

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
BEAUFORT COUNTY SUPERIOR COURT DIVISION

2014 AUG 27 A 9 28 14 CvS 327

PCS PHOSPHATE COMPANY, INC. BEAUFORT CO., C.S.C.

Plaintiff BY phd)

v.)

ORDER

ESSIE MOORE LONG, MARCELLUS)
BLOUNT, AND BERNARD MOORE,)
each individually and as a Representative)
of the Class of All Heirs of ELIZA ANN)
MOORE DIAMOND,)

Defendants.

THIS MATTER is before the Court on the Parties' Joint Motion for an Order Preliminarily Certifying the Class and Appointing Class Counsel, Preliminarily Approving Settlement, Approving Form and Dissemination of Class Notice, and Setting a Date and Time for the Certification and Fairness Hearing.

On August 27, 2014, the Court held a hearing at which time it considered above-referenced Joint Motion. Upon reviewing the Complaint, the Joint Motion, the Memorandum of Law filed by Plaintiff, the arguments of counsel, the Notice of Filing by Plaintiff, and the Affidavits of Curtis Brown, John Prescott, Essie Moore Long, Marcellus Blount, Bernard Moore, and Matthew Sullivan, and documents attached thereto, the Court hereby makes the following findings of fact and conclusions of law:

1. Class Certification. The Court preliminarily finds that the requirements of the North Carolina Rules of Civil Procedure, the United States Constitution, and any and all other applicable laws have been met as to the "Class" defined below, in that:

a. The Class is cohesive and well defined;

- b. The members of the Class are so numerous that their joinder before the Court would be impracticable;
- c. Based on allegations in the Complaint, there exist questions of fact and law common to the Class;
- d. Based on allegations in the Complaint, the legal interests, defenses, and factual issues related to the claims against the Named Defendants are typical of the Class;
- e. The Named Defendants, by the nature of their interests, are in a position to fairly and adequately protect the interests of the Class in that: (i) the interests of Named Defendants and the nature of their alleged defenses are consistent with those of the members of the Class; (ii) there appear to be no conflicts between or among Named Defendants and the Class; (iii) Named Defendants, by their education and experience, are qualified to represent the Class; and (iv) Named Defendants and the members of the Class are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action;
- f. The Court further finds that (i) the prosecution of separate actions by or against individual members of the Class would create a risk of (A) inconsistent or varying adjudications as to individual Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted by the Plaintiff and (B) adjudications as to individual Class members that as a practical matter, would be dispositive of the interests of the other Class members not parties to the adjudications or

substantially impair or impede the ability of those persons to protect their interests; and (ii) Plaintiff has allegedly acted on grounds that apply generally to the Class, so that final declaratory relief is appropriate respecting the Class as a whole; and

- g. The Court further finds that the nature of the claims asserted by Plaintiff dictates that any Class certified be a non-opt-out Class, lest the dangers of duplicative litigation, and possible inconsistent or conflicting results set out above, would be realized, frustrating the purpose and efficacy of the Class certification.

2. Preliminary Findings Concerning Proposed Settlement. The Court preliminarily finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm's-length and non-collusive negotiations; (ii) fair, reasonable, and adequate; (iii) having no obvious deficiencies; (iv) not improperly granting preferential treatment to the Named Defendants or segments of the Class; (v) falling within the range of possible approval; and (v) warranting notice to Class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the proposed Settlement.

3. Notices. A proposed form of Class Notice is attached hereto as Attachment A. The Court finds that the form fairly and adequately: (i) describes the litigation, the proposed Class certification, the terms and effect of the Settlement Agreement and of the Settlement; (ii) notifies the Class concerning the proposed distribution of Settlement proceeds; (iii) notifies the Class that the Settlement would award from the Settlement proceeds the amount of \$2,500 to each Named Defendant; (iv) notifies the Class that the Settlement would award from the Settlement proceeds the amount of \$27,500 to Class counsel for attorneys' fees; (v) gives notice

to the Class of the time and place of the Certification and Fairness Hearing; and (vi) describes how the recipients of the Class Notice may object to either the Certification or Settlement.

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. The Court preliminarily certifies the following class (the “Class”) under North Carolina Rule of Civil Procedure 23: **All persons or entities other than PCS Phosphate Company, Inc. claiming any ownership interests in the “Diamond Property,” described more particularly in Exhibits 1, 2 and 3.**
2. The Court preliminarily appoints Named Defendants Essie Moore Long, Marcellus Blount, and Bernard Moore as class representatives for the Class and appoints Matthew Sullivan and White & Sullivan, P.A. as Counsel for the Class.
3. Certification and Fairness Hearing. A hearing is scheduled for November 7, 2014 at 10:00 a.m. E.S.T. in the Beaufort County Superior Court, Washington, North Carolina (the Certification and Fairness Hearing’) to determine, among other things:
 - a. Whether the Class Notice and Internet/Publication Notice: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Class of the pendency of the Action, their right to object to the Certification and Settlement, and their right to appear at the Certification and Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to notice; and (iv) met all applicable

requirements of the North Carolina Rules of Civil Procedure, the United States Constitution, and any and all other applicable laws;

- b. Whether Named Defendants adequately represent the Class generally and for purposes of entering into and implementing the Settlement Agreement;
- c. Whether Class Counsel adequately represent the Class generally and for purposes of entering into and implementing the Settlement Agreement;
- d. Whether the Class, as a non-opt-out Class, should be certified;
- e. Whether the Settlement should be finally approved as fair, reasonable, and adequate; and
- f. Whether Plaintiff should be adjudged the sole owner of the Diamond Property.

