

STATE OF NORTH CAROLINA)	IN THE GENERAL COURT OF JUSTICE
WAKE COUNTY)	SUPERIOR COURT DIVISION
)	CASE NO. 18CVS009120-910
KEOSHA JOHNSON,)	
)	
Plaintiff,)	
v.)	
)	
HAWTHORNE RESIDENTIAL)	
PARTNERS LLC, SMWL, INC., f/k/a)	
HAWTHORNE RESIDENTIAL,)	
INC., and HAWTHORNE-MIDWAY)	
DUNHILL, LLC d/b/a)	
HAWTHORNE AT THE TRACE,)	
)	
Defendants.)	

**ORDER APPROVING FINAL SETTLEMENT AND
AWARDING ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS**

THIS MATTER comes before the Court on Plaintiff Keosha Johnson's ("Plaintiff") unopposed motion for final approval of class action settlement, approval of Class Counsel's attorneys' fee request and reimbursement of expenses, and request for approval of a service award pursuant to the Settlement Agreement entered into with Defendants Hawthorne Residential Partners, LLC; SMWL, Inc. f/k/a Hawthorne Residential, Inc.; and Hawthorne-Midway Dunhill, LLC d/b/a Hawthorne at the Trace, ("Defendants") fully executed May 16, 2023 (the "Settlement Agreement") in the above-captioned matter ("the Settlement"). Capitalized terms not defined herein shall have the meaning ascribed in the Settlement Agreement.

On August 10, 2023, the Court held a hearing and was satisfied as to the fairness, reasonableness, and adequacy of the Settlement, and the fairness and reasonableness of the fees, expenses, and service awards provided herein. Therefore, having considered the supporting materials submitted to the Court, which includes the Affidavits and supporting memorandum, discussions with counsel during the hearing, and other appropriate matters of record, the Court

concludes that good cause exists to grant Final Approval of the Settlement. Therefore, the Court GRANTS the Final Approval, APPROVES the Settlement, APPROVES the Attorneys' Fee Award, APPROVES the Reimbursement of Expenses, and APPROVES the Service Award Request to the named Plaintiff Keosha Johnson. The grounds supporting these rulings follow.

BACKGROUND

1. Plaintiff filed a putative class action on July 20, 2018, on behalf of herself and those similarly situated tenants against Defendants Hawthorne Residential Partners, LLC, SMWL, Inc., f/k/a Hawthorne Residential Inc. and Hawthorne-Midway Dunhill, LLC d/b/a Hawthorne at the Trace (collectively "Defendants").
2. Plaintiffs alleged Defendants violated N.C.G.S. §§ 42-46 and 75-50 *et seq.* by automatically assessing tenants three fees incurred in filing an eviction lawsuit based on tenants' failure to pay rent or other amounts owed in a timely manner: (1) a \$96.00 eviction complaint filing fee ("Filing Fee"), (2) a \$30.00 service fee ("Service Fee"), and (3) an attorneys' fee ("Attorneys' Fee") (collectively, "Eviction Fees"). Plaintiff further alleged that Defendants violated the NCDCA by sending collection letters to tenants that unlawfully threatened to assess Eviction Fees if all amounts were not paid or that claimed that Eviction Fees were owed ("Collection Letters"). Plaintiffs also made claims for a declaratory judgment and preliminary injunction.
3. Plaintiff sought to represent two classes consisting of: (a) who received Collection Letters during the period between June 20, 2014 and June 25, 2018; and (b) tenants who were charged and paid the Eviction Fees during the period between June 20, 2014 and June 25, 2018.
4. On November 18, 2018, Defendants filed their Answer and Counterclaim.

