

STATE OF NORTH CAROLINA
PITT COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

Case No. 18-CVS-2376

2021 AUG 20 P 1:50

KIDD CONSTRUCTION GROUP,
LLC, ROCKY RUSSELL BUILDERS
INC., and TOMMY WILLIAMS
BUILDERS, LLC,)
BY _____)

PITT CO., C.S.C.

**ORDER GRANTING PLAINTIFFS’
MOTION FOR PRELIMINARY
APPROVAL OF THE CLASS
ACTION SETTLEMENT,
DIRECTING NOTICE TO THE
CLASS AND SCHEDULING THE
FINAL APPROVAL HEARING**

Plaintiffs,)

v.)

GREENVILLE UTILITIES
COMMISSION,)

Defendant.)

WHEREAS, this matter came before the undersigned Superior Court Judge on August 13, 2021 pursuant to Plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement, Directing Notice to the Class, and Scheduling the Final Approval Hearing (the “Motion”) filed by Kidd Construction Group, LLC, Rocky Russell Builders, Inc., and Tommy Williams Builders, LLC individually, on behalf of itself and the members of the settlement class in this action (collectively, “Class Plaintiffs”).

WHEREAS, the Court finds that it has jurisdiction over this action and the parties; and

WHEREAS, this Court is otherwise fully advised of the facts and circumstances of the proposed settlement.

IT IS HEREBY ORDERED THAT:

The Settlement Agreement is Preliminarily Approved

1. The Court preliminarily approves the Stipulation of Settlement and Release (the “Settlement”), between Class Plaintiffs and Defendant Greenville Utilities Commission (“GUC”), executed by the parties and subject to further consideration thereof at the Final

Approval Hearing provided for below. The Settlement calls for GUC to provide benefits to Class Members in the form of making a common settlement of \$1,557,000 (“Settlement Fund”) to be administered by the Settlement Administrator, appointed below, to whom Class Members can make claims. Class Plaintiffs may make a claim to receive a partial refund of the Impact Fee they paid GUC minus attorneys’ fees in the amount of one-third of the Settlement Fund plus expenses, costs, and a service award to the Plaintiff. GUC has agreed not to object to the service award to the Plaintiffs and class representatives of \$5,000.00 or the payment of the fees of the Settlement Administrator. Additionally, GUC has agreed not to oppose Class Counsel’s request for attorneys’ fees and expenses, payable from the settlement fund, provided that Class Counsel complies with all provisions in the Settlement. The Settlement was entered into after extensive litigation and arm’s length negotiation by experienced counsel for the parties, and assisted by a neutral mediator after an extended mediation. The Court finds that the Settlement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order.

The Notice Plan and Schedule are Approved

2. The Court has reviewed and hereby approves the notice plan designed by CPT Group (“Settlement Administrator”) described in the settlement (“Notice Plan”). This Notice Plan includes mailing to Class Plaintiffs a claim form in which they can fill out and return to make a valid claim. The Class Plaintiffs must abide by all applicable deadlines on the Claim Form. The Court finds that the notice to be provided to the Class Plaintiffs as set forth in the Notice Plan to be the best practicable notice under the circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the settlement to all persons and entities

affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of North Carolina Rule of Civil Procedure 23 and due process.

3. The Court appoints CPT Group as the Settlement Administrator. Responsibilities of the Settlement Administrator include: (i) disseminating the Settlement Notice and the Claim Forms to the Class Plaintiffs; (ii) establishing and maintaining a website for purposes of posting the notices, the Settlement, the complaint and other case pleadings, and related documents; (iii) accepting and maintaining documents sent from Class Plaintiffs, including Claim Forms, exclusion requests, objections, and other documents relating to settlement administration; (iv) processing Claim Forms; (v) communicating with Class Counsel and counsel for GUC concerning settlement administration; (vi) determining the benefits due to eligible Class Plaintiffs in strict accordance with the terms and conditions of the Settlement; and (vii) carrying out any other tasks assigned to the Settlement Administrator by the Settlement.

4. The Court hereby orders the Settlement Administrator to implement the events identified in the Settlement pursuant to the following schedule:

<u>EVENT</u>	<u>DATE</u>
<i>Notice Plan to Begin</i>	<u>August 31, 2021</u> (no later than 15 days from the date of this Order)
<i>End of Notice Plan</i>	<u>November 15, 2021</u> (90 days from the date of this Order)
<i>Post-Notice Declaration of Settlement Administrator and Notice Administrator Attesting to their Compliance with this Order</i>	<u>September 3, 2021</u> (10 days before Final Approval Hearing)

Procedures for Objections to the Settlement are Approved

5. Any Class Plaintiffs who objects to the Settlement shall file a written objection with the Court, with a written copy delivered to Class Counsel, GUC’s Counsel, and the Clerk of Court as outlined in the Settlement pursuant to the schedule below.

