

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19-CVS-3879

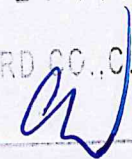
TRUE HOMES, LLC and D.R.
HORTON, INC., on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

CITY OF GREENSBORO,

Defendant.

FILED
2022 AUG 24 A 11: 55
GUILFORD CO., N.C. S.C.
BY 

ORDER AND JUDGMENT

THIS CAUSE came on to be heard on July 15, 2022 before the undersigned Superior Court Judge assigned to this action pursuant to Rule 2.1 of the North Carolina General Rules of Practice on the parties' Cross-Motions for Summary Judgment and Defendant's Motion to Strike. James R. DeMay and J. Hunter Bryson, Milberg Coleman Bryson Phillips Grossman, PLLC, John F. Scarbrough, Scarbrough, Scarbrough & Trilling, PLLC, and William G. Wright, Shipman & Wright, LLP, were present and appearing for Plaintiffs and the Class. Alan W. Duncan, Stephen M. Russell, Jr., and Tyler D. Nullmeyer, Mullins Duncan Harrell & Russell, PLLC, were present and appearing for Defendant.

The Court, having reviewed the pleadings, affidavits, depositions, discovery responses, and other materials submitted by the parties in support of and in opposition to the motions for summary judgment, and after considering the briefs and other materials presented by the parties and having heard the arguments of counsel, determines that there are no genuine issues of material fact for trial and that

Plaintiffs and the Class are entitled to summary judgment as a matter of law, and that Defendant's motion for summary judgment should be denied, and finds and concludes as follows:

1. During the period from March 4, 2016 to the present (the "Class Period"), Defendant lacked authority under N.C.G.S. § 160A-314 or other applicable law to charge and collect its water and sewer capacity use fees, and the capacity use fees charged and collected during the Class Period are therefore *ultra vires*.¹

2. The principal amount of water and sewer capacity use fees unlawfully charged and collected by Defendant from Plaintiffs and the Class during the Class Period is \$5,252,309.06, and Plaintiffs and the Class are entitled to the refund of these capacity use fees charged and collected during the Class Period, together with pre-judgment interest at the rate of 6.00% per annum from the date of each payment (as set forth on the payment records produced by Defendant) pursuant to N.C.G.S. § 160D-106.²

¹ This Order and Judgment does not pertain to the water and sewer system development fees charged and collected by Defendant from July 1, 2018 through the present.

² The water and sewer capacity use fees charged and collected by Defendant from March 4, 2016 through the present are: March 4, 2016 through September 30, 2017: \$3,228,443.54 (\$1,073,306.87 pre-judgment interest through July 15, 2022); October 1, 2017 through November 28, 2017: \$768,145.98 (\$215,904.88 pre-judgment interest through July 15, 2022); November 29, 2017 through June 30, 2018: \$1,240,853.84 (\$321,434.47 pre-judgment interest through July 15, 2022); July 1, 2018 through present: \$14,865.70 (\$2,054.01 pre-judgment interest through July 15, 2022).

3. Plaintiffs withdrew their constitutional claims (Claim II and portion of Claim III) at the summary judgment hearing. Accordingly, the constitutional claims are dismissed.

4. With respect to the Motion to Strike, the Court finds and concludes that the affidavits of Brian McWhirter and Eric Wall do not contradict Plaintiffs' prior sworn deposition testimony and discovery responses. Specifically, Paragraph 6 of each affidavit are not conclusory statements or recharacterizations more favorable to plaintiffs that materially alter the deposition testimony and discovery responses. Defendant's Motion to Strike should therefore be denied.

5. The Court reserves ruling on Plaintiffs' request for costs and attorneys' fees until following any appellate review of this Order and Judgment, or until after the appeal period has expired.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Plaintiffs' Motion for Summary Judgment is GRANTED and Defendant's Motion for Summary Judgment is DENIED.

2. Plaintiffs' constitutional claims are DISMISSED.

3. Defendant lacked lawful authority to charge and collect its water and sewer capacity use fees during the Class Period, and the capacity use fees collected during the Class Period are *ultra vires*.

4. Judgment is hereby entered against Defendant in favor of Plaintiffs and the Class in the principal amount of \$5,252,309.06, together with pre-judgment

interest in the amount of \$1,612,700.22 through July 15, 2022, and with further pre-judgment interest at a per diem rate of \$863.39 from July 16, 2022 through the date of entry of this judgment, and post-judgment interest thereafter at a per diem rate of \$863.39.

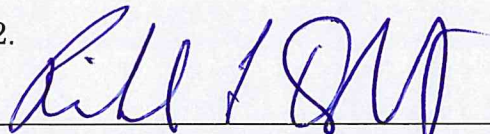
5. The Court will entertain a motion regarding class administration, including regarding the mechanics for payment of the Judgment to the class, and related class administration issues, after the conclusion of any appellate review of this Order and Judgment, or after the appeal period has expired. Unless otherwise ordered by the Court, the City shall not be required to pay the Judgment, and Plaintiffs shall take no actions to seek to enforce or collect on the Judgment, until such time as the Court has ruled on a motion regarding class administration issues.

6. Defendant's Motion to Strike is DENIED.

7. The Court reserves ruling on Plaintiffs' request for costs and attorneys' fees until the conclusion of any appellate review of this Order and Judgment, or until after the appeal period has expired.

IT IS SO ORDERED.

This the 12 day of August, 2022.



Hon. Richard L. Doughton
Superior Court Judge