

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2020 MAY -0 P 2 12 CASE NO. 17-CVS-7995

JORDON HARGROVE,

Plaintiff,

v.

GRUBB MANAGEMENT, INC.;  
GRUBB FUND MANAGEMENT,  
LLC; GRUBB RESIDENTIAL  
DEVELOPMENT FUND III, LLC; and  
GLENWOOD RALEIGH  
APARTMENTS, LLC d/b/a STERLING  
GLENWOOD APARTMENTS,

Defendants.



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

THIS MATTER comes before the Court on Plaintiff Jordon Hargrove's ("Plaintiff") unopposed motion for final approval of class action settlement and 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 Grubb Management, Inc., Grubb Fund Management, LLC, Grubb Residential Development III, LLC, and Glenwood Raleigh Apartments, LLC d/b/a Sterling Glenwood Apartments ("Defendants") dated February 17, 2020 (the "Settlement Agreement") in the above-captioned matter ("the Settlement").

On May 8, 2020, 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, 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 Jordon Hargrove. The grounds supporting these rulings follow.

### **BACKGROUND**

1. Plaintiff Hargrove filed his complaint on June 30, 2017, individually and on behalf of North Carolina tenants who were threatened, charged and paid Eviction Fees in violation of North Carolina law between June 30, 2013 and June 25, 2018 (the "Relevant Time Period").<sup>1</sup>

2. The Action brought four claims for relief: a violation of the North Carolina Residential Rental Agreements Act (N.C.G.S. § 42-46), a violation of the North Carolina Debt Collection Act (N.C.G.S. § 75-50, *et seq.*), a violation of the North Carolina Unfair and Deceptive Trade Practices Act (N.C.G.S. § 75-1.1, *et seq.*), Petition for Injunction (N.C.G.S. § 1-485, *et seq.*), and Declaratory Judgment (N.C.G.S. § 1-253, *et seq.*).<sup>2</sup>

3. On September 8, 2017, Defendants Answered Plaintiff's Complaint, denying any wrongdoing and raising ten Affirmative Defenses.

4. On October 24, 2017, Defendants moved for a Judgment on the Pleadings as to Plaintiff's Complaint, arguing, *inter alia*, that charging and collecting Eviction Fees was lawful.

5. On October 25, 2017, Plaintiff moved for a Partial Judgment on the Pleadings against Defendant Glenwood Raleigh Apartments, LLC d/b/a Sterling Glenwood Apartments

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<sup>1</sup> The Relevant Time Period corresponds with the four-year statute of limitations for Plaintiff's claims under the North Carolina Debt Collection Act, N.C.G.S. § 75-50 *et seq.* through June 25, 2018 § 42-46 Amendment (Session Law 2018-50).

<sup>2</sup> On February 19, 2018, the case was designated exceptional, pursuant to North Carolina General Rule of Practice, Rule 2.1 and assigned to this Court.

("Sterling"), arguing that it had violated N.C.G.S. § 42-46 by charging, demanding, and collecting Eviction Fees from Plaintiff.

6. On March 23, 2018, the Court granted Plaintiff's Motion for Partial Judgment on the Pleadings, holding that N.C.G.S. § 42-46 was unambiguous and that Defendant Sterling had violated the statute by imposing and collecting Eviction Fees from Plaintiff.

7. On June 25, 2018, an amendment to N.C.G.S. § 42-46 was ratified and made into law (the "Amendment").

8. The Amendment added two subsections to § 42-46 – (i) and (j) – which authorized landlords to charge and recover out-of-pocket expenses including Eviction Fees and to include these amounts in the amount required to cure a default.

9. Beginning in the summer of 2018, the Parties began settlement discussions, which included numerous informal meetings and discussions between counsel for the Parties.

10. In October 2018, the Parties mediated the case with Robert A. Beason in Raleigh, North Carolina.

11. After the mediation concluded, the Parties disagreed as to whether a settlement occurred due to a dispute about whether all material terms were agreed upon.

12. On March 6, 2019, Defendants filed a Motion to Enforce Settlement and Dismiss.

13. On July 12, 2019, Defendants' Motion came before this Court.

14. Upon the conclusion of the hearing, this Court denied Defendants' Motion, finding that that no meeting of the minds had been reached as to all material terms of the settlement.<sup>3</sup>

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<sup>3</sup> During the July 12, 2019 hearing, this Court also addressed and denied Defendants' Motion to Reconsider its Order on the Motion for Judgment on the Pleadings in light of the Amendment.

15. During and after the pendency of resolution of the settlement issue, numerous depositions were taken, including those of multiple 30(b)(6) representatives on behalf of Defendants (Lawrie Myers, Megan Slocum, Michell Brown, and Shawn Cardner), and Maggie Krueger, former property manager of Sterling Glenwood Apartments.

16. Following denial of Defendants' Motion to Enforce the Settlement, the deposition of Plaintiff Hargrove was also taken.

