsheltered homeless person living in the City of Pittsburgh, Allegheny County, Pennsylvania. See Declaration of Raymond Duerr, attached hereto as Exhibit 4.

7. Defendant, City of Pittsburgh, is a municipal government agency established and operating under the laws of Pennsylvania. At all relevant times hereinafter mentioned, elected and appointed officials identified in this Verified Class Action Complaint were, and are, operating under color of state law.

D. CLASS ALLEGATIONS

8. Pursuant to Fed. R. Civ. P. 23(a), 23(b)(1) and 23(b)(2), the named plaintiffs bring this class action on their own behalf and on behalf of all other persons similarly situated. The plaintiff class consists of all homeless persons living in the City of Pittsburgh who have been, are now, or will in the future be, temporarily living on public property.

9. The defined class is so numerous that joinder of all plaintiffs is impracticable. Upon information and belief, the number of class members exceeds one hundred (100). Additionally, this is a transient and changing population, making it particularly difficult to find and identify all class members.

10. There are questions of fact and law common to the class, and those questions predominate over all other questions affecting individual class members. All plaintiff class members have the same federal rights (a) to be free from unreasonable property seizures under the Fourth Amendment to the United States Constitution; (b) to receive adequate notice and other procedural

due process protections whenever the City deprives them of their personal property, as guaranteed by the Fourteenth Amendment to the United States Constitution; and (c) the right to be compensated when the City takes their personal property for public use, as guaranteed by the Fifth Amendment to the United States Constitution.

11. Common questions of fact and law include the following:

- (a) Whether the City has a policy, practice or custom of seizing and destroying homeless people's property;
- (b) Whether the City has a policy, practice or custom of seizing and destroying homeless people's property without adequate procedural due process protections;
- (c) Whether the City has a policy, practice or custom of taking homeless people's property for public use without just compensation;
- (d) Whether the City's policy, practice or custom of seizing and destroying homeless people's property is an unreasonable, warrantless property seizure under the Fourth Amendment to the U. S. Constitution;
- (e) Whether the procedural due process protections provided under the City's policy, practice or custom of seizing and destroying homeless people's property satisfies Fourteenth Amendment due process requirements; and
- (f) whether the City's policy, practice or custom of taking homeless people's property for public use without just compensation violates the Takings Clause of the Fifth Amendment to the U. S. Constitution.

12. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs' claims arise from the same conduct -- the City's seizure and destruction of their personal property without warrant, procedural due process or just compensation - that give rise to the absentee members' claims.

13. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the interests of the class; the plaintiffs and class members seek to assure that the City does not illegally seize and destroy homeless people's personal property. Therefore, the relief that the named plaintiffs seek will benefit all members of the class.

14. Plaintiffs' attorneys are experienced career public interest lawyers with extensive experience litigating federal civil rights class action lawsuits.

15. By routinely seizing and destroying plaintiffs' and other homeless persons' personal property without warrant, procedural due process and just compensation, defendants have acted on grounds generally applicable to members of the class. As a result, declaratory and injunctive relief with respect to the entire class is appropriate. The plaintiffs' rights to security in the personal papers and effects, to procedural due process attendant to any governmental deprivation of property, and to just compensation taken for public use can best be addressed through one action on their behalf.

16. A class action is superior to other methods for the fair and efficient adjudication of this controversy and this litigation presents no unusual manageability problems.

E. FACTS

17. Plaintiffs Sager, Randolph, West and Duerr are unsheltered homeless people. See Exhibits 1-4.

18. Lacking a place to live, they sleep in various public places around the City. They do not generally sleep in missions or shelters because they find them to be distasteful and/or unaccommodating to their needs and interests.

19. Additionally, there are insufficient beds in shelters and missions to house all of the people needing space. By way of example, the Allegheny County Department of Human Services, Bureau of Hunger and Housing, conducted a survey in March 2003 of available shelter and mission beds in the County. The survey identified 337 available beds of adults and children. See Allegheny County Housing Continuum of Care Housing Units and Supportive Services Classification As of March 2003, attached as Exhibit 5. The same County agency conducted a point-in-time census on January 27, 2003, and found 467 people in the shelters. See Allegheny County Coldest Night Survey, January 27, 2003, attached as Exhibit 6.

