

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

Filed in Open Court this
8 day of Nov, 20 19
Rebecca Walden Chief Clerk
Clerk, Superior Court
Glynn County, Georgia

J. MATTHEW COLEMAN, IV)
and ELIZABETH BLAIR COLEMAN,)
Plaintiffs,)
v.)
GLYNN COUNTY, GEORGIA,)
Defendant.)

Civil Action No.: CE12-01785-063

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

J. MATTHEW COLEMAN, IV and)
ELIZABETH BLAIR COLEMAN,)
Plaintiffs,)
v.)
GLYNN COUNTY, GEORGIA)
Defendant.)

Civil Action No: CE13-01480-063

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

J. MATTHEW COLEMAN, IV and)
ELIZABETH BLAIR COLEMAN,)
Plaintiffs,)
v.)
GLYNN COUNTY, GEORGIA)
Defendant.)

Civil Action No: CE14-00750-063

ORDER ON ATTORNEY'S FEES AND COSTS AND SERVICE AWARD

WHEREAS, the instant three (3) actions pending before the Court are class actions brought by Plaintiffs J. Matthew Coleman and Elizabeth Blair Coleman, (hereinafter "Plaintiffs" or the "Class Representatives"), individually and on behalf of all other persons similarly situated ("Class Members") against Defendant Glynn County, Georgia (hereinafter the "County"), styled *J. Matthew Coleman, et al. v. Glynn County, Georgia*, CE12-10785-063; *J. Matthew Coleman, et al. v. Glynn County, Georgia*, CE13-01480-063; and *J. Matthew Coleman, et al. v. Glynn County, Georgia*, CE14-00750-063 (the "Lawsuits");

WHEREAS, the Lawsuits sought refunds pursuant to O.C.G.A. §48-5-380 for taxes that were overpaid based on the County's incorrect application of the Scarlett Williams Exemption (the "Exemption");

WHEREAS, the Parties reached a resolution of the Lawsuits in the form of [Proposed] Consent Judgment that was presented to and preliminarily approved by the Court on October 4, 2019;

WHEREAS, pursuant to its Preliminary Approval Order on October 4, 2019, the Court directed that notice be mailed to the Class Members, a notice be published in the Brunswick News, and the County was directed to add a webpage to its website providing information about the Lawsuits and the [Proposed] Consent Judgment, and setting a time period in which objections to the same could be filed;

WHEREAS, the Preliminary Approval Order also established a schedule for the filing of an Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives (the "Fee Application"), as well as a time period in which objections to the same could be filed;

WHEREAS, notice to the Class Members was given as required by the Court's Preliminary Approval Order;

WHEREAS, the Fee Application was filed on October 18, 2019 as required by the Court's Preliminary Approval Order;

WHEREAS, no objections to the proposed Consent Judgment were filed;

WHEREAS, no objections to the Fee Application were filed;

WHEREAS, the Court held a Final Approval Hearing on November 8, 2019 as scheduled in the Preliminary Approval Order at which the Court finally approved the Consent Judgment, and considered the Fee Application; and

WHEREAS, the Court having considered the entire records of these Lawsuits, including the Fee Application, the evidence presented, including but not limited to the Affidavit of James L. Roberts, IV dated October 18, 2019 (the "October 18, 2019 Aff.") and the Affidavit of James L. Roberts, IV dated November 1, 2019 (the "November 1, 2019 Aff."). **NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Fee Application requests an award of attorney's fees to Class Counsel in the amount of seven million dollars (\$7,000,000.00), reimbursement of Class Counsel's actual costs and expenses in the amount of ninety-three thousand four hundred fifty-five and 28/100 dollars (\$93,455.28) and a service award to the Class Representatives of three hundred and fifty thousand dollars (\$350,000.00) all to be paid from the seventeen million five hundred thousand dollar (\$17,500,000.00) Aggregate Refund Fund established in the Settlement of these Lawsuits. As set forth below, the Court makes the following findings of fact and conclusions of law holding that : (a) the requested attorney's fee is appropriate, fair and reasonable and is therefore approved; (b) the request for approval of reimbursement of litigation costs and expenses advanced by Class

Counsel is reasonable and justified and is therefore approved; and (c) the requested service award is appropriate, fair and reasonable and is therefore approved.

Class Counsel's Request for Attorney's Fees is Approved

2. Tax refund actions under O.C.G.A. §48-5-380, such as these Lawsuits, are considered common fund cases. Under Georgia law where a common fund is generated in litigation for the benefit of persons other than the named plaintiff, reasonable attorney's fees are paid from the fund. Barnes v. City of Atlanta, 281 Ga. 256, 260, 637 S.E.2d 4, 7 (2006).

