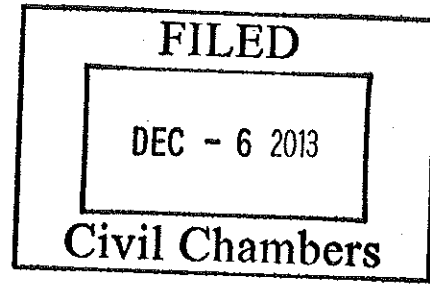


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Attorneys for Plaintiffs



JOANNE CASALE and KAREN HUTCHINSON, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

SEGAL & MOREL AT LOPATCONG LLC, SEGAL & MOREL INC., OVERLOOK AT LOPATCONG CONDOMINIUM OWNERS ASSOCIATION INC., RADATA INC., REGENCY MANAGEMENT GROUP, LLC, JOHN AND JANE DOES 1-100, JOHN AND JANE DOE MANUFACTURERS 1-100,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
WARREN COUNTY

DOCKET NO.: WRN-L-170-09

CIVIL ACTION

ORDER APPROVING CLASS
SETTLEMENT

THIS MATTER being opened to the Court by Lieberman & Blecher, P.C., attorneys for named Plaintiffs and the class in the above-referenced matter, and Patton Boggs, LLP, attorneys for Defendant RAdata, Inc., by way of Motion for an Order Approving Class Settlement with Defendant RAdata, Inc., and the Court having considered this request, the pleadings on file and argument of the parties, if applicable, and for good cause shown:

IT IS ON THIS 6th day of December, 2013,

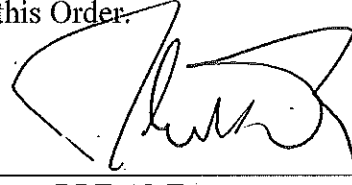
ORDERED that Plaintiff's Motion for an Order Approving Class Settlement with RAdata, Inc. as articulated in the agreement attached as Exhibit A to the Certification of Shawn M. LaTourette, Esq.; and it is further

ORDERED that the long form settlement notice to class members attached as Exhibit B to the Certification of Shawn M. LaTourette, Esq. is approved; and it is further

ORDERED that the short form settlement notice to class members attached as Exhibit C to the Certification of Shawn M. LaTourette, Esq. is approved; and it is further

ORDERED that a fairness hearing will occur before this Court on February 13, 2014 at 1:30 p.m. before John H. Pursel, J.S.C., P.J. Cr. Ret +/a Recall; and it is further

ORDERED that a copy of this Order shall be served by the moving party upon all parties in this action within seven (7) days of counsel's receipt of this Order.



JOHN H PURSEL, J.S.C., P.J. Cr. Ret +/a Recall

Opposed

Unopposed

See attached Statement of Reasons

STATEMENT OF REASONS

Pursuant to R. 4:32-2(e), governing settlement, voluntary dismissal, or compromise:

(1)(A) The court shall approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.

(B) The court shall direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

(C) The court may approve a settlement, voluntary dismissal, or compromise that would bind class members only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate.

(2) The parties seeking approval of a settlement, voluntary dismissal, or compromise under this rule shall file a statement identifying any agreement made in connection with the proposed settlement, voluntary dismissal, or compromise.

...

(4) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires court approval under paragraph (e)(1)(A) of this rule. An objection made under this paragraph may be withdrawn only with the court's approval.

PRESSLER & VERNIERO, Current N.J. COURT RULES (GANN).

This matter arises from a class action brought by plaintiffs Joanne Casale and Karen Hutchinson, and class members similarly situated, against defendants Segal & Morel of Lopatcong, LLC (Segal), RAdata, Inc. (RAdata), Overlook at Lopatcong Condominium Owners Association Inc., (Association), Segal & Morel Inc. (Segal Inc.), and Regency Management Group, LLC (Regency). Plaintiffs and defendant RAdata (hereinafter Movants) now jointly move for a preliminary approval of a class action settlement negotiated between the two parties. Defendants Regency and the Association have filed opposition. Movants have filed a reply.

