

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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 VESTA ELLERBE, :
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 Plaintiff, :
 :
 v. : Civil No. C-2002-82562
 :
 CHESAPEAKE MOBILE HOMES, et al., :
 :
 Defendants. : Annapolis, Maryland.
 :
 ----- x October 28, 2004

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JUDGE'S RULING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE PAUL A. HACKNER, Judge

APPEARANCES:

FOR THE PLAINTIFF:

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CHESAPEAKE MOBILE HOMES OF LAUREL, INC.
and DEEP RUN HOMES:

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P R O C E E D I N G S

1
2 THE COURT: Good morning. Be seated, please. I
3 apologize for keeping you all waiting. There is about a half
4 a million dollars worth of billable hours here that I have
5 frittered away. So, I apologize for that.

6 I am going to call the case of Ellerbe versus
7 Chesapeake Mobile Homes, Case Number C-02-82562. That is the
8 consolidated case name and case number. If I could ask
9 counsel to just sort of go around the pike and introduce
10 yourselves for the record and spell your last names for the
11 reporter, please.

12 MR. PELS: Good morning, Your Honor. John Pels, on
13 behalf of the Plaintiff class. That is P-e-l-s.

14 MR. ANDERSON: Good morning, Your Honor. Lawrence
15 Anderson, co-counsel for the Plaintiffs. A-n-d-e-r-s-o-n.

16 MR. FERGUSON: Good morning, Your Honor. Robert
17 Ferguson, F-e-r-g-u-s-o-n, on behalf of Defendants Chesapeake
18 Mobile Homes, Inc., Chesapeake Mobile Homes of Laurel, Inc.
19 and Deep Run Homes, Inc.

20 MR. GAENG: Good morning, Your Honor. Gerard
21 Gaeng, G-a-e-n-g. I represent one of the mobile home parks,
22 the Deep Run Associates.

23 THE COURT: All right. Good morning.

24 MR. LEVY: May it please the Court. Andrew Levy,
25 L-e-v-y. I am here on behalf of Southeast, Darlington and

1 Arundel Mobile Parks.

2 MR. SPENCE: Good morning, Your Honor. Adam
3 Spence, counsel for Parkway Village Associates.

4 MR. McCLOSKEY: Good morning, Your Honor. Stephen
5 McCloskey, M-c-C-l-o-s-k-e-y, attorney for RZ Construction.

6 MR. COBLEIGH: Good morning, Your Honor. Kenneth
7 Cobleigh, C-o-b-l-e-i-g-h, and I also represent the Deep Run
8 Associates.

9 MR. GUSTIN: Good morning, Your Honor. Todd
10 Gustin, on behalf of Midway Mobile.

11 THE COURT: All right. That is all the counsel we
12 have in the courtroom. Right?

13 (No response.)

14 (Whereupon, the hearing continued.)

15 THE COURT: All right. Well, counsel, let me say,
16 first of all, that I appreciate all of the hard work that has
17 gone into this from all sides. It was a case that -- much
18 like, I guess, when Mr. Pels first saw Mr. Bohling, you get a
19 certain impression, and I got a certain impression early on
20 that evolved I guess as the case went on.

21 And I appreciate that. I think that is part of the
22 thing that makes litigation such a fascinating process. I
23 will certainly acknowledge that this was not a slam dunk on
24 anybody's part. So, let me address then the points that need
25 to be addressed.

1 First and foremost, I think that the settlement
2 agreement that has been very carefully and with a tremendous
3 effort put together is a fair and adequate settlement
4 agreement for all of the reasons urged upon the Court by
5 Mr. Pels, particularly noting that there is no objection to
6 it, and I certainly will approve the settlement agreement.

7 I believe that the incentive payments that have
8 been requested on behalf of the specific class
9 representatives that are named in the agreement are likewise
10 fair and reasonable. I do recognize that on any one -- for
11 any one claimant the financial stakes may not be sufficient
12 to bring an action like this, although a lot can be said
13 about class actions and a lot has been said by folks on both
14 sides of the table and both sides of the political spectrum.

15 It is a mechanism by which certain issues get
16 resolved that would never got resolved otherwise because it
17 just isn't financially prudent for somebody to take on the
18 impressive array of defense counsel and defense insurers and
19 defendants to bring these matters to a conclusion. So, those
20 who did take the lead, so to speak, in this matter I think
21 are entitled to the incentive fees that are proposed, and I
22 will approve those.

23 Likewise, for the reasons stated by Mr. Pels, I
24 find that the vehicle of a class action is an appropriate
25 vehicle and that I will approve the certification of the

1 class and the classes defined in the papers that have been
2 filed. I have already stated my opinion as to the opt-outs.
3 So I think that is covered.

4 Therefore, I think the only issue is then --
5 subject to the couple of tweaks that we mentioned a moment
6 ago, there is a question of costs and counsel fees.

7 Now, Mr. Pels, my understanding as to the
8 out-of-pocket costs is that the total is \$155,799. Is that
9 right? That is the \$119,240 that you had originally, plus
10 the advertising costs? Or no?

11 MR. PELS: I believe it is the 119 plus the 36,000.
12 Yes. That is correct.

13 THE COURT: Yes. That is \$155,799, if I did the
14 math right. I don't vouch for that.

15 MR. : No. I believe it is 119 total.

16 MR. : Your Honor, I believe in the prior
17 order we had written in a number, approximately 78,000 and
18 change, and then we have an additional 36. As it was stated
19 in the --

20 MR. : Right. He is right. The additional
21 amount for advertising is 36,000. We didn't include that in
22 the original. Right? That needed to be added with the ---

23 THE COURT: Aside from your pleading, do you have
24 some itemization or something?

25 MR. : It was attached to the original

1 motion. May I have a second, Your Honor?