3. The United States Supreme Court and the Eleventh Circuit have also recognized that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorney's fees from the fund as a whole. See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). See also Camden I Condominium Association, Inc., et al v. Dunkle, 946 F.2d 768, 771 (11th Cir. 1991) ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.").

4. The controlling authority for awarding attorney's fees in common fund cases in the Eleventh Circuit is Camden I. Georgia courts rely on Camden I when awarding fees in a common fund case. See Friedrich v. Fidelity Nat'l Bank, 247 Ga. App. 704, 545 S.E.2d 107 (2001).

5. When deciding awards of attorney's fees in common fund cases, Georgia Courts follow the Eleventh Circuit which "made clear in Camden I that percentage of the fund is the exclusive method for awarding fees in common fund class actions." In re Checking Account Overdraft Litig., 830 F. Supp. 2d 1330, 1362 (S.D. Fla. 2011).

6. Georgia and the Eleventh Circuit evaluate the reasonableness of attorney fee awards in common fund cases by applying the following factors:

- (1) the time and labor required;
- (2) the novelty and difficulty of the relevant questions;
- (3) the skill required to properly carry out the legal services;
- (4) the preclusion of other employment by the attorney as a result of his acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the clients or the circumstances;
- (8) the results obtained, including the amount recovered for the clients;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and the length of the professional relationship with the clients; and
- (12) fee awards in similar cases.

Camden I, 946 F.2d at 772, n.3 (citing factors originally set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974)). These factors are hereinafter referred to as the “Camden I Factors”.

7. In support of their request for attorney’s fees, Class Counsel presented Class Counsel’s October 18, 2019 Affidavit. Class Counsel’s October 18, 2019 Affidavit analyzes each of the Camden I Factors and concludes that every applicable factor supports the reasonableness of the instant fee request. The Court independently has analyzed the Camden I Factors against the unique facts of these Lawsuits and concludes that every applicable factor supports the reasonableness of the instant fee request.

8. The eighth Camden I factor looks to the amount involved in the litigation with particular emphasis on the monetary results achieved in the case by class counsel. See Allapattah Servs., Inc. v. Exxon Corp., 454 F. Supp. 2d 1185 (S.D. Fla. 2006). The Court finds that Class Counsel achieved an excellent result for the Class and that the eighth Camden I Factor supports Class Counsel's fee request.

9. Here, the result obtained provides for not only the recovery of the tax overpayments by Class Members for 2010 to 2018, but also future tax relief of an even greater value to the Class Members, and future Exemption holders, by requiring that the Exemption be applied properly prospectively. See generally Coleman, et al. v. Glynn County, Georgia, et al., 344 Ga. App. 545, 549, 809 S.E.2d 383, 387 (2018); October 18, 2019 Aff. ¶27.

10. The direct benefits to the Class Members include immediate cash payments from the \$17,500,000.00 Aggregate Refund Fund. October 18, 2019 Aff. at ¶28. Each Qualified Class Member (as defined in the [Proposed] Consent Judgment) will receive his or her pro-rata share of his or her calculated tax refund up to 100% of the total calculated refund due from the Aggregate Refund Fund less Fees and Expenses (as defined in the [Proposed] Consent Judgment). Id. at ¶29.

11. In addition to this immediate cash benefit to the Class Members the Settlement provides tangible benefits – tax dollar savings – into the future each year for every year the Exemption is received. Class Counsel estimates that the net present value of these tangible future benefits is calculated at \$23,500,000.00. Id. at ¶¶34, 37.

12. The Court finds that Class Counsel's estimate of the future benefits in tax dollar savings is credible. See Eaves v. Earthlink, Inc., No. 2005-CV-97274, 2010 WL 5883596 (Ga. Super. June 7, 2010) (Court permitted value of benefits to the class to include an estimate of the value of reduction of charges by defendant into the future).

13. The Court finds that the first, fourth and seventh Camden I Factors – the time labor, preclusion of other employment, and the time limitations imposed – support Class Counsel’s fee request. In short, Class Counsel engaged in these Lawsuits for seven (7) years against worthy, highly competent adversaries representing the County and obtained extraordinary results in the Settlement. October 18, 2019 Aff. at ¶45.

14. Class Counsel’s October 18, 2019 Affidavit confirms that Class Counsel spent a substantial number of hours, among other things, investigating the thousands of potential refund claims based on the incorrect application of the Exemption and served multiple sets of interrogatories, requests for documents and requests for admission on the County and on third parties, conducted depositions, served over twenty (20) Open Records Requests and filed eight (8) discovery motions. Id. at ¶43.