5. On December 18, 2018 Plaintiff served her Reply, Motions to Dismiss, Motion to Strike, and Affirmative Defenses to the Counterclaim by Defendants.
6. On May 15, 2019, Defendants filed a Motion to Dismiss which was heard before the Honorable Rebecca W. Holt ("Judge Holt") on June 6, 2019.
7. On November 15, 2019, the Honorable Rebecca W. Holt granted in part and denied in part Defendants' Motion to Dismiss.
8. On July 2, 2021, the North Carolina General Assembly passed an amendment to N.C. Gen. Stat. § 42-46 (the "2021 Amendment"). The 2021 Amendment stated that it was "intended to apply retroactively to all pending controversies" as of the effective date of the amendment and that the 2021 Amendment was "intended to be clarifying of the General Assembly's intent under previous amendments to this statute."
9. On January 5, 2022, Defendants filed a Motion for Judgment on the Pleadings, and, on March 9, 2022, Plaintiff filed a Motion for Declaratory Judgment.
10. On June 17, 2022, Judge Holt heard arguments on Plaintiff's Motion for a Declaratory Judgment and Defendants' Motion for Judgment on the Pleadings.
11. On June 21, 2022, Judge Holt issued an Order Denying Plaintiff's Motion for Declaratory Judgment on the Pleadings and Granting Defendants' Motion for Judgment on the Pleadings.
12. In Judge Holt's June 21, 2022 Order, the Court found that the 2021 Amendment to N.C.G.S. § 42-46 applied retroactively to this lawsuit and allowed Defendants to charge the fees at issue at the time they were charged.
13. As a result, the Court dismissed all of Plaintiff's claims with prejudice.
14. On July 7, 2022, Hawthorne Midway-Dunhill, LLC d/b/a Hawthorne at the Trace filed a

voluntary dismissal of its Counterclaim against Plaintiff without prejudice.

15. On July 13, 2022, Plaintiffs filed a Notice of Appeal of Judge Holt's June 21, 2022 Order.
16. The appeal was docketed in the Court of Appeals as Case No. 22-849 on October 12, 2022. Plaintiffs' opening brief was due on December 12, 2022.
17. While this matter was on appeal, the Parties engaged in extensive, arm's length negotiations regarding the settlement of this Action and reached an agreement in principle to settle the case and formalized their agreement in a written settlement agreement,
18. On May 16, 2023, the Parties finalized the thirty-six (36) page Settlement Agreement.
19. In an order dated May 26, 2023, the Court preliminarily approved the Settlement Agreement, the proposed notice plan, and the Settlement Classes (as defined below).
20. Pursuant to the plan approved by the Court, notice was disseminated to the Settlement Classes.
21. Any exclusions or objections were to be submitted by July 25, 2023, and the Fairness Hearing was scheduled for August 10, 2023.
22. No Settlement Classes member objected to the settlement and no Class Member has opted-out of the settlement or filed a valid and timely request for exclusion.

SETTLEMENT TERMS

23. In broad brush strokes, the settlement provides significant monetary benefits to the Eviction Fee Class and Collection Letter Class (collectively, "Settlement Classes").
24. The Eviction Fee Class is defined as all natural persons who (a) at any point between July 20, 2014 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendants and (c) were charged and (d) paid Eviction Fees.

25. The Collection Letter Class is defined as all natural persons who (a) at any point between July 20, 2014 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendants and (c) received a Collection Letter.
26. The Settlement Agreement provides for a \$500,000.00 Cash Settlement Fund and Debt Relief in the amount of \$2,776,916.62 (“Outstanding Debt”).
27. Each Eviction Fee Class member was expected to receive approximately \$50.00 for being charged and paid Eviction Fees during the Class Period, subject to pro rata increase based on Settlement Classes participation in the settlement.
28. Pursuant to the terms of the Settlement, the Collection Letter Class members were eligible to receive \$20.00 for each Collection Letter sent by Defendants for a maximum of \$60, subject to a pro rata reduction based on availability. The Collection Letter Class was allotted \$50,000.00 of the Cash Fund, with any unclaimed amounts to be re-allocated to the Eviction Fee Class.
29. Based upon the claims that have been filed based upon the declaration of the Claims Administrator, the Eviction Fee Members will now each receive approximately \$50.00 in addition to the substantial debt relief.
30. As defined in the Settlement Agreement and used herein:
 - (a) “Released Persons” means the Defendant, along with its parent companies, lenders, insurers contributing to the Cash Settlement Fund, investors, affiliates, suppliers, successors, assigns, subsidiaries, related entities and trustees and/or beneficiaries of trusts which have an interest in any of the above-referenced companies; and all of their respective current, past or future owners, members, directors, officers, employees, attorneys,

accountants, direct and indirect shareholders, partners, members, or agents of the foregoing; and any and all entities that have held an interest—at any time from the beginning of the Relevant Time Period to the present—in any apartment complex in which any Settlement Class Member resided to the extent such apartment complex was owned and/or managed by any Defendant during the Relevant Time Period;