20. Plaintiffs establish little camps for themselves in out-

of-the-way public places.

21. In essence, this becomes their temporary home.

22. Plaintiffs generally have with them all of their worldly possessions.

23. These possessions include life's necessities, such as blankets and/or a sleeping bag to sleep on and stay warm, clothing, medications and food.

24. They also often possess certain other valuable items, such as electronic appliances, typically radios, tape players and clocks, and jewelry.

25. Finally, plaintiffs typically also have with them valuable personal effects, such as photographs, papers, identification, jewelry and books.

26. These relatively few, and meager, possessions have particular value to the plaintiffs simply because it is all they have.

27. In some cases, loss of these possessions could imperil the plaintiffs' health and safety. For example, clothing, blankets and sleeping bags are essential for warmth on cold days and nights. Food is scarce and what may not appear edible to most people in fact provides life-sustaining nutrition to many homeless people. The loss of medications, even for short periods of time, could threaten plaintiffs' well being and very lives. And personal papers and effects are often unique and

irreplaceable.

28. During the day plaintiffs often must leave their possessions in order to apply for or collect public benefits, to search for employment, or for other reasons.

29. They leave their possessions in their temporary homes, generally consolidated into a small space and organized in an orderly fashion.

30. They often ask other homeless residents in the area to keep an eye on their possessions while they attend to business and personal matters.

31. In June 2001, City officials directed that the Pennsylvania Department of Transportation ("PennDOT") carry out a sweep of homeless people's property located on PennDOT-owned land within City limits. See, Pittsburgh Post-Gazette, PennDOT Ejects Homeless From Campsite Under Ramp, June 7, 2001, attached as Exhibit 7.

32. The City gave no pre-deprivation notice that the sweep was about to occur.

33. The sweep occurred during business hours.

34. Many of the homeless people were away from their sites and, therefore, not personally attending to their property.

35. At the City's request, PennDOT employees seized the property.

36. Neither City officials nor PennDOT employees had a

warrant or probable cause to seize plaintiffs' property.

37. No information was left describing how the property could be retrieved and re-claimed.

38. Upon information and belief, the property was destroyed.

39. City officials did not fairly compensate, or make any compensation available to, plaintiffs and class members for the seized property.

40. PennDOT's actions, taken at the City's behest, deprived some class members of valuable property in violation of their Fourth, Fifth and Fourteenth Amendment rights.

41. In November 2002, workers from the City's Department of Public Works, accompanied by City police officers, conducted another "sweep" of homeless peoples' personal property.

42. City employees summarily seized and destroyed personal property that had been left unattended at various homeless camp sites throughout the City. See Pittsburgh Post-Gazette, Homeless Evicted From Encampments, Nov. 22, 2002, a copy of which is attached as Exhibit 8, and Pittsburgh Post-Gazette, Problem of Homelessness Has Many Facets but Very Few Solutions, December 15, 2002, attached as Exhibit 9.

43. Upon information and belief, the sweeps described in the foregoing paragraphs were ordered by Mayor Tom Murphy and/or by other final City policymakers, such as the directors of the Public Works or Public Safety Departments.

44. City officials did not give plaintiffs either written or verbal notice that they would be seizing and destroying their personal property.

45. City officials and employees did not have a warrant or probable cause to seize plaintiffs' property.

46. City officials and employees did not fairly compensate plaintiffs for the seized property.

47. The City's actions in November 2002 deprived several class members of valuable property in violation of their Fourth, Fifth and Fourteenth Amendment rights.

48. Upon information and belief, the City has conducted other unannounced property sweeps of homeless encampments, without any due process of law, where they have seized and destroyed the property without providing fair compensation.

49. Upon information and belief, the City does not have a written policy or practice to provide effective and adequate prior notice to homeless people about sweeps.

50. Upon information and belief, the City does not have a policy to inventory and safeguard seized property, but simply discards and destroys it.

