

DEC 10, 2020 02:46 PM

Wendy Whitaker-Lee
Wendy Whitaker-Lee, Clerk
Charlton County, Georgia

**IN THE SUPERIOR COURT OF CHARLTON COUNTY
STATE OF GEORGIA**

**TOLEDO MANUFACTURING)
COMPANY, RAYONIER FOREST)
RESOURCES, L.P.,)
MARK TIMOTHY THRIFT, LISA)
ROSE THRIFT, LESLIE H. BLAIR)
AND MARY E.)
BLAIR)**

Plaintiffs,

v.

**CHARLTON)
COUNTY)**

Defendant.

CIVIL ACTION NO. SUCV201900232

ORDER ON ATTORNEY'S FEES AND COSTS AND SERVICE AWARD

WHEREAS, the instant action pending before the Court is a class action (the "Lawsuit") brought by Plaintiffs Toledo Manufacturing Company ("Toledo"), Rayonier Forest Resources, L.P. ("Rayonier"), Mark Timothy Thrift and Lisa Rose Thrift (the "Thrifts") and Leslie H. Blair and Mary E. Blair (the "Blairs") (Toledo, Rayonier, the Thrifts and the Blairs are collectively referred to as the "Named Plaintiffs"), individually and on behalf of all other persons similarly situated ("Class Members") against Defendant Charlton County (the "County")¹;

¹ Initially, members of the Charlton County Board of Commissioners (the "BOC"), members of the Charlton County Board of Assessors (the "BOA") and the Tax Commissioner of Charlton County (collectively "Certain Other Defendants") were included as defendants. On February 26, 2020 Named Plaintiffs filed a Consent Motion to Dismiss Certain Other Defendants without prejudice.

WHEREAS, the Lawsuit sought refunds pursuant to O.C.G.A. §48-5-380 for taxes that were overpaid based on the County's use of only five (5) soil productivity classifications rather than nine (9) soil productivity classifications for parcels enrolled in the Forest Land Protection Act ("FLPA") program the Conservation Use Valuation Assessment program ("CUVA");

WHEREAS, this matter is currently before the Court on Named Plaintiffs' Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives (the "Fee Application");

WHEREAS, the Court held a Final Approval Hearing on December 14, 2020 as scheduled in the Preliminary Approval Order entered on November 12, 2020 and as made known to the Class Members through the notice procedures (the "Notice Program") approved by the Court in the Preliminary Approval Order to consider among other things the Fee Application; and

WHEREAS, the Court having considered the entire records of this Lawsuit, including the Fee Application, the evidence presented, including but not limited to the Affidavit of James L. Roberts, IV dated November 18, 2020 (the "November 18, 2020 Aff.") and the Affidavit of James L. Roberts, IV dated December 7, 2020 (the "December 7, 2020 Aff.").

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Fee Application requests an award of attorney's fees to Class Counsel in the amount of \$540,000.00, reimbursement of Class Counsel's actual costs and expenses in the amount of \$7,385.65 and a service award in the total amount of \$40,000.00 (to be paid to the Class Representatives as follows: Toledo – \$25,000; Rayonier – \$5,000; the Thrifts – \$5,000; and the Blairs – \$5,000) all to be paid from the \$1,350,000.00 Aggregate Refund Fund established in the Settlement of this Lawsuit. As set forth below, the Court makes the following findings of fact and conclusions of law, and holds that (a) the requested attorney's fee is appropriate, fair and

reasonable and is therefore approved; (b) the request for approval of reimbursement of litigation costs and expenses advanced by Class Counsel is reasonable and justified and is therefore approved; and (c) the requested service award is appropriate, fair and reasonable and is therefore approved.

Class Counsel's Request for Attorney's Fees is Approved

2. Tax refund actions under O.C.G.A. §48-5-380, such as this Lawsuit, are considered common fund cases. Under Georgia law where a common fund is generated in litigation for the benefit of persons other than the named plaintiff, reasonable attorney's fees are paid from the fund. Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4, 7 (2006). See also Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) and Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020).

3. The United States Supreme Court and the Eleventh Circuit have also recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole.”). See also Camden I Condominium Association, Inc., et al v. Dunkle, 946 F.2d 768, 771 (11th Cir. 1991) (“Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.”).

4. The controlling authority for awarding attorney's fees in common fund cases in the Eleventh Circuit is Camden I. Georgia courts rely on Camden I when awarding fees in a common fund case. See Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 545 S.E.2d 107 (2001).