15. Class Counsel’s October 18, 2019 Affidavit also confirms that Class Counsel expended significant resources researching and developing the legal theories and claims and many other legal issues that arose. Id. at ¶47.

16. According to Class Counsel’s October 18, 2019 Affidavit, Class Counsel and its staff invested not less than 3,207 hours on these Lawsuits. Id. at ¶69.

17. The Court does not doubt that these Lawsuits took an enormous amount of Class Counsel’s time and frequently required prioritizing these Lawsuits over other work and/or required the turning down of new work that would have interfered with the vigorous prosecution of these Lawsuits.

18. The Court finds that the second, sixth and tenth Camden I Factors – the novelty and difficulty of the issues, whether the fee is contingent, and the “undesirability” of the case – support Class Counsel’s fee request.

19. The Court finds that in undertaking to prosecute these complex Lawsuits entirely on a contingent fee basis, Class Counsel assumed a significant risk of non-payment or underpayment. Courts have long recognized that “a contingency fee arrangement often justifies an increase in the award of attorney’s fees.” Lunsford v. Woodforest Nat’l Bank, 2014 U.S. Dist. LEXIS 200716, at *14 (N.D. Ga. 2014) (internal citations omitted).

20. These Lawsuits involved difficult and novel issues as evidenced by the fact that these Lawsuits spanned seven (7) years and have been up to the Court of Appeals and the Georgia Supreme Court twice.

21. Class Counsel faced numerous risks throughout the pendency of these Lawsuits. There was the inherent possibility of failing to certify the class or having the Lawsuits dismissed at the pleadings stage or upon a motion for summary judgment. Because the Lawsuits involved the County, there were also risks concerning sovereign immunity. And then there was the real threat that the Lawsuits would have been decertified after the second appeal to the Court of Appeals – after more than six (6) years of litigation. October 18, 2019 Aff. at ¶¶47-53.

22. The Court finds that the fact that Class Counsel skillfully addressed these novel and difficult issues, achieving an excellent result for the Class Members, supports the requested fee.

23. The Court finds that the fifth and twelfth Camden I Factors – the customary fee and awards in similar cases – supports approval of Class Counsel’s fee request.

24. The Eleventh Circuit explained that “[t]here is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of the case.” Camden I, 946 F.2d at 774. However, the Camden I Court noted that “an upper limit of 50% of the fund may be stated as a

general rule, although even larger percentages have been awarded.” Id. at 774-75 (internal citations omitted).

25. The Court finds that Class Counsel’s request for approval of a 40% fee of the Aggregate Refund Fund falls squarely within the permissible range indicated by Barnes, 281 Ga. 256 (33.33%) and Camden I, 946 F.2d at 774-75 (upper limit of 50%).

26. The Court finds that Class Counsel’s fee request falls within the range of the private marketplace for standard contingency fee cases. October 18, 2019 Aff. at ¶¶57, 60.

27. The Court finds that Class Counsel’s fee request falls within the range of the private marketplace for tax refund cases. Id.

28. Furthermore, the Court finds that when the future tax relief achieved by Class Counsel is taken into consideration, along with the Aggregate Refund Fund, Class Counsel’s fee request is even more reasonable. Id. at ¶¶36-38.

29. The Court finds that the third, ninth and eleventh Camden I Factors – the skill, experience, reputation and ability and nature and length of professional relationship with the client – also supports approval of Class Counsel’s fee request.

30. Class Counsel effectively pursued the Plaintiffs’ and Class Members’ claims before this Court, conferring a significant benefit on the Class. The Court finds that the outcome of these Lawsuits was made possible by Class Counsel’s extensive experience in property tax law and tax refund matters as well as experience with complex litigation. Id. at ¶¶4-6, 62-65.

31. In sum, the Court finds that all of the Camden I Factors favor approval of the requested fee award.

32. Additionally, the Court finds that the reaction of the Class Members to Class Counsel’s fee request also supports approval of the fee award.

33. In the Preliminary Approval Order the Court directed that notice be mailed to the Class Members (the "Full Notice"), a notice be published in the Brunswick News (the "Publication Notice") and the County was directed to add a webpage to its website (the "Webpage") providing information about the Lawsuits and the proposed Settlement (collectively the "Notice Program").

34. The Class Members were advised through the Notice Program approved by this Court that Class Counsel would seek approval for an award of attorney's fees, expenses and service award.

35. Plaintiffs were directed to post and in fact did post the Application for Attorney's Fees, Reimbursement of Expenses and Service Award on the Webpage on the same day that it was filed with the Court.

36. The Full Notice and the Publication Notice approved by the Court advised the Class Members that at the Final Approval Hearing the Court would determine, among other things, Class Counsel's request for an award of attorney's fees, expenses and service award.