17. Several Motions to Compel discovery were filed and resolved by this Court.

18. Following more than two years of litigation, the Parties re-engaged in settlement discussions and reached a final resolution for Court approval.

19. The Parties thereafter drafted formal settlement documents (hereafter, the "Settlement Agreement") to resolve all claims brought on behalf of Plaintiff and those similarly situated.

20. On February 17, 2020, the Parties finalized the Settlement Agreement.

21. On February 21, 2020, this Court held a hearing attended by Class Counsel in which it entered an Order preliminarily approving the Settlement.

#### **SETTLEMENT TERMS**

22. In broad brush strokes, the settlement provides significant benefits to two classes: the Collection Letter Class and the Eviction Fee Class.

23. Collection Letter Class members are defined as all natural persons who (a) at any point between June 30, 2013 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendant and (c) received a Collection Letter.

24. A Collection Letter is defined as any letter sent by Defendants to Settlement Class members during the Relevant Time Period that asserts that Settlement Class Members will either

(a) be charged with Eviction Fees upon the filing of a summary ejectment action or (b) that Eviction Fees are owed. Exemplar Collection Letters are attached to the settlement agreement as Exhibits A.

25. The Eviction Fee Class is defined as all natural persons who (a) at any point between June 30, 2013 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendant and (c) were charged and (d) paid Eviction Fees.

26. The Settlement Agreement provides a Settlement Fund for a total of \$475,000.00 in Monetary Relief.

27. Collection Letter Class members were eligible to claim \$50 for each Collection Letter received from Defendants, up to a total of \$150. Collection Letter Class members' benefits were available on a claims-made basis.

28. The Settlement Agreement allotted \$50,500.00 in Monetary Relief to claims made by the Collection Letter Class Members. If the amount allotted to the Collection Letter Class was undersubscribed, then any amounts remaining would be redistributed equally to the Eviction Fee Class Members.

29. Based upon the claims received by the Settlement Administration and subject to confirmation that there are no duplicates, the Collection Letter Class members have made claims for approximately \$5,550.00 of the \$50,500.00 allotted. Therefore, the remaining amount will be allocated to the Eviction Fee Class.

30. Eviction Fee Class members were expected to receive approximately \$350.00 for each instance in which they were charged and paid Eviction Fees during the Class Period, subject to pro rata increase based on Settlement Class participation in the settlement. Since there were less claims for the Collection Letter Class members, the Eviction Fee Class Members will now receive

approximately \$415.00 for each instance in which they were charged and paid Eviction Fees. Thus, the Eviction Fee Class Members will receive more than double what they paid made whole because they were charged approximately \$191.00 to \$201.00 by Defendants without having to pay any attorneys' fees or costs.

31. The approximate \$415.00 per instance will be provided to the Eviction Fee Class members without having to file a claim.

32. As defined in the Settlement Agreement and used herein:

(a) "Released Persons" means Defendant, along with its parent companies, lenders, insurers, investors, affiliates, suppliers, successors, assigns, subsidiaries, related entities and trustees and/or beneficiaries of trusts which have an interest in the above referenced company; and/or any current, past or future owners, members, directors, officers, employees, attorneys, accountants, direct and indirect shareholders, partners, members, or agents of the foregoing, as well as any and all entities with a current interest in any apartment complex in which any Settlement Class Member resided to the extent such apartment complex was owned or managed by 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 costs, expenses, restitution, punitive damages, exemplary damages, compensatory damages, incidental damages, pecuniary 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 has, 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; 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**

33. 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.

34. 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 Class are bound by the Order and Final Judgment herein.

### **APPROVAL OF THE SETTLEMENT**

35. The Court finds that the parties' settlement is fair, reasonable and adequate in accordance with North Carolina Rules of Civil Procedure 23; was reached at arm's length without collusion or fraud; and satisfies all of the requirements for final approval.

36. The Court has considered the complexity, expense and likely duration of the litigation if the settlement is not approved; the odds of the plaintiff succeeding at trial balanced by

the risks of continued litigation; the range of possible recovery if the case is tried; the opinions of Class Counsel and the class representative; and the degree of opposition to the settlement.

37. The Court recognizes that no Settlement Class member objected to the settlement and only one Class Member has opted-out of the settlement or has filed a valid and timely request for exclusion.

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

### **CERTIFICATION OF THE SETTLEMENT CLASSES**

39. The Court hereby certifies the Collection Letter Class and the Eviction Fee Class.

40. The Collection Letter Class is defined as “all natural persons who (a) at any point between June 30, 2013 and June 25, 2018, (b) resided in any of the properties in North Carolina owned and/or managed by Defendants and (c) received a letter that threatened that Defendants would file a summary ejection lawsuit, eviction action, or notice to vacate the premises if the person failed to make a complete rental payment and that once the summary ejection lawsuit was filed, the tenant would be charged Eviction Fees in order to dismiss the eviction action.”

41. The Eviction Fee Class is defined as “all natural persons who (a) at any point between June 30, 2013 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) actually paid Eviction Fees.”