- (b) “Released Claims” means any and all claims, demands, actions, allegations, suits, causes of action, theories of liability, damages whenever incurred, and the liabilities of any nature whatsoever, including, without limitation, costs, expenses, restitution, punitive damages, exemplary damages, compensatory damages, incidental damages, pecuniary damages, statutory damages, fines, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, whether past, present or future, in law or in equity, in tort or in contract, that Class Releasers, whether or not they object to this Settlement or make a claim upon or participate in the Settlement, ever had, now have, or hereafter can, shall, or may have, directly, indirectly, representatively, derivatively, or in any capacity, arising out of or relating in any way to the charging, threatening to charge, collecting, or attempting to collect Eviction Fees or any Outstanding Debt; and
- (c) “Class Releasers” means each Settlement Class Member, as well as each Settlement Class Member’s predecessors, successors, heirs, executors, trustees, legal representatives, administrators, agents and assigns.

APPROVAL OF CLASS NOTICE PROCEDURES

31. The Settlement Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Post-Notice Declaration of the Settlement Administrator, which was responsible for carrying out the notice program, the Court hereby finds that the notice was accomplished in accordance with the Court's directive.
32. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of North Carolina Rule of Civil Procedure 23, due process and applicable law, and it is further determined that all members of the Settlement Classes are bound by the Order and Final Judgment herein.

APPROVAL OF THE SETTLEMENT

33. The Court finds that the parties' settlement is fair, reasonable, and adequate in accordance with North Carolina Rule of Civil Procedure 23; was reached at arm's length without collusion or fraud; and satisfies all of the requirements for final approval.
34. The Court has considered the complexity, expense and likely duration of the litigation if the settlement is not approved; the procedural posture of the case, particularly this Court's prior order dismissing Plaintiffs' claims and the subsequent appeal of that order; the odds of the plaintiffs succeeding at trial balanced by the risks of continued litigation; the range of possible recoveries if the case is tried; the opinions of Class Counsel and the class representative; and the degree of opposition to the settlement.
35. The Court recognizes that no Settlement Classes member objected to the settlement and no Class Member has opted-out of the settlement or filed a valid and timely request for exclusion.

36. In light of the same, the settlement is finally approved and the parties are directed to consummate the settlement in accordance with its terms.

ATTORNEYS' FEES AND EXPENSES

37. The Settlement also provides that Defendants will not contest Class Counsel's application to the Court for payment of attorneys' fees, expenses, and costs up to the amount of \$225,000.00. The requested attorneys' fees amount to less than one-third of the total value of the Settlement. The enforceability of the Settlement was not contingent upon this amount being awarded.

38. While a court may not modify a contractual attorneys' fees arrangement reached in a settlement of a Rule 23 class action, it nevertheless must review the fees sought for reasonableness and must approve any fees paid by way of settlement. *Ehrenhaus v. Baker*, 216 N.C. App. 59, 74 (2011) ("While any 'compromise' in a class action must be reviewed by a court, a court cannot modify a purely contractual settlement."). Here, the parties agreed that Class Counsel could apply to the Court for an award of attorneys' fees and reimbursement of expenses up to one-third of the total Settlement.

39. The determination of the amount of attorneys' fees to be awarded is in the sound discretion of the Court. *G.E. Betz, Inc. v. Conrad*, 231 N.C. App. 214, 242 (2013). Accordingly, the issue before the Court is whether Class Counsel's request for \$225,000.00 in fees is reasonable.

40. The Court notes that common fund cases like Class Counsel have created in this case routinely result in attorneys' fees being awarded under a percentage of the fund method. *See Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997) (holding that the common-fund doctrine applied to a change in

calculation of benefits under the State's retirement system resulting in the creation of a recovery fund). "As such, we are persuaded that the recovery at issue in this case properly constitutes a common fund for purposes of shifting attorney's fees under the common-fund doctrine of *Horner* and its progeny." *Bailey*, 348 N.C. at 162.

