

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Edain Altamirano Flores; Esperanza Herrera;
Lori Nicol; Olutundun Arike Ogundipe;
Jason Beck; Patricia Goggin; Norma Juarez;
and Bruno Gorostieta, on behalf of
themselves and all others similarly situated,

Court File No. 27-CV-16-14225
Class Action
Judge Mary R. Vasaly
Chief Judge Ivy S. Bernhardson

Plaintiffs,

v.

**ORDER FOR FINAL APPROVAL OF
CLASS SETTLEMENT AND
JUDGMENT**

Spiros Zorbalas; Stephen Frenz; Equity
Residential Holdings, LLC; National
Housing Fund, LLC; The Apartment Shop,
LLC; ERT, LLC; Quarters for Creativity,
LTD.; Emerald Square Properties, Inc.;
Hennepin Quarters, Inc.; Powderhorn
Quarters, Inc.; Hiawatha Quarters, Inc.; 25
&3146 Properties, Inc.; Lahaha Holdings,
Inc.; Arts Avenue Properties, Inc.; SS
Quarters, Inc.; Berkeley Holdings, Inc.;
1801Properties, Inc.; SZ112, Inc.; S1322,
Inc.; R110, Inc.; G121, Inc.; Alpha-Omega
Companies, Inc.; JAS Apartments, Inc.;
Jennifer Frenz; Mary Brandt; and 2020
Vision Investments, LLC,

Defendants.

This matter came before the Court on Plaintiffs' Motion under Minn. R. Civ. P. 23.05 for an Order granting final approval of a settlement between Plaintiffs, as representatives of and on behalf of the class certified by this Court, and Defendants. The Court granted preliminary approval of the settlement on October 24, 2018, directed that notice be delivered to the class, and scheduled a Final Approval Hearing to be held on December 27, 2018. Plaintiffs filed an executed copy of the Settlement Agreement along with their Motion for Preliminary Approval.

There were no objections to the settlement filed by the deadline set forth in the Court's Order granting preliminary approval. No class member nor any attorney on behalf of a class member provided notice of an intention to appear at the Final Approval Hearing to object to the settlement.

On December 17, 2018, Plaintiffs filed a Supplemental Submission Regarding Class Action Settlement, along with a declaration from the settlement administrator. This submission and declaration provided additional information required by the Court's Order granting preliminary approval in advance of the Final Approval Hearing. This information includes proof of the settlement administrator's compliance with the class notice obligations of the Settlement Agreement and a list of the class members who have opted out. The settlement administrator subsequently provided an additional list of class members whose opt out forms were received after its first submission, but appear to have been timely mailed.

At the Final Approval Hearing, counsel for the Defendants indicated that Defendants had not deposited the full amount due under the Settlement Agreement. Defendants have offered no adequate reason for failing to pay, nor have the Defendants indicated why the Settlement Agreement should not be enforced. On January 15, 2019, the Court entered an Order pursuant to the parties' stipulation setting forth a payment schedule, interest, and related matters, pursuant to which the Defendants must pay the full amount due under the Settlement Agreement no later than February 28, 2019. In addition, the Defendants stipulated that they fully support the fairness of the class settlement and to the Court's finding of fairness and final approval.

The Court may finally approve the settlement "if it is fair, adequate, reasonable, and not the product of collusion between the parties." *Heller v. Schwan's Sales Enter., Inc.*, 548 N.W.2d 287, 289 (Minn. Ct. App. 1996) (citing *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 231

(Minn. 1979). “The Court must compare the settlement’s terms with the result the plaintiffs would have likely received after trial.” *Heller*, 548 N.W.2d at 289. The Court has discretion whether to approve the settlement, but as directed by the Minnesota Supreme Court, “absent a finding of fraud or collusion, [it] should be hesitant to substitute its own judgment for that of counsel.” *SST*, 228 N.W.2d at 231.

The Court has evaluated the proposed settlement in light of these requirements. Based on all the files, records, and proceedings herein, as well as the arguments of counsel,

IT IS HEREBY ORDERED:

1. The Court finds that it has personal jurisdiction over Plaintiffs and Defendants and has subject matter jurisdiction to approve the settlement, the Settlement Agreement, and all exhibits thereto.

2. The Court finds that the settlement was not a product of collusion. Rather, the settlement was the product of arm’s-length bargaining between sophisticated counsel, aided by an experienced mediator, and made at a stage of the litigation that allowed counsel to act intelligently. In addition, the settlement provides class members with a significant portion of the potential damages that could have been awarded at trial.

3. The Court grants final approval to the settlement as being fair, reasonable, and adequate as to all parties and consistent and in compliance with all requirements of due process and applicable law, and directs the parties and their counsel to implement and consummate the Settlement Agreement in accordance with its terms and provisions. In addition, the settlement administrator may distribute the attorneys’ fees, costs and expenses, and class representative service awards as set forth in the Court’s Order Granting an Attorneys’ Fee Award, Cost Award, and Class Representative Service Award.

4. The Court previously certified a class in this action, defined as:

All Persons who held residential leases with Defendants between November 13, 2012 and the present, for rental units located within the City of Minneapolis. The class includes lessees of rental units in the 63 subject Properties listed in Exhibit A to the Amended Complaint.

(Order dated August 11, 2017, ¶ 2.) In its Preliminary Approval Order dated October 24, 2018, the Court ordered that the class shall include all persons who held such residential leases with Defendants through the date of its Preliminary Approval Order.