2 THE COURT: Sure. Absolutely.

3 MR. : I apologize. We polished everything
4 except this.

5 (Pause.)

6 MR. : Yes, Your Honor.

7 THE COURT: I mean, that was my take on what I
8 read, --

9 MR. : That is right.

10 THE COURT: -- that you had incurred \$119,240, but
11 you didn't have invoices for the advertising costs at that
12 time.

13 MR. : That is right, Your Honor.

14 THE COURT: And I will say, parenthetically, I was
15 shocked at how expensive those ads ran. Particularly in the
16 -- I think it was the Post. It was unbelievable. I happen
17 to be very friendly with the comptroller of the Post, and I
18 will talk to her about that.

19 Just as an aside, she happens to be married to
20 Judge Schiff, from the Prince George's County Circuit Court.
21 Peggy Schiff. In any event, I guess that is why it is a
22 successful paper.

23 I find that the amounts incurred as out-of-pocket
24 costs are also fair, reasonable and necessary and will
25 authorize those sums, which I total to be \$155,799, to be

1 reimbursed to Glass counsel.

2 With respect to the attorneys fees, I find that
3 those are also fair and reasonable, the one third that is
4 being requested. I recognize that it is a huge amount of
5 money, but I really do consider very favorably the fact that
6 this was a risky undertaking to begin with, one that I could
7 easily understand why a lot of attorneys would have passed on
8 the case.

9 Not necessarily because Mr. Bohling's tattoos or
10 leather jacket. I have a couple of leather jackets myself,
11 although I don't have any tattoos. But it is a case that
12 doesn't immediately attract the desire to jump on it, and I
13 think that the Plaintiff's counsel here has taken on a
14 difficult challenge and they were, I think, very ably -- the
15 claims were very ably defended, and I think the all of the
16 difficulties and all of the challenges described by Mr. Pels
17 are very accurately stated.

18 I think it is also something to be considered,
19 aside from the risk of their loss of time, which is
20 substantial and I believe that it could easily have engulfed
21 a small firm, or a relatively small firm, for the balance of
22 this litigation, the fact that they have essentially gone
23 out-of-pocket or incurred liabilities of somewhere in the
24 range of \$150,000 plus in costs, I think is also something
25 that not only made the litigation possible, but is something

1 that entitles them to a significant return for the risks that
2 they took.

3 So, the Court will approve the attorneys fees
4 request, which is the one third contingency fee, which comes
5 to 600-6666666; a lot of sixes. \$666,666.

6 Now, the only issue that leaves me with is the
7 issue of a retainage, and this was a construction contract.
8 Sort of the rule of thumb is somewhere around 10 percent,
9 which I think in this case might be excessive. But I do
10 think a one percent retainage fee or retainage would be
11 appropriate.

12 I think there still is a lot of work to be done and
13 although I have no reason to believe that counsel is going to
14 slack off, I do realize that once a case is settled and you
15 start moving on to your next case, the incentives are less to
16 devote the time to it. So, I believe that a one-percent
17 retainage would be appropriate, which, if I have done the
18 math correctly, would be 66,666. Did I do the math
19 correctly?

20 MR. : I believe it actually would be 10
21 percent, Your Honor.

22 THE COURT: All right. Well, then I did the math
23 wrong originally. My intention is that it be 66,000. So,
24 maybe that is one of the reasons I went to law school and my
25 number one son is the mathematician.

1 (Pause.)

2 THE COURT: Well, --

3 MR. : Times .1 would be 10 percent.

4 THE COURT: Yes. That is right, because I -- yes.

5 Yes.

6 MR. : 66,666 would be 10 percent.

7 THE COURT: Yes. Because I figured it out on six
8 million. That is right. Okay. So anyway, forget the
9 percentages. My objective is that there be a retainage of
10 \$66,666 and change, and that that be retained until
11 completion of this matter.

12 Now, I am not adverse to considering some draws
13 against that if you feel that some significant amount of work
14 has been done and you require some additional fees. I don't
15 know whether you want me -- I don't know that I can create a
16 draw schedule at the moment.

17 But if that is something that you want to come back
18 to me on at some later point, I don't mind. It is not my
19 intention to hold up your money for four years, if it doesn't
20 have to be held up, but there ought to be something in there
21 to make it appealing and interesting to you to keep working
22 on this case.

23 So, subject to that change and then the comments
24 that we made earlier about the Cypres recipients, I am
25 prepared to sign the order, and I will be happy to wait for

1 it until you get it to me. I presume it won't be more than a
2 couple of days, right?

3 MR. : Yes, Your Honor. I actually had
4 envisioned -- if we can talk to Mr. Ferguson in the hall and
5 if Your Honor would also like, we could even have our office
6 make the changes and have it emailed to you, if that is
7 appropriate.

8 THE COURT: That is fine. You can do that, and I
9 will print it out and sign it.

10 I want to say again that it has been an interesting
11 experience for me. This is the first class action that I
12 have been involved with I guess on either side of the bench,
13 and I appreciate having the opportunity to work with fine
14 counsel.

15 It is, unfortunately, not every day that you get
16 good lawyers in the courtroom, and this is a really very
17 impressive collection. And I appreciate all of your efforts.
18 Thank you very much, counsel.

19 (Whereupon, the requested portion of the hearing
20 was concluded.)

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C E R T I F I C A T E

CompuScribe, hereby certifies that the attached pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Anne Arundel County in the matter of:

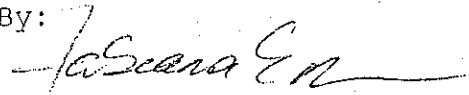
Civil No. C-2002-82562

VESTA ELLERBE

v.

CHESAPEAKE MOBILE HOMES, et al.

By:



Fabiana E. Barham
Transcriber