IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2020-027233-CA-01
SECTION: CA43
JUDGE: Michael Hanzman

Jockey Club Condominium Apartments Inc (The)

Plaintiff(s)

vs.

City of North Miami (The)

Defendant(s)

_____/

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND PERMISSION TO POST CLASS NOTICE AS MODIFIED, AND SCHEDULING A FINAL APPROVAL HEARING

Before the Court is the Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement, (DE # 53), filed May 6, 2022. Plaintiff seeks entry of an order (a) granting preliminary approval of the settlement embodied in the Settlement Agreement; (b) approving the forms of notice; (c) establishing a procedure for providing notice of the Settlement to members of the Class and affording them an opportunity to object; and (d) setting a date and time for a fairness hearing.

Plaintiff, THE JOCKEY CLUB CONDOMINIUM APARTMENTS, INC., and Defendant, THE CITY OF NORTH MIAMI, have agreed to settle this action pursuant to the terms and conditions set forth in their executed Settlement Agreement and Release. The parties reached the Settlement after arm's-length negotiations with the help of an experienced mediator. Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiff and the proposed Settlement Class will fully, finally, and forever resolve, discharge, and release their claims. The Settlement has been filed with the Court, and Plaintiff has filed Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement ("Motion") (DE #53).

Upon considering the Motion, the Settlement, and all exhibits thereto, the record in these proceedings, and the representations and recommendations of counsel: it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Court has jurisdiction over the subject matter and parties to this proceeding pursuant to Fla. Stat. § 26.012 and Chapter 86, Fla. Stat.

Provisional Class Certification and Appointment of Class Representative and Class Counsel

2. It is well established that "[a] class may be certified solely for purposes of settlement [if] a settlement is reached before a litigated determination of the class certification issue." *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006) (internal quotation marks omitted). In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class – *i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied – except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial. *Id.*; *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Applying the December 2018 amendments to Rule 23(e)(1), the Court concludes that it is likely to certify the Settlement Class and approve the Settlement as fair, adequate, and reasonable.

3. The Court finds, for settlement purposes, Plaintiff satisfies the requirements of Rule 1.220(a) and the requirements of Rule 1.220(b)(3), and that certification of the proposed Settlement Class is appropriate under Rule 1.220(a).[1] The Court therefore provisionally certifies the following Settlement Class:

For the period from December 17, 2016, through the date of entry of judgment herein (the "Class Period"), each property owner and/or their duly authorized

legal representative who is subject to the classification named in City Ordinance Sec. 19-96(d)(3).

4. Specifically, the Court finds, for settlement purposes only and conditioned on final certification of the proposed Settlement Class and on the entry of the Final Approval Order, that the Settlement Class satisfies the following factors of Fla. R. Civ. P. 1.220(a):

    a. Numerosity: In the Action, pursuant to the Plaintiff's Motion for Class Certification (DE # 36), the parties stipulated to numerosity.

    b. Commonality: "[C]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" and the plaintiff's common contention "must be of such a nature that it is capable of class-wide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (citation omitted). "The commonality requirement is satisfied where questions of law refer to standardized conduct by defendants toward members of the proposed class." *CV Reit, Inc. v. Levy*, 144 F.R.D. 690, 696 (S.D. Fla. 1992). Multiple questions of law and fact centering on Defendant's class-wide practices are common to the Plaintiff and the Settlement Class, are alleged to have injured all members of the Settlement Class in the same way and would generate common answers central to the viability of the claims were this case to proceed to trial.

    c. Typicality: The Plaintiff's claims are typical of the Settlement Class because they concern the same alleged Defendant practices, arise from the

same legal theories, and allege the same types of harm and entitlement to relief. Rule 1.220(a)(3) is therefore satisfied. *See, Kornberg v. Carnival Cruise Lines, Inc*., 741 F.2d 1332, 1337 (11th Cir. 1984) (typicality satisfied where claims "arise from the same event or pattern or practice and are based on the same legal theory"); *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001) (named plaintiffs are typical of the class where they "possess the same interest and suffer the same injury as the class members").