37. Through the Notice Program the Class Members were advised that for an objection to be considered by the Court it had to be postmarked on or before October 29, 2019 and certain objection procedures outlined in the Preliminary Approval Order and repeated in the Full Notice had to be strictly followed.

38. The Court finds that each facet of the Notice Program was timely and properly accomplished. November 1, 2019 Aff. at ¶¶11-15. See also Affidavit of Printing and Mailing and Publisher's Affidavit attached as Exhibits "B" and "C" respectively to Supplemental Memorandum in Support of Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives filed by Plaintiffs.

39. The period for filing timely objections ended on October 29, 2019. There were no objections filed within the Court ordered objection period. There has been no objection filed to date regarding Class Counsel's request for an award of attorney's fees, expenses and service award. November 1, 2019 Aff. at ¶16. See Ingram. et al v. The Coca-Cola Co., 200 F.R.D. 685, 691 n.7 (N.D. Ga. 2001) (few or no objections can be taken as some indication that the Class Members did not think the request was unfair).

40. Accordingly, an award of attorney's fees to Class Counsel in the amount of seven million dollars (\$7,000,000.00) is approved.

The Expense Request is Approved

41. The Court finds that the request for approval of reimbursement from the Aggregate Refund Fund of \$93,455.28 in litigation costs and expenses advanced by Class Counsel is reasonable and justified. See George. et al v. Academy Mortgage Corp., 369 F. Supp. 3d 1356, 1386 ("Because Class Counsel has lost the use of this money for nearly three years, the expenses required are reasonable and necessary." Citing McLendon v. PSC Recovery Sys., 2009 WL 10668635, at *3, 2009 U.S. Dist. LEXIS 136999, at *4 (N.D. Ga. 2009)).

42. This sum corresponds to certain actual out of pocket costs and expenses that Class Counsel necessarily incurred and paid in connection with the prosecution and settlement of these Lawsuits. October 18, 2019 Aff. at ¶71.

43. Accordingly, ninety-three thousand four hundred fifty-five and 28/100 dollars (\$93,455.28) in litigation costs and expenses is approved.

The Service Award Request is Approved

44. "[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action." David v. Am. Suzuki Motor Corp.

2010 U.S. Dist. LEXIS 146073, 2010 WL 1628362. at *6 (S.D. Fla. Apr. 15, 2010). Courts have consistently found service awards to be an efficient and productive way to encourage members of a class to become a class representative.

45. For the last seven (7) years the Colemans have served as Class Representatives, undertaking the burdens and risks of representing the Class.

46. The Court finds that as the Colemans provided invaluable assistance to counsel in these Lawsuits by first identifying the issue concerning the incorrect application of the Exemption and then by, among other things, locating relevant documents, participating in conferences with Class Counsel and attending and testifying at hearings. October 18, 2019 Aff. at ¶¶19-20, 40.

47. Accordingly, a service award in the amount of three hundred and fifty thousand dollars (\$350,000.00) is approved (the "Service Award"). See Ingram, 200 F.R.D. 685 (awarding class representatives \$300,000 each, explaining that the magnitude of the relief the class representatives obtained on behalf of the class warranted a substantial incentive award).

Conclusion

48. Class Counsel's Application for Attorney's Fees, Reimbursement of Expenses and Service Award to Class Representatives is GRANTED for the reasons set forth above.

49. Class Counsel are awarded attorney's fees in the amount of \$7,000,000.00 from the Aggregate Refund Fund to be paid no later than 15 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment and the Final Approval Order and Judgment.

50. Class Counsel are awarded \$93,455.28 in advanced litigation costs and expenses from the Aggregate Refund Fund to be paid no later than 15 days from the date of this Order and

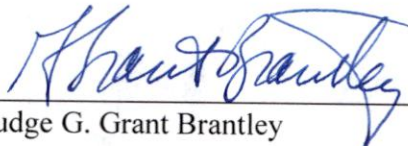
to be paid in accordance with the provisions of the [Proposed] Consent Judgment and the Final Approval Order and Judgment.

51. The Court further awards the Class Representatives \$350,000.00 as a service award from the Aggregate Refund Fund to be paid no later than 15 days from the date of this Order and to be paid in accordance with the provisions of the [Proposed] Consent Judgment and the Final Approval Order and Judgment.

52. Without affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction over all matters relating to protect and effectuate this Order, and for any other necessary purpose.

53. The Clerk shall promptly enter this Order in the dockets of each of these Lawsuits

SO ORDERED. This 8th day of November, 2019.



Judge G. Grant Brantley