EVENT

DATE

Deadline to File, Postmark, and Send Objections

September 21, 2021
(30 days from the originally scheduled date of the Final Approval Hearing)

6. A written statement of objection must: (a) contain a caption or title that identifies it as Objection to Class Settlement in of *Kidd Construction Group, LLC et. al v. Greenville Utilities Commission* (Pitt Co. No. 18-CVS-2376);” (b) set forth the specific reason(s), if any, for each objection, including all legal support the Class Plaintiff wishes to bring to the Court’s attention and all factual evidence the Class Plaintiff wishes to introduce in support of the objection; (c) include the name and address of the Class Plaintiff; (d) be personally signed by the Class Plaintiff; (e) include an identification, by case style and number, of any other class settlements the objector or the objector’s attorney(s) have asserted an objection; and (f) include an identification of all attorneys having a financial interest or stake in the objection; and (g) include three different dates within the next two weeks from the date in which the objection is submitted on which the Class Plaintiff is available for a deposition.

Requests to Be Excluded from the Settlement

7. Any Class Plaintiff who wishes to be excluded from the Settlement shall mail a written notice of exclusion to the Settlement Administrator and mail copies of that written

request for exclusion to Class Counsel and GUC's Counsel at the addresses provided in the respective Settlement Notice, pursuant to the schedule below.

EVENT

DATE

Deadline to Postmark and Send Notice of Exclusion

September 21, 2021
(30 days before the originally scheduled Final Approval Hearing)

8. Any Class Plaintiff who submits a timely request for exclusion that complies with the requirements set forth in this Order shall not be bound by the Settlement or the Final Order and Judgment.

9. Any Class Plaintiff who does not properly and timely mail a notice of exclusion as set forth herein shall remain in the Class and shall be bound by the terms of the Settlement and Final Order and Judgment if the Settlement is approved, whether or not such Class Plaintiff shall have otherwise objected to the settlement or sought exclusion, and whether or not such Class Plaintiff submits a claim or participates in the Settlement.

10. Any Class Plaintiff who submits a notice of exclusion that complies with the requirements of this Order and also objects to the Settlement shall be deemed to have excluded himself or herself from the Class and his or her objections shall not be considered by the Court.

The Filing and Administration of Claim Forms are Approved

11. To effectuate the Settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion and Claim Forms. The Settlement Administrator shall preserve all notices of exclusion, Claim Forms, and any and all other documents received from members of the Class Plaintiffs in response to the notices for a period of five (5) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the

Settlement shall be available at all reasonable times for inspection and copying by Class Counsel and GUC's counsel.

12. To participate in the Settlement, each Class Plaintiff shall take the following actions and be subject to the following requirements:

- a. A Class Plaintiff who wishes to receive a refund shall timely submit a valid Claim Form by the Claim Form Deadline. Pursuant to the Settlement, the Class Plaintiff does not need to submit any supporting evidence with their Claim Form or state the amount of fees they believed they paid.
- b. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall make a determination about which claims should be allowed.
- c. There shall only be one claim per fee per property address.
- d. Each Class Plaintiff who submits a Claim Form shall thereby expressly submit to the jurisdiction of the Court with respect to the claims submitted and shall (subject to final approval of the Settlement) be bound by all the terms and provisions of the Settlement Agreement.
- e. Upon request, GUC will verify the claim of anyone not on the class list.
- f. A Class Plaintiff may submit evidence to the review of the Settlement Administrator in the event the records of GUC and the Class Plaintiff differ. The Settlement Administrator will make the ultimate determination as to the final payout to the Class Plaintiff.

13. Any Class Plaintiff who wishes to submit a Claim Form shall do so in accordance with the procedures set forth in the Claim Form, in the Settlement, and in this Order. Other

filings by the parties or any Class Plaintiff shall be made pursuant to the following schedule: A hearing on final settlement approval (the "Final Approval Hearing") shall be held before this Court, at the Pitt County Superior Court, 100 W 3rd Street, Greenville, NC 27834, on the date set forth below, to consider matters relating to the settlement, including the following: (a) the fairness, reasonableness, and adequacy of the Settlement, the dismissal with prejudice of the Action as to GUC, and the entry of final judgment; (b) whether Class Counsel's application for attorneys' fees in the amount of one-third of the Settlement Fund, expenses, and service award of \$5,000.00 each for the Class Plaintiffs (the "Fee Petition"), and should be given final approval; and (d) whether to approve the proposed plan of allocation and distribution of the balance of the Settlement Fund.