42. Excluded from the Settlement Classes are (1) persons who are employees, directors, officers, and agents of Defendant; (2) persons who timely and properly exclude themselves from the Settlement Classes as provided in this Agreement; (3) anyone who has previously executed a written release of all claims against Defendant related to the collecting or threatening to collect



Eviction Fees and would otherwise be a member of the Settlement Classes; and (4) the Court, the Court's immediate family, and Court staff.

43. Based on the record before the Court, the Court hereby finds that the Plaintiff is an adequate representative of the Settlement Classes.

44. In so holding, the Court finds that the prerequisites of North Carolina Rule 23 of Civil Procedure has been satisfied for certification of the Settlement Classes for settlement purposes only; the Settlement Classes, which contain hundreds of members, are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the Settlement Classes; the claims of the Class Representative are typical of the claims of the absent Settlement Class members; the Class Representative and Class Counsel have and will adequately and fairly protect the interests of the Settlement Classes with regard to the claims of the Settlement Classes; and common questions of law and fact predominate over questions affecting only individual Settlement Class members, rendering the Settlement Classes sufficiently cohesive to warrant a class settlement.

45. In making all of the foregoing findings, the Court has exercised its discretion in certifying the Settlement Classes.

46. The Court appoints Scott C. Harris and Patrick M. Wallace of Whitfield Bryson LLP, and Edward H. Maginnis and Karl S. Gwaltney of Maginnis Law, PLLC, as Class counsel. The Court appoints Jordon Hargrove as Class Representative.

#### **ATTORNEYS' FEES AND EXPENSES**

47. The Settlement also provides that Defendants will not contest Settlement Class Counsel's application to the Court for payment of attorneys' fees, expenses, and costs up to one third of the Settlement Fund. This amount was negotiated only after the substantive terms of the

Settlement were agreed upon. The enforceability of the Settlement was not contingent upon this amount being awarded.

48. 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.

49. 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 \$158,333.33 in fees is reasonable.

50. 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. 130, 162, at 500.

51. 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.

52. This action settled after filing of the complaint, arguing motions for judgment on the pleadings, motion to enforce settlement agreement, motion to reconsider, motions to compel and substantial and involved discovery in the complex issues into the case, and mediation.

53. 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.

54. In addition, the declaration of Class Counsel, Scott Harris, indicates the extensive work performed by the parties in seeking to resolve this litigation. Since the attorneys' fee request is unopposed by Defendants, 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.

55. Settlement Class Counsel worked comprehensively and extensively for almost three years on the case and anticipate working more to effectuate the Settlement and assist Settlement Class members in receiving the settlement benefits.

56. Class Counsel also has established that they obtained a highly favorable result for the Settlement Class by providing substantial monetary benefits.

57. Settlement 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 almost three years through complicated discovery also favorably weighs in Settlement Class Counsel's favor.

58. After carefully reviewing the foregoing, the Court finds, in its discretion, that \$158,333.33 is a reasonable attorney fee.

59. Plaintiffs' counsel requested reimbursement of expenses of \$14,928.74 are also reasonable under the circumstances and the Court in its discretion awards the full amount of these expenses.

60. Accordingly, the Court grants to Class Counsel should be awarded \$173,262.07 in attorneys' fees and reimbursement of expenses. This amount will be paid in accordance with the parties' Settlement Agreement.

#### **SERVICE AWARD**

61. The Settlement Agreement provides that Defendants, subject to Court approval, will pay \$5,000.00 for Jordan Hargrove as Class Representative.

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

63. The Court hereby approves the service award, which shall be paid consistent with the parties' Settlement Agreement.

#### **CY PRES**

64. In the event that Settlement Class 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 to the approved *cy pres* recipients: Duke Eviction Diversion Program and Legal Aid of North Carolina. The Claims 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 class.

2. Class Counsel is hereby awarded attorneys' fees in the amount of \$158,333.33 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 \$14,928.74.

4. The Court also finds to be fair and reasonable service award of \$5,000.00 to Jordan Hargrove to be paid from the Settlement Fund.

5. In addition, the Claims Administrator has projected a total budget of up to \$34,000 to fully administer the notice plan and effectuate the payment of the settlement to the class members. Since the Claims Administrator has been paid a retainer of \$30,000 already, they will be reimbursed up to \$34,000.00 from the Settlement Fund. Any amounts unused for the administration of the Settlement will be distributed to the *Cy Pres* recipients.

6. Since no member of the Class has objected to 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.

7. By reason of the settlement, and there being no just reason for delay, the Court hereby enters final judgment in this matter and all claims alleged by Plaintiff are dismissed with prejudice.

8. 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.

9. 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 Defendant and Released Persons.

10. The parties shall bear their own costs except as provided by the Settlement Agreement and as ordered herein.

11. It is further adjudged that the Class Representative, on behalf of himself and 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 8 day of May, 2020.

  
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Honorable A. Graham Shirley II  
North Carolina Superior Court Judge