41. The North Carolina Business Court in *Byers v. Carpenter*, 1998 NCBC LEXIS 3, **32 (January 30, 1998), held that the appropriate level of compensation in cases such as these is typically 25% of the relief obtained if the case is settled before filing; one-third if after filing; and 40% if after an appeal has been taken. Here, since an appeal has been taken, the requested fees are appropriate.
42. This action settled while it was on appeal and the opening briefs had been written and filed.
43. Under *Byers*, and the above-cited case law, Class Counsel's attorneys' fee request is well within the range of reasonable fees in this state.
44. In addition, the Affidavit of Class Counsel, Scott C. Harris, indicates the extensive work performed by the parties in seeking to resolve this litigation. The attorneys' fee request is unopposed, and Class Counsel have provided sufficient information and evidence to establish the reasonableness of their fee request under *Byers* and other relevant North Carolina case law submitted in their other briefing.
45. Class Counsel worked comprehensively and extensively for nearly five years on the case and anticipate working more to effectuate the Settlement and assist Settlement Classes members in receiving the settlement benefits.
46. Class Counsel provided sufficient information to establish their experience, skill, and ability to successfully conduct complex litigation. The skill and labor required to litigate

this action over a year and a half through complicated discovery also favorably weighs in Class Counsel's favor.

47. After carefully reviewing the foregoing, the Court finds, in its discretion, that \$225,000.00 is a reasonable attorney fee. This amount shall be paid from the Settlement Fund.

48. Plaintiffs' counsel requested reimbursement of expenses of \$23,796.15 are also reasonable under the circumstances and the Court in its discretion awards the full amount of these expenses. This amount shall be paid from the Settlement Fund.

49. Accordingly, the Court awards to Class Counsel the total \$248,796.15 attorneys' fees and expenses. This amount will be paid from the Settlement Fund in accordance with the parties' Settlement Agreement.

SERVICE AWARD

50. The Settlement Agreement provides that Defendants, subject to Court approval, will pay from the Settlement Fund \$5,000.00 to Keosha Johnson as Class Representative.

51. The Court finds that payment of a service award is appropriate in this case in light of their work on behalf of the Settlement Classes and that no Settlement Classes member has objected to the service award.

52. The Court hereby approves the service award, which shall be paid from the Settlement Fund and consistent with the parties' Settlement Agreement.

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53. In the event that Settlement Classes members fail to cash their checks within six (6) months of mailing, as provided in the Settlement Agreement, such that the Settlement Fund has a positive balance, all remaining amounts in the Settlement Fund shall be equally divided and disbursed with one-half going to SafeChild North Carolina and the other one-half reverting to Hawthorne Residential Partners, LLC.

54. The Settlement Administrator is ordered to provide a report to Class Counsel of all money in the Settlement Fund left undisbursed within fifteen (15) calendar days after the 6-month period has elapsed.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED AS FOLLOWS:

1. Pursuant to Rule 23 of North Carolina Rules of Civil Procedure, the Court hereby finally approves in all respects the Settlement set forth in the Settlement Agreement, and finds that the Settlement, the Settlement Agreement, and the plan of distribution of the Settlement funds are in all respects fair, reasonable, and adequate, and are in the best interest of the Settlement Classes.
2. Class Counsel is hereby awarded attorneys' fees in the amount of \$225,000.00 from Defendants to be paid from the Settlement Fund as set forth in the manner described in Settlement Agreement, which amount the Court finds to be fair and reasonable.
3. Class Counsel are also awarded a reimbursement of their expenses of \$23,796.15 to be paid from the Settlement Fund.
4. The Court also finds to be fair and reasonable service award of \$5,000.00 to Keosha Johnson to be paid from the Settlement Fund.
5. Since no member of the Classes have objected and none have opted out of the Settlement, the Effective Date of the Settlement Agreement is the date of the signing of this order, and the Class Releasers shall release and forever discharge the Released Persons from the Released Claims.
6. By reason of the settlement, the Court hereby enters final judgment in this matter and all claims alleged by Plaintiffs are dismissed with prejudice.

7. Without affecting the finality of this judgment, the Court retains continuing and exclusive jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, to protect and effectuate this Final Order and Judgment, and for any other necessary purpose.
8. Pursuant to the terms of the Settlement Agreement, this action is dismissed with prejudice as against the Class Representative, all members of the Settlement Classes and the Defendants and Released Persons.
9. The parties shall bear their own costs, except as provided by the Settlement Agreement and as ordered herein.
10. It is further adjudged that the Class Representatives, on behalf of themselves and all members of the Settlement Classes, shall be deemed conclusively to have compromised, settled, discharged, dismissed, and released any and all rights, claims, or causes of action against Released Persons as provided for in the Settlement Agreement.

IT IS SO ORDERED this 29 day of August 2023.



Superior Court Judge Presiding
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