

QUAN-EN YANG, *et al.*

Plaintiffs,

v.

G&C GULF, INC. d/b/a G&G TOWING,
et al.

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY
* Case No.: 403885V
* TRACK VI
*
* Hon. Ronald B. Rubin
* Specially Assigned

* * * * *

JOINT MOTION TO CORRECT NAMES OF ABSENT CLASS MEMBERS

Council of Unit Owners of Townes of North Creek Condominium, by Gardner M. Duvall, Patrick D. McKeivitt, and Whiteford, Taylor & Preston, L.L.P., (“WTP”), and North Creek Condominium, Inc., by Ruth Katz and Lerch, Early, & Brewer, Chtd. (collectively, the “Moving Parties”), with the consent of Plaintiff and Defendant Class Counsel,¹ hereby jointly move for the Court to correct a misnomer and accidental transposition of two entities in the January 16, 2018 *Final Judgment Approving Settlement Class and Certifying Settlement Classes* (“Final Judgment”), [Dkt. No. 369]:

Relevant Procedural History

1. On December 15, 2017 undersigned counsel for WTP filed a *Motion to Intervene As of Right, or in the Alternative, Permissively* (“Motion to Intervene”), [Dkt. No. 326], on

¹ Counsel from WTP spoke with Richard S. Gordon (Lead Counsel for the Plaintiff Litigation Class) and James P. Ulwick (Lead Counsel for the Defendant Class). Both Mssrs. Gordon & Ulwick consent to: (a) North Creek Condominium participating in the settlement approved by this Court on January 16, 2018 [Dkt. Nos. 368-369]; and (b) Council of Unit Owners of Townes of North Creek Condominium intervening in the litigation to present its defenses as to the merits of the litigation.

behalf of six Intervening Defendants. The Court granted the Motion to Intervene in an Order dated December 27, 2017, which Order was docketed on January 3, 2018. [Dkt. No. 355].

2. On or about January 2, 2018 undersigned counsel for WTP filed, on behalf of the same Defendants as the Motion to Intervene: an *Answer of Intervening Defendants* (“Answer”), [Dkt. No. 356]; *Motion to De-Certify Defendant Class Action* (“Motion to De-Certify”), [Dkt. No. 357]; *Motion to Opt Out of Defendant Class Action* (“Motion to Opt Out”), [Dkt. No. 358]; and *Objection to Proposed Defendant Class Settlement Agreement* (“Objection”), [Dkt. No. 359] (collectively, the “Related Papers”).

Misnomer in the Motion to Intervene and Related Papers

3. The Motion to Intervene and Related Papers mistakenly listed as a party “North Creek Condominium, Inc.”

4. In fact, WTP does not represent North Creek Condominium, Inc. Rather, North Creek Condominium, Inc. is represented by Ruth Katz and Lerch, Early, & Brewer, Chtd. North Creek Condominium, Inc., through Ms. Katz, filed an Objection to the Proposed Defendant Settlement Class Agreement, [Dkt. No. 335], with the desire that if its Objection were overruled that North Creek Condominium, Inc. would be included in the Settlement Class.

5. WTP’s client—and the proper party to the Motion to Intervene and Related Papers—is “Council of Unit Owners of Townes of North Creek Condominium.”

6. As a result of this misnomer in the Motion to Intervene and the Related Papers, the Final Judgment transposed North Creek Condominium, Inc. with Council of Unit Owners of Townes of North Creek Condominium.

7. The Final Judgment currently identifies North Creek Condominium, Inc. as “excluding [itself] from the settlement” and “remain[ing] [a] member[] of the Defendant

Litigation Class[.]” Final Judgment at ¶ 10. The Final Judgment currently identifies “Townes of North Creek Condominium c/o Abaris Realty, Inc.”—which entity is believed to refer to Council of Unit Owners of Townes of North Creek Condominium—as one of the 424 “entities and individuals who are included in the Defendant Settlement Class, and thus bound by the Settlement Agreement.” Final Judgment at ¶ 20, Ex. B ¶ 381.

Correction of the Misnomer

8. North Creek Condominium, Inc. desires to be included in the Defendant Settlement Class and to be bound by the Settlement Agreement. Council of Unit Owners of Townes of North Creek Condominium desires to intervene in the litigation to present its individual defenses as to the merits of the litigation.

9. Counsel for North Creek Condominium, Inc. has requested that both she and her client be provided with a copy of any invoice required to be sent to members of the Defendant Settlement Class. Plaintiffs’ counsel has agreed to comply with this request. *See, e.g.*, Final Judgment ¶ 25.