51. Upon information and belief, the City does not have a policy to safeguard seized property and to make it available for return within a reasonable time to the rightful owner.

52. Upon information and belief, the City does not have a

policy to compensate homeless people for the fair market value of seized and destroyed property.

53. On Thursday, May 1, 2003, Lisa Moses, a spokesperson for Mayor Tom Murphy called James "Moon" Johnson. She advised him that Robert Kennedy, Director of Operations, City of Pittsburgh, had ordered a property sweep of Point State Park homeless encampments during the week of May 5. A copy of the letter subsequently faxed by Ms. Moses to Mr. Johnson is attached as Exhibit 10. The Exhibit includes a cover sheet, Ex. 10a; May 1, 2003, letter from Robert A. Kennedy to Karl C. Smith, Ex. 10b; an April 11, 2003, letter from Karl C. Smith to Mayor Tom Murphy, Ex. 10c; and an April 11, 2003, letter from Karl C. Smith to Chief of Police, Ex. 10d. See Verification of James "Moon" Johnson.

54. Robert Kennedy is a final policymaker for the City of Pittsburgh.

55. Mr. Johnson is a the Special Projects Coordinator for Community Human Services, a Pittsburgh-based, private, non-profit social service agency that provides, *inter alia*, assistance to the homeless.

56. Ms. Moses asked Mr. Johnson to notify the homeless about the sweep.

57. Mr. Johnson is not positioned to provide meaningful and adequate notice to all affected individuals.

58. The City has not provided any notice directly to plaintiffs, even though it would be practicable and relatively easy to do so.

59. Upon information and belief, the City's planned sweep will be carried out in the same fashion as previous ones, whereby plaintiffs' property will be destroyed.

60. Unless this Court grants the requested temporary restraining order and/or preliminary injunction to enjoin this week's anticipated property sweeps, plaintiffs will be irreparably harmed.

61. Injunctive relief is necessary as plaintiffs are without an adequate remedy at law.

E. CAUSES OF ACTION

62. Defendant's pattern, practice and/or policy of seizing and destroying homeless person's property constitutes an unreasonable warrantless seizure without probable cause that violates plaintiff's rights under the Fourth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983.

63. Defendant's pattern, practice and/or policy of seizing and destroying homeless person's property without reasonable notice, an opportunity to contest the seizure and an opportunity

to retrieve the property constitutes a deprivation of property without due process of law, which violates plaintiffs' procedural due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983.

64. Defendant's pattern, practice and/or policy of seizing and destroying homeless person's property without just compensation constitutes a taking of private property for public use, which violates plaintiffs' rights under the takings clause of the Fifth Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983.

F. RELIEF

WHEREFORE, plaintiffs request that this Court:

- I. Declare that the City's pattern, practice and/or policy violates plaintiffs' Fourth, Fifth and Fourteenth Amendment rights;
- II. Issue preliminary and permanent injunctive relief enjoining the Defendant, its officials, officers, employees, agents assigns, and those acting in concert with it, from conducting any property sweeps of homeless persons' personal property until adequate policies are promulgated to protect and safeguard plaintiffs' Fourth, Fifth and Fourteenth Amendment Rights;

- III. Award plaintiffs reasonable damages, as may be proved at trial;
- IV. Award plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. §1988; and
- V. Grant such other relief as the Court deems just and appropriate.

Witold J. Walczak
PA ID No. 62976
American Civil Liberties Foundation
of PA
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864

Attorney for Plaintiffs

May 5, 2003

VERIFICATION OF JAMES "MOON" JOHNSON

I, James "Moon" Johnson, hereby declare as follows:

1. I am over the age of eighteen and otherwise competent to testify.

I HEREBY DECLARE, UNDER PENALTIES OF PERJURY, THAT I HAVE READ THE FOREGOING VERIFIED CLASS ACTION COMPLAINT AND THE FACTUAL ALLEGATIONS ARE, TO THE BEST OF MY KNOWLEDGE AND BELIEF, TRUE AND ACCURATE.

James "Moon" Johnson