4. The Court directs Class Counsel shall:

- a. No later than thirty (30) days after entry of this Order, cause the Class Notice (Attachment A), with such non-substantive modifications thereto as may be agreed upon by the Parties and presented to the Court, to be mailed, by first-class mail, postage prepaid, to the last known address of each such Person within the Class who can be identified by reasonable effort. Plaintiff and Defendants will provide Class Counsel with the names and last known addresses of the members of the Class, if known, which names and addresses shall be used solely for the purpose of providing notice of this Settlement and for no other purpose;
- b. No later than thirty (30) days after entry of this Order, cause the Class Notice to be published on each website identified in the Class Notice;

- c. No later than thirty (30) days after entry of this Order, cause the Publication Notice attached as Attachment B, with such non-substantive modifications thereto as may be agreed upon by the Parties and presented to the Court, to be published in the Raleigh News and Observer and the Washington Daily News once a week for four weeks; and
- d. No later than seven (7) days before the Certification and Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

5. Objections to Settlement. Any member of the Class who wishes to object to the Certification of the class or the fairness, reasonableness or adequacy of the Settlement or to any term of the Settlement Agreement, may file an Objection. An objector must file with the Court a statement of his, her or its objections, specifying the reasons, if any, for each objection, including any legal support or evidence that the objector wishes to bring to the Court's attention. The objector also must mail the objection and all supporting law and evidence to Class Counsel and to Plaintiff's counsel. The addresses for filing objections with the Court and service on counsel are as follows:

To the Court:

Beaufort County Clerk of Court
P.O. Box 1403
Washington, NC 27889-1403

To Class Counsel:

Matthew S. Sullivan
White and Allen
P.O. Box 3169
Kinston, NC 28502-3169

To Plaintiff's Counsel:

William P.H. Cary
Brooks Pierce McLendon,
Humphrey & Leonard, LLP
P.O. Box 26000
Greensboro, NC 27420-6000

The objector or his, her or its counsel (if any) must have the objection postmarked no later than October 20, 2014, and must effect service of the objection on counsel listed above and file it with the Court so that it is received by counsel listed above and the Court no later than October 27, 2014. If objector hires an attorney to object pursuant to this paragraph, the attorney's notice of appearance must be both received by counsel listed above and filed with the Court no later than October 27, 2014. Any member of the Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

6. Appearance at Certification and Fairness Hearing. Any objector who files and serves a timely, written objection may appear at the Certification and Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Certification and Fairness Hearing must effect service or a notice of intention to appear setting forth the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and on Plaintiff's Counsel (at the addresses set out above). The objector must mail the notice of intention to appear such that it is postmarked no later than October

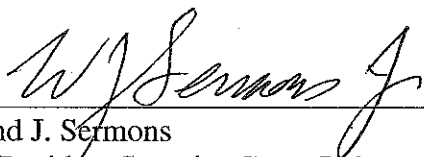
20, 2014, and the notice of intention to appear must be served on counsel listed above such that it is received by counsel and filed with the Court no later than October 27, 2014. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Certification and Fairness Hearing, except for good cause shown.

7. Service of Papers. If it appears that any objections were not properly served, the Parties shall furnish each other's counsel with copies of any and all such objections that come into their possession promptly after learning of the deficiency in service.
8. Injunction. Pending the final determination of the Motion for Class Certification and the fairness, reasonableness and adequacy of the proposed Settlement, all members of the Class are enjoined from instituting or commencing any action against Plaintiff based on any claim to any interest in the Diamond Property, and all proceedings in this Action, except those related to approval of the Settlement, are stayed.
9. No Settlement Discovery. Except as provided in the Claims Procedure of the Settlement Agreement with respect to a request for information and/or documents in support of a claim by a Class member, no discovery by any person with regard to the Settlement or the Settlement Agreement shall be permitted as to any of the settling parties other than as may be directed by the Court upon a proper showing by the person seeking such discovery pursuant to a motion properly noticed and served.

10. Termination of Settlement. In the event that the Settlement is terminated in accordance with the Settlement Agreement or does not receive final approval, the parties may move the Court to vacate this Order without prejudice to the rights of the Parties.
11. Use of Order. This Order is entered with the recognition that the Defendants specifically deny Plaintiff's claims, including Plaintiff's claim of ownership, and the Plaintiff specifically believes it would have a good chance of prevailing in the event of trial, but that the Parties have settled this matter in recognition of the inherent uncertainty of litigation. Neither the fact nor the terms of this Order may be construed or used as an admission, concession, or declaration by or against any Parties of any fault, wrongdoing, breach, or liability or as a waiver by any Party of any arguments, defenses, or claims he, she, or it may have.
12. Continuation of Hearing. The Court may in its discretion continue the Certification and Fairness Hearing without further written notice.

IT IS SO ORDERED.

Dated: 8/22/14



Wayland J. Sermons
Senior Resident Superior Court Judge