

STATE OF CONNECTICUT

DOCKET NO. (X10) CV-166033559S : SUPERIOR COURT
PERSONNA NOBLE, ET AL. : COMPLEX LITIGATION DOCKET
v. : AT WATERBURY
NORTHLAND INVESTMENT CORP., :
ET AL. : OCTOBER 14, 2020

**RULING ON MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT (# 301)**

This motion comes before the court for a decision on the papers.¹ The parties have stipulated that “the information set forth in the Motion provides an adequate factual predicate for the issuance of the Preliminary Approval Order” (# 311).² This motion is also supported by the Rosen Declaration. The parties have waived any hearing that may be required pursuant to Practice Book § 9-9 (c) (1) (C). Id.³

¹ In determining this motion, the court has reviewed and relied upon the following docket entries: # 300 Second Amended Stipulation of Settlement and its appendix and exhibits (Settlement Agreement); # 310 Declaration of David N. Rosen made under penalty of perjury (Rosen Declaration); Parties’ Stipulation Waiving Hearing on Motion for Preliminary Approval of Class Action Settlement, # 311.

² All references to docket entries in this ruling will be in the format (# ____).

³ The parties have also waived a hearing on the motions for appointments of a Guardian Ad Litem, # 305, Trustee, # 307, and Special Masters, # 312. The court has entered electronic orders on those motions.

*Emailed to all counsel
R. Hinton
B. Rosen*

I.

The following background is relevant to the consideration of this motion: This lawsuit was commenced in the New Haven Judicial District in December 2016 by a number of former residents of a 301 unit housing project in New Haven, Connecticut known as Church Street South (CSS), seeking class action relief against the alleged current owners of CSS, Northland Investment Corporation, Lawrence R. Gottesdiener, Church Street New Haven, LLC, and two property management companies, DeMarco Management Corporation and Wm. M. Hotchkiss Company (defendants).⁴ On January 13, 2017, an application was made to transfer this lawsuit to the complex litigation docket (# 101). On January 31, 2017, the application was granted and the case was transferred to the X10 complex litigation docket in Waterbury (# 101.10). This court has presided over this lawsuit since the date of transfer.

Following an initial status conference on February 22, 2017, a scheduling order (# 108) entered directed towards the completion of the initial stage of a class action which is the filing and hearing of a class certification motion. The order concerned first stage discovery, to be conducted both informally and formally if required, directed to class certification with the objective of joining the issues for the consideration of a such a motion, as well as certain additional time sensitive fact discovery involving inspections of the CSS property (see # 310, ¶ 22). There followed a protracted period of discovery, both fact and expert, informal and formal (with related litigation), along with motions directed to the pleadings, all reflected in the lawsuit's docket entries. Once the issues related to class certification were fully joined and

⁴ Claims against other originally named defendants were stricken by the court following protracted litigation. See Memorandum of Decision at entry # 225 ruling on the motion to strike at entry # 143.

briefed, the court held a lengthy oral argument on August 29, 2018. As represented in this motion, following that hearing this court encouraged the parties to attempt mediation efforts which they undertook with the assistance of retired judge Jonathan E. Silbert, a highly regarded and skilled mediator. The mediation efforts “involved 100 or more meetings and consultations, some jointly, some with one side, over the course of more than a year, as well as innumerable emails and written presentations” (# 301, p.4) which occurred prior to the filing of a motion for preliminary approval on March 6, 2020 (# 291). Since then, due to the pandemic, the parties have continued their negotiations remotely with the assistance of the mediator leading to the filing of the present motion and the Second Amended Stipulation of Settlement on October 5, 2020. When it was appropriate, the parties and the mediator involved this court in the process. Additionally, given the fact that a settlement award for many of the potential class members could require probate court approval, with this court’s assistance, the parties and the mediator conferred with the Honorable Beverly K. Streit-Kefalas, the Probate Court Administrator, and the Honorable Clifton E. Graves, Jr., the probate judge for New Haven where the vast majority of potential class members reside.⁵

II.

Practice Book § 9-9 (c) governs the approval of the settlement of class actions. The standard for approval, both at the preliminary and final approval stage, is that the settlement must be “fair, reasonable, and adequate.” Practice Book § 9-9 (c) (1) (C). In that regard, § 9-9 is

⁵ This court believes that the willingness of the probate judges to engage in the settlement process was critical to the success of the negotiations. In particular, their input was instrumental to the parties’ decision to adopt the trust mechanism set forth in the Second Amended Stipulation for Settlement (# 300, ex. H).

identical to Rule 23 (e) (2) of the Federal Rules of Civil Procedure which provides that final approval of a class action settlement requires a “finding that it is fair, reasonable, and adequate” Thus, that rule and federal case law interpreting it can be looked to for guidance in the consideration of this motion. See *Rivera v. Veterans Memorial Medical Center*, 262 Conn. 730, 737, 818 A.2d 731 (2003).

Before 2018, Rule 23 did not describe the process for preliminary approval and thus the federal courts developed a “general rule that a court would grant preliminary approval where the proposed settlement was neither illegal nor collusive and is within the range of probable approval.” (Internal quotation marks omitted). W. Rubenstein, *Newberg on Class Actions* (5th Ed. 2014, Winter 2019 Supplement) § 13.10. In 2018, this approach was codified in Rule 23 (e) (1) (B) which provides that the court must determine whether, at the final approval stage, it likely will be able to give final approval to the settlement proposal pursuant to the procedural and substantive standards set forth in Rule 23(e)(2)⁶ and also certify the proposed class for purposes of entering judgment. The “likely” standard means that the court does not have to engage in a full and rigorous analysis of the proposed settlement’s strengths and weaknesses at the preliminary approval stage. The court has reviewed the motion and the Settlement Agreement in this light.

⁶ F. R. Civ. P. 23 (e) (2) sets forth the following factors to measure whether the proposal is fair, reasonable and adequate: “(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.”

Preliminary approval requires assessment of both procedural and substantive factors as described in Rule 23 (e) (2), see note 6, supra, and federal caselaw. See *City of Detroit v. Grinnell*, 495 F.2d 448, 463 (2d Cir. 1974). All the factors do not have to be present or satisfied. “[R]ather, a court should look at the totality of these factors in light of the particular circumstances.” *Berni v. Barilla G. e R. Fratelli, S.p.A.*, 332 F.R.D. 14, 30 (E.D.N.Y., 2019), rev’d on other grounds, 964 F.3d 141 (2020).

The procedural factors address the quality and nature of the negotiations asking the court to consider whether the class was adequately represented through legitimate arm’s length negotiations after appropriate discovery has occurred and in light of the litigation that preceded the Settlement Agreement. In this case, it is clear that the court can conclude that it will likely find these procedural requirements met at the final approval stage.

After a lengthy period of extensive, substantial and relevant discovery including fact and expert discovery and after a lengthy period of adversarial litigation including a thoroughly briefed and argued motion for class certification with each side vigorously advocating their views in favor and against either full or partial class certification, the parties elected to seek to resolve their differences with the assistance of a highly qualified third party mediator. With the mediator’s assistance over a very lengthy period, the parties engaged in an arm’s length negotiation that was serious, well-informed and sought to address the legitimate concerns of the proposed class and the defendants. The Settlement Agreement that resulted from these negotiations does not give preferential treatment to any class representative or any segment of the proposed class; all are treated the same. Like the members of the proposed class they seek to represent, the class representatives resided at CSS during the relevant time period and claim

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