

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2012-017609-CA-01

SECTION: CA27

JUDGE: Oscar Rodriguez-Fonts

Haney, Richard

Plaintiff(s)

vs.

Plucienkowski, George F

Defendant(s)

**FINAL JUDGMENT AND ORDER APPROVING CLASS ACTION SETTLEMENT AND
DISMISSING CLASS ACTION WITH PREJUDICE**

WHEREAS, this matter came before the Court by Zoom Remote Videoconference on January 28, 2021, from 11:00 – 11:30 a.m., after proper notice for a Final Hearing, with all parties represented by counsel, and duly informed the Court as follows:

Appearing before the Court were:

Daniel A. Meyer, Class Counsel for Plaintiffs (Admitted *Pro Hac Vice*)

Jon M. Herskowitz, Class Counsel for Plaintiffs (Florida Bar No. 814032)

Joshua A. Goldstein, Counsel for Defendant Pinnacle Condominium Association, Inc. (Florida Bar No. 64834)

WHEREAS, the parties have entered into a Settlement Agreement, (the “Settlement Agreement”), to settle this class action; and

WHEREAS, the Court entered an Order on Joint Motion for Preliminary Approval of Settlement dated November 16, 2020 (the “Preliminary Approval Order”), preliminarily approving this class action settlement; ordering notice to potential class members; providing those persons with an opportunity either to exclude themselves from the Settlement Class or to object to the proposed settlement; and scheduling a Fairness Hearing; and

WHEREAS, the Court held a Fairness Hearing on January 28, 2020, to determine whether to finally approve the proposed settlement; and

WHEREAS, the parties have complied with the Preliminary Approval Order and the Court finds that the Settlement Agreement is fair, adequate, and reasonable, and that it should be finally approved.

NOW THEREFORE, based on the submissions of the parties, there having been no objectors or opt-outs by Class Members, any testimony or evidence adduced at the Fairness Hearing, the pleadings on file, and the argument of counsel, the Court hereby finds, and it is hereby ORDERED, ADJUDGED AND DECREED, as follows:

1. **Incorporation of Defined Terms.** Except where otherwise noted, all capitalized terms used in this Order hereto shall have the meanings set forth herein.
2. **Jurisdiction.** The Court has personal jurisdiction over all Class Members and has subject matter jurisdiction over this action, including, without limitation, jurisdiction to approve the proposed settlement, to settle and release all claims arising out of the transactions alleged in the action or the Released Claims, and, pursuant to the settled resolution, to dismiss this action on the merits and with prejudice.
3. **The Class.** The "Settlement Class" consists of: All condominium unit owners of the Pinnacle Condominium who suffered financial damage from the obligations imputed upon them under the February 3, 2010 Settlement Agreement for the matter of "Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06", who were not members of the Board of Directors from August 30, 2006 through February 3, 2010.
4. **Opt-Outs.** There are no persons or entities who have timely requested exclusion from the Settlement Class.
5. **Adequacy of Representation.** The Court finds that Class Counsel and Plaintiffs have fully and adequately represented the Settlement Class for purposes of entering into and implementing the settlement and have satisfied the requirements of Florida Rule of Civil Procedure 1.220.
6. **Class Notice.** The Court finds that the distribution of the Class Notice, in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order, and as explained in the declaration(s) filed at or before the Fairness Hearing:
 - a. constituted the best practicable notice to Class Members under the circumstances of this action;
 - b. was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of this class action, (ii) their right to exclude themselves from the proposed settlement, (iii) their right to object to any aspect of the proposed settlement (including without limitation the fairness, reasonableness or adequacy of the proposed settlement, the adequacy of the Settlement Class's representation by Plaintiffs or Class Counsel, the award of attorneys' fees and expenses to Class Counsel and/or the award of an incentive

payments to the named Plaintiffs), (iv) their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) if they did not exclude themselves from the Settlement Class, and (v) the binding effect of the orders and Final Judgment and Order in this action, whether favorable or unfavorable, on all persons or entities who do not request exclusion from the Settlement Class;

c. was reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to be provided with notice, and

d. fully satisfied the requirements of the United States Constitution, the Florida Constitution, the Florida Rules of Civil Procedure, the Rules of this Court, and any other applicable rules or law.

7. **Final Settlement Approval.** The terms and provisions of the Settlement Agreement, including all exhibits, have been entered into in good faith and are hereby fully and finally approved as fair, reasonable and adequate as to, and in the best interests of Plaintiffs and the Class Members, and in full compliance with all applicable requirements of the Florida Rules of Civil Procedure, and any other applicable rules or law. No timely filed objections to the Settlement Agreement have been filed with the Court. The parties and Class Members are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions, provided that the Claim Administrator is authorized to accept claim forms through January 30, 2021.
8. **Binding Effect.** The terms of the Settlement Agreement and of this Final Judgment and Order shall be forever binding on Plaintiffs and all other Class Members, as well as their heirs, representatives, executors and administrators, successors and assigns, and those terms shall have res judicata and full preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in this action or are otherwise encompassed by the Release described in the next paragraph of this Final Judgment and Order.
9. **Release.** Upon the Effective Date, Plaintiffs and all Class Members, together with their respective heirs, representatives, executors and administrators, successors, assigns or any other persons or entities claiming through or on behalf of Plaintiffs or any such Class Members, shall be deemed to have, and by operation of this Final Judgment and Order shall have fully, finally, and forever released, relinquished and discharged all Released Claims against the Released Parties.
10. **Enforcement of Settlement.** Nothing in this Final Judgment and Order or any order entered in connection herewith shall preclude any action to enforce the terms of this Final Judgment and Order or the Settlement Agreement.