5. When deciding awards of attorney's fees in common fund cases, Georgia Courts follow the Eleventh Circuit which "made clear in *Camden I* that percentage of the fund is the exclusive method for awarding fees in common fund class actions." In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011).

6. Georgia and the Eleventh Circuit evaluate the reasonableness of attorney fee awards in common fund cases by applying the following factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the "undesirability" of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772, n.3 (citing factors originally set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974)). These factors are hereinafter referred to as the “Camden I Factors”.

7. In support of their request for attorney’s fees equal to 40% of the common fund, Class Counsel presented Class Counsel’s November 18, 2020 Affidavit. The Class Counsel’s November 18, 2020 Affidavit analyzes each of the Camden I Factors and concludes that every applicable factor supports the reasonableness of the instant fee request. The Court independently has analyzed the Camden I Factors against the unique facts of this Lawsuit and concludes that every applicable factor supports the reasonableness of the instant fee request.

8. The eighth Camden I Factor looks to the amount involved in the litigation with particular emphasis on the monetary results achieved in the case by class counsel. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006). The Court finds that Class Counsel achieved an excellent result for the Class and that the eighth Camden I Factor supports Class Counsel’s fee request.

9. Here, the result obtained provides for not only the recovery of the tax overpayments by Class Members for tax years 2014 to 2019, but also future tax relief to the Class. See November 18, 2020 Aff. at ¶20.

10. The direct benefits to the Class Members include immediate cash payments from the \$1,350,000.00 Aggregate Refund Fund. Id. Each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). Id. at ¶21.

11. In addition to this immediate cash benefit to the Class Members the Proposed Consent Judgment will provide tangible benefits – tax dollar savings – into the future since the County has agreed to correct the soil delineation and land use values for future tax years beginning in tax year 2020. Id. at ¶19.

12. The Court finds that the first, fourth and seventh Camden I Factors – the time labor, preclusion of other employment, and the time limitations imposed – support Class Counsel’s fee request. See November 18, 2020 Aff. at ¶¶30-42.

13. Class Counsel’s November 18, 2020 Affidavit confirms that Class Counsel expended significant resources researching and developing the legal theories and claims presented in the Complaint and Amended Complaint in this Lawsuit. Class Counsel defended a motion to dismiss and opposition to a motion for class certification and a motion for summary judgment. Id. at ¶¶11-12.

14. Class Counsel’s November 18, 2020 Affidavit also confirms that Class Counsel expended significant resources significant resources investigating the hundreds of potential refund claims including analyzing the County lists of parcels enrolled in the FLPA program for tax years 2014, 2015, 2016, 2017, 2018 and 2019 and analyzing the County lists of parcels enrolled in the CUVA program for tax years 2014, 2015, 2016, 2017, 2018 and 2019. Id. at ¶¶31-35. For all of the taxpayers who potentially could be entitled to a refund, Class Counsel reviewed property record cards, tax bills and soils maps. Id. at ¶36. The record also shows that Class Counsel analyzed the soil productivity classifications utilized by the County and then analyzed the soil productivity classifications required by the FLPA and CUVA statutes for each parcel to determine the refund. Id. at ¶37.

15. According to Class Counsel’s November 18, 2020 Affidavit, Class Counsel and its staff invested not less than 773.7 hours on this Lawsuit. Id. at ¶54.

16. The Court does not doubt that this Lawsuit took an enormous amount of Class Counsel’s time and frequently required prioritizing this Lawsuit over other work and/or required the turning down of new work that would have interfered with the vigorous prosecution of this Lawsuit.

17. The Court finds that the second, sixth and tenth Camden I Factors – the novelty and difficulty of the issues, whether the fee is contingent, and the “undesirability” of the case – support Class Counsel’s fee request.

18. The Court finds that in undertaking to prosecute this complex Lawsuit entirely on a contingent fee basis, Class Counsel assumed a significant risk of non-payment or underpayment. Courts have long recognized that “a contingency fee arrangement often justifies an increase in the award of attorney’s fees.” Lunsford v. Woodforest Nat’l Bank, 2014 U.S. Dist. LEXIS 200716, at *14 (N.D. Ga. 2014) (internal citations omitted). See also In re Equifax, Inc. Customer Data Security Breach Litigation, 2020 WL 256132, at *33 (N.D. Ga. Mar. 17, 2020).