d. Adequacy: Adequacy under Rule 1.220(a)(4) relates to: (1) whether the proposed class representatives have interests antagonistic to the class; and (2) whether the proposed class counsel has the competence to undertake the litigation at issue. *See, Fabricant v. Sears Roebuck*, 202 F.R.D. 310, 314 (S.D. Fla. 2001). Here, Rule 1.220(a)(4) is satisfied because there are no conflicts of interest between Plaintiff and the Settlement Class, and Plaintiff has retained competent counsel to represent them and the Settlement Class. Class Counsel regularly engage in consumer class litigation, complex litigation, and other litigation similar to this Action, and have dedicated substantial resources to the prosecution of the Action. Moreover, Plaintiff and Class Counsel have vigorously and competently represented the Settlement Class in the Action. *See, Lyons v. Ga.-Pac. Corp. Salaried Employees Rel. Plan*, 221 F.3d 1235, 1253 (11th Cir. 2000).

5. The Court appoints Plaintiff, THE JOCKEY CLUB CONDOMINIUM ASSOCIATION, INC., as Class Representative.

6. The Court appoints William J. Cornwell, Esq. and Weiss, Handler & Cornwell,

P.A., as Class Counsel.

I. **Procedural History**

Plaintiff commenced this putative class-action lawsuit against the City of North Miami by filing a lawsuit alleging causes of action for declaratory relief, money had and received, and unjust enrichment (hereinafter referred to collectively as the "Claims"). (DE # 1, 11.) On March 26, 2021, Defendant filed a Motion to Dismiss the Complaint in its entirety. (DE # 12.) On June 1, 2020, the Court denied Defendant's motion and directed Defendant to file and serve its answer. (DE # 21.) Thereafter, on July 30, 2021, Plaintiff filed a Motion for Class Certification. (DE #36.) On September 22, 2021, the parties engaged in Mediation before Sarah Clasby Engel, P.A., during which the parties resolved matters relating to the claims asserted in this action. The parties then moved jointly to stay proceedings of the instant action pending finalization of the settlement on October 6, 2021. (DE # 48.) The Court entered an order granting the parties' motion and staying proceedings pending settlement on October 8, 2021. (DE # 49.)

II. **Final Approval Hearing**

The Court will hold the Final Approval Hearing on **Monday, October 31, 2022, at 2:00 p.m.**, in Room 416 at the Miami-Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130, to assist the Court in determining whether to grant Final Approval of the Settlement and consider any objections from the Class.

CONCLUSION

For the foregoing reasons, the Motion is **GRANTED**. The Court **ORDERS** that:

1. The Settlement is conditionally **APPROVED** as fair, reasonable, and adequate to the Class members, subject to further consideration at the Final Approval Hearing.

2. The Parties are **DIRECTED** to provide notice of the proposed Settlement as provided in this Order and the Settlement Agreement.

3. Any person in the Class may object to or opt-out-of the Settlement. Any such objections to or opt-out-from the Settlement must be received by the Clerk of the Court by no later than **October 21, 2022**, at the address printed in the Notices.

4. The Parties are **DIRECTED** to modify the Notices to reflect the appropriate dates and times of the Final Approval Hearing and the deadline for objections.

5. The Parties are **DIRECTED** to make a copy of this Order available to members of the Class.

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[1] Because Rule 1.220 is patterned after Fed. R. Civ. P. 23, the Court may look to federal cases as persuasive authority on the interpretation of the Florida rule. *Broin v. Phillip Morris Cos., Inc.*, 641 So.2d 888, 889 n. l (Fla. 2d DCA 1994).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 16th day of June, 2022.

2020-027233-CA-01 06-16-2022 7:11 PM
Hon. Michael Hanzman

CIRCUIT COURT JUDGE
Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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