11. **Attorneys' Fees and Expenses.** Plaintiffs' Counsel are hereby awarded attorneys' fees and costs in the amount of \$192,500. Additionally, \$14,740.00 is allocated to fund settlement administrative costs of The Notice Company, including the location of claimants. Attorneys' fees and costs are allocated out of the total recovery.
12. **Incentive Awards.** The named Plaintiffs are allocated \$3,000.00 in total; \$1,000.00 each as compensation for their time and effort in connection with the litigation.
13. **No Other Payments.** Paragraph 10 of this Final Judgment and Order covers, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or incurred by Plaintiffs or the Settlement Class Members, or any of them, in connection with or related in any manner to this action, the settlement of this action, the administration of such settlement, and/or the Released Claims. Defendant shall not be liable to Plaintiffs, Class Counsel or the Settlement Class Members for any additional attorneys' fees or expenses.
14. **Modification of Settlement Agreement.** The parties are hereby authorized, without needing further approval from the Court, to agree to and adopt such amendments to, and modifications and expansions of, the Settlement Agreement as are consistent with this Final Judgment and Order and do not limit the rights of Class Members under the Settlement Agreement.
15. **Retention of Jurisdiction.** The Court shall have exclusive and continuing jurisdiction over the implementation, interpretation and execution of the Settlement Agreement; of any orders and this Final Judgment and Order entered by the Court; and/or of the conduct or the policies and procedures described herein, with respect to all parties hereto and all beneficiaries hereof, including all Class Members.
16. **No Admissions.** This Final Judgment and Order, the Settlement Agreement (or any other document referred to herein, or any action taken to negotiate, effectuate and implement the Settlement Agreement) is not admissible as evidence for any purpose against Defendant in any pending or future litigation; shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability and Defendant specifically denies any such fault, breach, liability, or wrongdoing; and shall not be construed or used as an admission, concession, declaration, or waiver by Defendant of any arguments, defenses, or claims he, she, or it may have. Neither the fact of, nor any provision contained in Final Judgment and Order, the Settlement Agreement (or any other document referred to herein, or any action taken to negotiate, effectuate and implement the Settlement Agreement), nor any actions taken

thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

Neither the Settlement Agreement nor any negotiations, actions, or proceedings related to it, shall be offered or received in evidence in any action or proceeding against any party hereto or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever, except to enforce the provisions of this Final Judgment and Order and the Settlement Agreement.

Neither this Final Judgment and Order, nor the Settlement Agreement (nor any other document referred to herein, nor any action taken to negotiate, effectuate and implement the Settlement Agreement) is, may be construed as, or may be used as an admission or concession by or against the Released Parties as to the issue of whether a class or collective action is properly certified in any non-settlement context. The Court's findings are solely for purposes of certifying the Settlement Class and will not have any legal, claim, issue, evidentiary, preclusive, precedential, or estoppel effect in any other action or claim against the Defendant or Defendant's Releasees, or in this action, should the Final Judgment and Order be overturned or modified in any way.

Notwithstanding the foregoing, this Final Judgment and Order and the Settlement Agreement may be filed and used in any action, arbitration or other proceeding against or by the Released Parties to support a claim or defense by them against Plaintiffs or Class Members of res judicata, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

17. **No Representations Regarding Taxes.** The Court finds that the parties and their counsel have expressed no opinions concerning the tax consequences of the settlement to Settlement Class Members and have made no representations, warranties or other assurances regarding any such tax consequences. No opinions, representations, warranties, or other assurances shall be deemed to have been made by the parties or their counsel with respect to any such tax consequences by virtue of the Settlement Agreement or by effectuating the settlement, and the parties and their counsel shall not be responsible or liable for any such tax consequences that may occur.
18. **Dismissal of Action.** This action, including all of the individual and class claims included therein, is, pursuant to the settled resolution, hereby dismissed on the merits and with prejudice against Plaintiffs and all other Settlement Class Members, without fees or costs to any party except as specifically provided in this Final Judgment and Order. This Order is final as to all issues and dismisses the case in its entirety.

DONE and ORDERED in Chambers at Miami-Dade County, Florida on this 3rd day of February, 2021.

2012-017609-CA-01 02-03-2021 10:50 P

2012-017609-CA-01 02-03-2021 10:50 PM

Hon. Oscar Rodriguez-Fonts

CIRCUIT COURT JUDGE

Electronically Signed

Final Order as to All Parties SRS #: 12 (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

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