19. Class Counsel faced numerous risks throughout the pendency of this Lawsuit. There was the inherent possibility of failing to certify the class or having the Lawsuit dismissed at the pleadings stage or upon a motion for summary judgment. Because the Lawsuit involved the County, there were also risks concerning sovereign immunity. See November 18, 2020 Aff. at ¶39.

20. The Court finds that the fact that Class Counsel skillfully addressed these novel and difficult issues, achieving an excellent result for the Class Members, supports the requested fee.

21. The Court finds that the fifth and twelfth Camden I Factors – the customary fee and awards in similar cases – supports approval of Class Counsel’s fee request.

22. The Eleventh Circuit explained that “[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of the case.” Camden I, 946 F.2d at 774. However, the Camden I Court noted that “an upper limit of 50% of the fund may be stated as a general rule, although even larger percentages have been awarded.” Id. at 774-75 (internal citations omitted).

23. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls squarely within the permissible range indicated by Barnes, 281 Ga. 256 (33.33%) and Camden I, 946 F.2d at 774-75 (upper limit of 50%). The Court also finds that the fees sought in this Lawsuit is the exact percentage that was awarded in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney’s Fees and Costs and Service Award (Nov. 8, 2019) and in Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney’s Fees and Costs and Service Award (Oct. 19, 2020) which were both class actions for tax refunds.

24. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls within the range of the private marketplace for standard contingency fee cases where 40% is the customary percentage. See November 18, 2020 Aff. at ¶48.

25. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls within the range of the private marketplace for tax refund cases where 50% is the customary percentage. Id. at ¶47.

26. The record leaves no doubt that Class Counsel's fee request is appropriate and comports with attorney fees awarded in similar cases.

27. The Court finds that the third, ninth and eleventh Camden I Factors – the skill, experience, reputation and ability and nature and length of professional relationship with the client – also supports approval of Class Counsel's fee request.

28. Class Counsel effectively pursued the Named Plaintiffs' and Class Members' claims before this Court, conferring a significant benefit on the Class. The Court finds that the outcome of this Lawsuit was made possible by Class Counsel's extensive experience in property tax law and tax refund matters as well as experience with complex litigation. *Id.* at ¶¶4-8, 49-55.

29. Class Counsel achieved an excellent outcome in this Lawsuit against the extremely reputable firm of Brown, Readdick, Bumgartner, Carter, Strickland & Watkins LLP including lead counsel G. Todd Carter. The Court finds that Mr. Carter was a worthy, highly competent and professional adversary.

30. In sum, the Court finds that all of the Camden I Factors favor approval of the requested fee award.

31. Additionally, the Court finds that the reaction of the Class Members to Class Counsel's fee request also supports approval of the fee award.

32. In the Preliminary Approval Order the Court directed that notice be mailed to the Class Members (the "Full Notice"), a notice be published in The Charlton County Herald (the "Publication Notice") and the County was directed to add a webpage to its website (the "Webpage") providing information about the Lawsuit and the proposed Settlement (collectively the "Notice Program").

33. The Class Members were advised through the Notice Program approved by this Court that Class Counsel would seek approval for an award of attorney's fees, expenses and service award.

34. Named Plaintiffs were directed to post Application for Attorney's Fees, Reimbursement of Expenses and Service Award on the Webpage on the same day that it was filed with the Court. The record shows that the Application for Attorney's Fees, Reimbursement of Expenses and Service Award was filed with the Court on November 18, 2020. On that same day the Application for Attorney's Fees, Reimbursement of Expenses and Service Award was posted on the Webpage. See December 7, 2020 Aff. at ¶15.

35. The Full Notice and the Publication Notice approved by the Court advised the Class Members that at the Final Approval Hearing the Court would determine, among other things, Class Counsel's request for an award of attorney's fees, expenses and service award.

36. Through the Notice Program the Class Members were advised that for an objection to be considered by the Court it had to be postmarked on or before October 5, 2020 and certain objection procedures outlined in the Preliminary Approval Order and repeated in the Full Notice had to be strictly followed.

37. The Court finds that each facet of the Notice Program was timely and properly accomplished. See December 7, 2020 Aff. at ¶¶11-13. See also Affidavit of Printing and Publisher's Affidavit attached as Exhibits "B" and "C" respectively to Supplemental Memorandum in Support of Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives filed by Named Plaintiffs.