Movants contend that the proposed settlement¹ is fair, reasonable, and adequate, and will reduce the burdens on the Court. Movants contend that if the settlement is preliminarily approved by the Court, they will comply with the provisions of R. 4:32-2(e), et seq., by providing notice of the terms of the settlement to class members and seeking final approval of the settlement at a hearing. Movants contend that the question before the Court is whether the settlement falls within the range of reasonableness and it sufficiently fair, reasonable, and adequate to warrant dissemination of notice to the class members and establish procedures for a final hearing.

Movants contend that: the settlement is the product of arms-length negotiation; that counsel are experienced in similar litigation; the factual record was well developed through investigation and discovery; the settlement provides substantial benefits for all class members and treats them fairly; the settlement is fair and reasonable in view of alleged claims and defenses; the proposed payments to the class representatives are reasonable; the proposed notice to class members is adequate; scheduling final approval hearings is appropriate; that Class Counsel will move for appropriate attorney's fees and expenses upon approval of the settlement.

Defendants Regency and the Association (hereinafter Defendants) contend that the lawsuit has been expensive and problematic to the Association and, consequently, the class. Defendants contend that there are claims for damages approaching \$4,000,000.00. Defendants contend that the settlement merely rewards the class representatives for placing a cloud over the community and pays counsel fees to the class counsel who have created expense and imparted concern to the Association. Defendants then argue that they do not object to the proposed

¹ Briefly, the settlement includes the creation of a fund in court in the amount of \$200,000.00 that will be distributed per capita, less costs of suit and legal fees, to class members to cover the costs of future radon testing and an educational seminar. Class representatives Casale and Hutchinson will each receive \$5,000.00.

settlement with RAdata, but do object to the proposed disbursement of the settlement proceeds. Defendants contend that any settlement proceeds should be deposited with the Court to await the final outcome of the suit, and to defray expenses incurred by the unit owners (including class members) for the proposed maintenance, repair and remedy of the alleged defects in the radon detection and mitigation systems in common areas.

Defendants contend that settlement proceeds must be applied to the claims made against the Association. Defendants argue that plaintiffs' claims against RAdata are comprised of damages to common areas. Defendants contend that, as such, any recovery belongs to the Association.

Defendants further contend that the named class representatives should not receive a reward for their involvement. Defendants contend that an award of counsel fees should await the final resolution of the suit.

Movants, in their reply, contend that the Association cannot dictate disbursement of class benefits. Movants point to the June 11, 2013 opinion issued by Judge Amy O'Connor, J.S.C., in which the Judge held that plaintiffs' class claims against RAdata for damages to the common area radon mitigation systems were dismissed for lack of standing. Movants contend that in that opinion, Judge O'Connor specifically held that plaintiffs could obtain relief related to individual harm suffered as a result of the allegedly defective systems. Movants contend that the proposed settlement will give the class members this limited relief, and, because the plaintiff class cannot seek damages from RAdata for damages to the common area, the Association has no claim to the settlement proceeds.

Movants contend that the class representatives are entitled to settle their individual claims with RAdata and receive a nominal award for their service as lead plaintiffs. Movants contend that defendants' objection to class counsel fees is premature.

The Court is persuaded by Movants' arguments. Defendants only objection to the proposed settlement is how the settlement proceeds will be disbursed. As a result of Judge O'Connor's June 11, 2013 opinion, the plaintiffs do not have the standing to seek recovery for damages to the common areas. Consequently, any recovery from RAdata cannot be directed to the Association. The Court finds that the proposed settlement does nothing to preclude either an allocation of a percentage of negligence by the finder of fact against RAdata, the settling defendant, or a credit in favor of the non-settling defendants consistent with that allocation.

Defendants object to the individual settlements made to Casale and Hutchinson. There is nothing in the Rule which prohibits the settlements made to the class representatives. The next step for the proposed settlement will be its publication to the class members, followed by a hearing at which class members may voice objections to any and all aspects of the proposed settlement. It is readily apparent to the Court that the parties in interest, namely the class members, will have opportunity to comment on and potentially dispute the individual awards to the class representatives. The Court understands that it is defendants' position is that the class members and the Association are essentially one and the same, but this argument has not been adopted by the Court at any stage in this litigation, and therefore cannot influence the Court's preliminary approval of the settlement agreement.

Lastly, defendants' objection to counsel fees is without merit, as the motion before the Court does not include a provision for counsel fees. For these reasons, Movants' motion is GRANTED.