Final Approval Hearing

14. Any Class Plaintiff who properly files and serves a timely written objection as described in this Order may appear at the Final Approval Hearing in person or through personal counsel hired at the Class Plaintiff's own expense. However, any Class Plaintiff who intends to make an appearance at the Final Approval Hearing must include a statement to that effect in his or her objection. If a Class Plaintiff hires his or her own personal attorney to represent him or her in connection with an objection, and if the attorney wishes to appear at the Final Approval Hearing, the attorney must: (a) file a notice of appearance with the Clerk of Court in this action; and (b) serve and deliver a copy of that notice of appearance to Class Counsel and GUC's Counsel no later than thirty (30) days before the originally scheduled date of the Final Approval Hearing (if the Final Approval Hearing is continued, the deadline runs from the first-scheduled Final Approval Hearing).

15. Any Class Plaintiff who fails to strictly comply with these deadlines shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the jurisdiction of the Court, to be part of the Class, and to be bound by all subsequent proceedings, orders, and judgments in this action, including, but not limited to, the Settlement.

16. Any Class Plaintiff who objects to the Settlement but does not file an exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain a Class Plaintiff and therefore be entitled to all of the benefits, obligations and terms of the Settlement if the same received final approval.

17. The date and time of the Final Approval Hearing and related filings as identified herein shall be as follows:

EVENT

DATE

Deadline for Notices of Appearance of Objectors Represented by Attorneys

September 21, 2021
(30 days before the originally schedule date for the Final Approval Hearing)

Motions for Final Approval, Attorneys' Fees and Expenses, and Service Awards to be Filed by Class Counsel

October 5, 2021
(10 days before Final Approval Hearing)

Final Approval Hearing to be Held

October 15, 2021
(no earlier than 60 days from the date of this Order)

18. The date and time of the Final Approval Hearing shall be set forth in the notice to be disseminated pursuant to this order and Settlement Notice, but shall be subject to adjournment by the Court without further notice other than that which may be posted at the Court, on the Court's website, and/or the website to be established pursuant to the Notice Plan.

19. Upon entry of the Final Order and Judgment, each and every term and provision of the Settlement (except as may be modified by the Court) shall be deemed incorporated into the Final Order and Judgment as if expressly set forth therein and shall have the full force and effect of an Order of the Court.

Service of Objections, Notices of Intent to Appear and Other Documents

20. When this Order directs that papers, briefs, objections, notices and other documents be served upon Class Counsel and GUC's counsel, service shall be made to the attorneys listed below by email and United States Mail, first class, addressed as follows:

Class Counsel

Daniel K. Bryson
J. Hunter Bryson
Milberg Coleman Bryson Phillips Grossman, PLLC
900 W. Morgan Street
Raleigh, NC 27603
Email: hbryson@milberg.com

GUC's Counsel

Dan Hartzog Jr.
Hartzog Law Group
2626 Glenwood Ave Suit 305
Raleigh, NC 27608
Email: dhartzogjr@hartzoglawgroup.com

Clerk of Superior Court

Clerk of Superior Court
Pitt County Superior Court
100 W 3rd Street
Greenville, NC 27834

Status of Litigation and Settlement

21. All proceedings and deadlines in this action are stayed and suspended, pending the final settlement date, except for such proceedings as are provided for in this Order or the Settlement, or which may be necessary to implement the terms of the Settlement, or this Order. Pending Final Approval, no Class Plaintiff, either directly, representatively, or in any other capacity (other than a Class Plaintiff who validly and timely elects to be excluded from the Class), shall commence, continue or prosecute against any or all released parties pursuant to the Settlement any action or proceeding in any court or tribunal asserting any of the matters, claims or causes of action that are to be released upon Final Approval pursuant to the Settlement, and are hereby enjoined from so proceeding.

22. Upon entry of the Final Order and Judgment, all Class Plaintiffs who do not file a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement, and any such Class Plaintiff shall be deemed to have forever released the released parties from the released claims pursuant to the Settlement.

23. In the event the Settlement is terminated in accordance with the provisions of the Settlement, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement, and without prejudice to the *status quo ante* rights of Class Plaintiffs or GUC.

24. Neither this Order nor the Settlement nor any filings in support of the Settlement shall constitute any evidence or admission of liability by GUC, or an admission regarding the propriety of any certification of any particular class for purposes of litigation, nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the

Settlement or the terms of this Order, or by any released party in connection with any action asserting released claims.

SO ORDERED this 20th day of August, 2021.



THE HONORABLE JEFFERY B. FOSTER