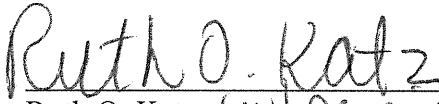
10. The Moving Parties jointly request the Court’s assistance in resolving this misnomer and accidental transposition of the two entities referenced above.

11. A Proposed Order is attached for the Court’s consideration. Since the relief requested by this Joint Motion does not affect the requirements, protocols or deadlines set forth in the Final Judgment, the undersigned request that the Court approve the Proposed Order *nunc pro tunc*.

WHEREFORE, the Moving Parties, with the consent of Plaintiff and Defendant Class Counsel, respectfully request that this Court grant this Joint Motion to Correct Names of Absent

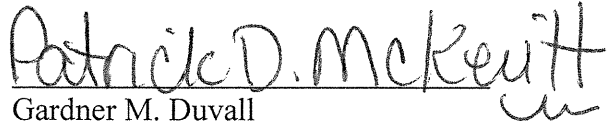
Class Members and enter an Order *nunc pro tunc* substantially similar to the Proposed Order submitted herewith.

Respectfully submitted,


Ruth O. Katz (w/permission)um

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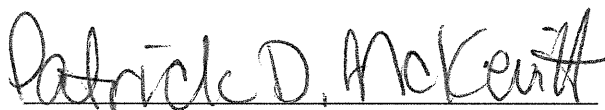

*Counsel for Council of Unit Owners of Townes
of North Creek Condominium*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of January, 2018, a copy of the foregoing *Joint Motion to Correct Names of Absent Class Members and Proposed Order* was sent via email and first class mail to:

James P. Ulwick
Jean E. Lewis
KRAMON & GRAHAM, P.A.
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Richard S. Gordon
Benjamin H. Carney
Ashley A. Wetzel
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Patrick D. McKeivitt 

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Hon. Ronald B. Rubin

* Specially Assigned

* * * * *

PROPOSED ORDER

UPON CONSIDERATION of the *Joint Motion to Correct Names of Absent Class Members* (“Motion to Correct”) filed by: (1) Counsel for Council of Unit Owners of Townes of North Creek Condominium; and (2) North Creek Condominium, Inc., and for good cause shown, it is this this _____ day of January, 2018, hereby

ORDERED, that the Motion to Correct is **GRANTED**; and it is further

ORDERED, that the reference to North Creek Condominium, Inc. in paragraph 10 of the Court’s January 16, 2018 *Final Judgment Approving Settlement Class and Certifying Settlement Classes* (“Final Judgment”), [Dkt. No. 369], is substituted with Townes of North Creek Condominium *nunc pro tunc*; and it is further

ORDERED, that North Creek Condominium, Inc. is a member of the Defendant Settlement Class, shall be included in the Defendant Settlement Class, and shall be bound by the Settlement Agreement *nunc pro tunc*; and it is further

ORDERED, that Plaintiffs’ Class counsel shall ensure that North Creek Condominium, Inc. and its counsel, Ruth O. Katz, be provided with a copy of any invoice required to be sent to

members of the Defendant Settlement Class under the Settlement Agreement and/or Final Judgment; and it is further

ORDERED, that the reference to “Townes of North Creek Condominium c/o Abaris Realty, Inc.” at paragraph 381 of Exhibit B to the Final Judgment is substituted with North Creek Condominium, Inc. *nunc pro tunc*; and it is further

ORDERED, that Council of Unit Owners of Townes of North Creek Condominium’s intent to intervene in this action and exclude itself from the Defendant Settlement Class and the Settlement Agreement was frustrated by misnomer; and it is further

ORDERED, that Council of Unit Owners of Townes of North Creek Condominium shall be deemed to have joined, incorporated, and adopted the *Motion to Intervene As of Right, or in the Alternative, Permissively* (“Motion to Intervene”), [Dkt. No. 326]; *Answer of Intervening Defendants* (“Answer”), [Dkt. No. 356]; *Motion to De-Certify Defendant Class Action* [Dkt. No. 357]; and *Motion to Opt Out of Defendant Class Action*, [Dkt. No. 358]; and it is further

ORDERED, that for the Order granting intervention dated December 27, 2017, which Order was docketed on January 3, 2018, [Dkt. No. 335], Council of Unit Owners of Townes of North Creek Condominium is substituted as an intervenor in place of North Creek Condominium, Inc., *nunc pro tunc*; and it is further

ORDERED, that Council of Unit Owners of Townes of North Creek Condominium may disregard and need not comply with any invoice sent to members of the Defendant Settlement Class under the Settlement Agreement and/or Final Judgment.

Hon. Ronald B. Rubin
Judge, Circuit Court for Montgomery County

Copies to:

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