38. The period for filing timely objections ended on November 30, 2020. There were no objections filed within the Court ordered objection period. There has been no objection filed

to date regarding Class Counsel's request for an award of attorney's fees, expenses and service award. See December 7, 2020 Aff. at ¶16. See Ingram, et al v. The Coca-Cola Co., 200 F.R.D. 685, 691 n.7 (N.D. Ga. 2001) (few or no objections can be taken as some indication that the Class Members did not think the request was unfair).

39. Accordingly, an award of attorney's fees to Class Counsel in the amount of \$540,000.00 is approved,

The Expense Request is Approved

40. The Court finds that the request for approval of reimbursement from the Aggregate Refund Fund of \$7,385.65 in litigation costs and expenses advanced by Class Counsel is reasonable and justified. See George, et al v. Academy Mortgage Corp., 369 F. Supp. 3d 1356, 1386 ("Because Class Counsel has lost the use of this money for nearly three years, the expenses required are reasonable and necessary." Citing McLendon v. PSC Recovery Sys., 2009 WL 10668635, at *3, 2009 U.S. Dist. LEXIS 136999, at *4 (N.D. Ga. 2009)).

41. This sum corresponds to certain actual out of pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of this Lawsuit. See November 18, 2020 Aff. at ¶56.

42. Accordingly, \$7,385.65 in litigation costs and expenses is approved.

The Service Award Request is Approved

43. Georgia courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become a class representative. For example, in Coleman v. Glynn County, CE12-01785-063, CE13-01480-063 and CE14-00750-063, Superior Court of Glynn County, Order on Attorney's Fees and Costs and Service Award (Nov. 8, 2019) the Glynn County Superior Court awarded the Class Representatives \$350,000.00 as a service

award. More recently, in Altamaha Bluff, LLC, et al. v. Thomas, et al., 14CV0376, Superior Court of Wayne County, Order on Attorney's Fees and Costs and Service Award (Oct. 19, 2020) the Wayne County Superior Court awarded the Class Representatives a total class service award of \$40,000.00.

44. The evidence of record is that Class Representative Toledo identified the issue of the County using only five (5) soil productivity classifications rather than the nine (9) soil productivity classifications required by statutes for the FLPA and CUVA programs and attempted for four (4) years prior to the Lawsuit to have the County utilize the nine (9) soil productivity classifications required by statute for its own parcels, including filing a tax appeal in 2015. See November 18, 2020 Aff. at ¶27.

45. The Court also finds that as class representatives, Named Plaintiffs were active in this Lawsuit and have provided invaluable assistance to counsel by, among other things, locating relevant documents, participating in conferences with Class Counsel and remained ready to provide testimony in this Lawsuit on behalf of themselves and the Class Members. In doing so, the Named Plaintiffs were integral to forming the theory in this Lawsuit and reaching the Settlement. Id. ¶28.

46. Accordingly, a service awards in the amount of \$25,000.00 for Toledo, \$5,000 for Rayonier, \$5,000 for the Thrifts and \$5,000 for the Blairs (total award of \$40,000.00) are approved. See Ingram, 200 F.R.D. 685 (awarding class representatives \$300,000 each, explaining that the magnitude of the relief the class representatives obtained on behalf of the class warranted a substantial incentive award).

Conclusion

47. Class Counsel's Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives is GRANTED for the reasons set forth above.

48. Class Counsel are awarded attorney's fees in the amount of \$540,000.00 from the Aggregate Refund Fund to be paid no later than 15 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

49. Class Counsel are awarded \$7,385.65 in advanced litigation costs and expenses from the Aggregate Refund Fund to be paid no later than 30 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

50. The Court awards the Class Representative Toledo \$25,000.00 as a service award from the Aggregate Refund Fund to be paid no later than 30 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

51. The Court awards the Class Representative Rayonier \$5,000.00 as a service award from the Aggregate Refund Fund to be paid no later than 30 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

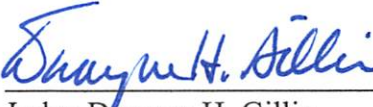
52. The Court awards the Class Representatives Thrifts \$5,000.00 as a service award from the Aggregate Refund Fund to be paid no later than 30 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

53. The Court awards the Class Representatives Blairs \$5,000.00 as a service award from the Aggregate Refund Fund to be paid no later than 30 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment.

54. Without affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction over all matters relating to protect and effectuate this Order, and for any other necessary purpose.

55. The Clerk shall promptly enter this Order in the docket of this Lawsuit.

SO ORDERED. This 9 day of December, 2020.



Judge Dwayne H. Gillis