5. As explained more fully in the Court's Order Granting Class Certification dated August 11, 2017, the Court finds that all of the requirements for a class action under Minn. R. Civ. P. 23 are met for the class defined above. The Court finds under Minn. R. Civ. P. 23.01, that the class is so numerous that joinder of all members is impracticable, there are questions of law or fact common to the class, the claims or defenses of the representative parties are typical of the claims or defenses of the class, and the class representative parties fairly and adequately protected the interests of the class. The Court also finds under Minn. R. Civ. P. 23.02, that the class action may be maintained because (a) the prosecution of separate actions by or against individual members of the class would create a risk of (1) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (2) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or (b) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as whole; or (c) questions of law or fact common to the members of the class

predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

6. The Court finds the Settlement Agreement and the Final Approval Order and Judgment to be binding on and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the releases provided by or on behalf of the class members.

7. The Court finds that the class notice program: (1) constituted the best practicable notice; (2) constituted notice that was reasonably calculated under the circumstances to apprise the class of the pendency of the action, of their right to object to or exclude themselves from the proposed settlement, of their right to appear at the Final Approval Hearing and of their right to seek monetary and other relief; (3) constituted reasonable, due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all requirements of due process and any other applicable law (including but not limited to Minn. R. Civ. P. 23 and Minnesota state law). The Court further finds that the settlement administrator fulfilled the requirements of the class notice program as required by the Court.

8. According to the terms of the Court's Order granting preliminary approval to the settlement, any objections to the settlement were required to be filed 35 days after the notice of settlement was mailed. No objections were filed with the Court. Similarly, any class member or counsel on behalf of an individual class member was required to provide notice of an intention to appear at the Final Approval Hearing by 35 days after mailing of the notice. No class member or individual class member's counsel provided such notice.

9. The Court dismisses the above-captioned case on the merits and with prejudice and without fees or costs (except as provided in the Court's Order Granting an Attorneys' Fee Award,

Cost Award, and Class Representative Service Award in this matter, which sums will be distributed from the settlement fund established pursuant to the Settlement Agreement, and except as provided in and ordered pursuant to the Court's January 15, 2019 Order), in accordance with the terms of this Final Approval Order and Judgment.

10. The Court adjudges that the parties and the class members have conclusively compromised, settled, dismissed, and released any and all claims released by the Settlement Agreement.

11. Without affecting the finality of the Final Approval Order and Judgment for purposes of appeal, the Court reserves jurisdiction over the settlement administrator, Defendants, Plaintiffs, and the class members as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the settlement, the Settlement Agreement, and Final Approval Order and Judgment, and for any other necessary purposes.

12. The Court determines that the Settlement Agreement and any proceedings taken pursuant thereto are not and should not in any event be offered, or received as evidence of a presumption, concession, or admission of liability. However, reference may be made to the Settlement Agreement and the settlement in such proceedings solely as may be necessary to effectuate or enforce the Settlement Agreement.

13. The Court approves the list of class members who have opted out of the class as submitted by the settlement administrator and determines that this list is a conclusive and complete list of all members of the class who have timely and effectively requested exclusion from the class and, accordingly, will neither share in nor be bound by the Final Approval Order and Judgment.

14. The Court authorizes the parties, without further approval from the Court, to agree in writing to such amendments, modifications, and expansions of the Settlement Agreement and

all exhibits thereto as (1) will be consistent in all material respects with this Final Approval Order and Judgment; and (2) do not limit the rights of the Parties or class members.

15. Pursuant to Minn. R. Civ. P. 23(e)(5), in the event there are residual funds that remain after payment of all class members claims (including any supplemental distributions to the class), expenses, litigation costs, attorney's fees, and other Court-approved disbursements, class counsel shall give written notice to CommonBond Communities and to the Legal Services Advisory Committee of the potential *cy pres* distribution of residual funds from the settlement, which is set forth in the Settlement Agreement. With that written notice, class counsel shall provide CommonBond Communities and the Legal Services Advisory Committee with copies of this Final Approval Order, the Settlement Agreement, and the amount of residual funds. No distribution of residual funds shall be made without further order of this Court.

16. Pursuant to paragraph 18 of the Court's Order Preliminarily Approving Class Settlement, prior to 5:00 p.m. Central Time on December 26, 2018, Defendants were required to transfer to the settlement administrator any portion of the \$18,500,000 settlement amount that had not previously been transferred. The settlement administrator received \$6,715,179.51 on or about November 8, 2018. Therefore, Defendants were required to transfer an additional \$11,784,820.49 to the settlement administrator by the deadline set out above. They did not do so and have offered no valid reasons why they should not be required to make the full payment. Subsequently, the Defendants have deposited a total of an additional \$11,500,000.00 into the settlement fund. As of the date of this Order, there remains a deficiency of \$284,820.49. Any failure to pay this deficiency, as well as other amounts due for interest and attorneys' fees, will be addressed as provided in the Court's January 15, 2019 Order.

17. Accordingly, the Court directs that judgment be entered as to all claims between the parties, except for any matters arising under the administration, consummation, enforcement, and interpretation of the terms of the settlement, the Settlement Agreement, and the Court's January 15, 2019 Order.

IT IS SO ORDERED.

PURSUANT TO MINN. R. CIV. P. 54.02, THE COURT FINDS THAT THERE IS NO JUST REASON FOR DELAY, AND DIRECTS THAT FINAL JUDGMENT ON THE MATTERS SET FORTH ABOVE BE ENTERED ACCORDINGLY FORTHWITH.

BY THE COURT:

Dated: February 11, 2019

Ivy S. Bernhardson
Chief Judge of District Court