

STATE OF NORTH CAROLINA
CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 3334

TINTU PARAMESWAR; and
DONNA PARAMESWAR,
individually and derivatively on
behalf of Saratoga Homeowners
Association,

Plaintiffs,

v.

NEAL CHOQUETTE; WENDY
CHOQUETTE; GARY CHOQUETTE;
AMERICAN LAND CORPORATION
– CHARLOTTE, INC.; ATLANTIC
GRADING CO. INC. f/k/a NO
SNIVELING GRADING CO. INC.;
CEDAR PROPERTY
MANAGEMENT, LLC n/k/a
AUSTERLITZ PROPERTY
MANAGEMENT, LLC; and PAYNE
ROCK INVESTMENTS, LLC,

Defendants,

SARATOGA HOMEOWNERS
ASSOCIATION,

Nominal
Defendant.

**ORDER ON PLAINTIFFS' AMENDED
CONSENT MOTION FOR APPROVAL
OF SETTLEMENT AND DISMISSAL
OF DERIVATIVE CLAIMS**

1. THIS MATTER comes before the Court on Plaintiffs' Amended Consent Motion for Approval of Settlement and Dismissal of Derivative Claims. ("Motion," ECF No. 90.) Pursuant to N.C.G.S. § 55A-7-40(d), Plaintiffs move this Court to approve the settlement and dismissal of the derivative claims in the above-captioned lawsuit. (*Id.*)

2. This action involves a dispute between residents of a Cabarrus County neighborhood known as Saratoga and members of its homeowners' association's board of directors. Plaintiffs, along with former parties John Bloxsom, Rebecca

Bloxsom, Heath Drye, and Caroline Drye, filed this action on 6 November 2020, asserting claims against Defendants both individually and derivatively on behalf of the Saratoga Homeowners Association (the “Association”)—a nonprofit corporation. (ECF No. 3.)¹ The derivative claims in this action include claims for breach of fiduciary duty against Defendants Neal Choquette, Wendy Choquette, and Gary Choquette for alleged wrongful actions taken while serving as directors of the Association. (*Id.* at ¶¶ 38–42.) The parties now represent that they have reached a global settlement and seek the Court’s approval of the dismissal of the derivative claims. (ECF No. 90.)

3. Section 55A-7-40(d) of the North Carolina Nonprofit Corporation Act states in pertinent part that:

[A derivative] action shall not be discontinued, dismissed, compromised, or settled without the approval of the court. The court, in its discretion, may direct that notice, by publication or otherwise, shall be given to any directors, members, creditors, and other persons whose interests it determines will be substantially affected by the discontinuance, dismissal, compromise, or settlement.

N.C.G.S. § 55A-7-40(d). Our Supreme Court has held that in determining whether to approve the settlement of a derivative action, “the court is to balance (1) any legitimate corporate claims brought forward in the derivative shareholder suit against (2) the corporation’s best interests.” *Alford v. Shaw*, 327 N.C. 526, 540 (1990).²

¹ The Bloxsoms and the Dryes reached a settlement with Defendants, and all claims between them were voluntarily dismissed with prejudice. (ECF No. 78.)

² *Shaw* was decided under a prior version of the Business Corporation Act’s similar requirement for court approval of derivative claims. *See Alford*, 327 N.C. at 539. This Court

4. With these principles in mind, on 27 June 2022 the Court directed the parties via email to (1) provide notice of the proposed settlement to all members of the Association and to any other persons whose interests will be substantially affected by the settlement pursuant to N.C.G.S. § 55A-7-40(d); (2) provide all such persons fourteen days in which to object to the proposed settlement; and (3) upon the expiration of the fourteen-day period, file a motion seeking the Court's approval of the settlement of the derivative claims and detailing the provision of said notice and any objections that were received.

5. On 18 July 2022, in conformity with the Court's directive, counsel for the Association notified the Court that the requisite notice had been given and that responses from four members of the Association had been received.³ These responses were sent by James Leone (who owns two lots), David and Kathryn Crockett (who together own one lot), and Gary Tubbs (who owns one lot). Leone and the Crocketts objected to the proposed settlement, while Tubbs stated that he was not actually objecting but was raising several concerns with respect to the proposed settlement.

6. On 21 July 2022, Plaintiffs filed the present Motion, which contained copies of the notice that was sent to members of the Association along with the above-referenced responses and objections. (ECF No. 90.)

has found that the *Shaw* factors are likewise applicable to a court's approval of a settlement involving derivative claims existing outside the context of for-profit corporations. *See, e.g., O'Donnell v. Moore*, 2019 NCBC LEXIS 34, at **6 (N.C. Super. Ct. May 29, 2019) (applying *Shaw* factors in deciding whether to approve settlement of derivative claims brought on behalf of a limited liability company.) The Court finds the *Shaw* factors equally applicable under the similar court approval provisions contained in the Nonprofit Corporation Act.

³ The Association contains a total of 36 lots.

7. The Court has carefully reviewed the Motion, the responses and objections, the proposed Settlement and Release, and other applicable matters of record. A hearing was held on the Motion via WebEx on 4 August 2022. In accordance with the Court's prior directive, members of the Association were invited to participate in the hearing and to give statements with regard to the proposed settlement. At the hearing, all counsel in this action provided input to the Court regarding the proposed settlement. Statements were also made by David Crockett and by a few other members of the Association. Mr. Crockett was the only member who had previously submitted comments or objections to the proposed settlement that requested the ability to speak at the hearing. During the hearing, the Court on several occasions invited all members of the Association who were present via WebEx to make any statements they desired regarding the proposed settlement.

8. Based on its thorough consideration of the record and the statements made at the 4 August 2022 hearing, the Court finds, in its discretion, that the proposed settlement is in the best interests of the Association and its members and is fair, reasonable, and adequate in all respects.

9. This settlement puts an end to lengthy and protracted litigation between the parties that has affected all members of the Association and has required the parties to engage in extensive discovery. This settlement avoids the risk, uncertainty, and significant expense—including the continued accumulation of legal fees—of further litigation. The parties have represented to the Court that the settlement terms were unanimously approved by the members of the Association's board of

directors. Moreover, all parties to this lawsuit agreed to this settlement following arm's length negotiations by experienced counsel based on sufficient discovery and investigation. The proposed settlement provides for the exchange of mutual consideration and attempts to fairly balance the risks and liabilities of the parties to this litigation.

10. The Court observes that, as noted above, the Association is comprised of 36 lots, and only three members have objected to the proposed settlement. The Court has carefully considered the objections and comments received in opposition to the proposed settlement and finds that despite the concerns contained therein, the continued litigation of this case is not in the best interests of the Association or its members. Moreover, this settlement provides needed closure to a hotly litigated lawsuit that has been bitter and divisive within the Saratoga community.

11. Accordingly, THE COURT, having considered the Motion, the applicable law, and the record, CONCLUDES, in its discretion, that the Motion should be GRANTED.

THEREFORE, IT IS ORDERED that the Motion is GRANTED, and the parties shall execute and file a notice of dismissal with prejudice as to all claims and counterclaims in this action in accordance with the terms of the Settlement and Release within **five (5)** business days from the date of this order.

SO ORDERED, this the 5th day of August, 2022.

/s/ Mark A. Davis

Mark A. Davis

Special Superior Court Judge
for Complex Business Cases