



IN THE CIRCUIT COURT OF KANWHA COUNTY, WEST VIRGINIA

IN RE: UNIVERSITY COMMONS LITIGATION

Civil Action No. 13-C-7000

THIS DOCUMENT APPLIES TO ALL CASES

ORDER REGARDING NOTIFICATION OF UNIT OWNERS

On July 9, 2013, the Presiding Judges and the Resolution Judges assigned to the University Commons Litigation held a Status Conference. Having heard from counsel for Plaintiff University Commons Riverside Home Owners Association, Inc., on Its Own Behalf and on Behalf of Its Members and Individual Unit Owners (“HOA”) regarding notification of unit owners in the University Commons Riverside Condominium Complex located in Star City, West Virginia (“UCR”) about their potential claims against the Defendants, the Court makes the following findings of fact and conclusions of law:

1. On October 5, 2011, Judge Tucker ordered that all individual unit owners be joined as plaintiffs in *University Commons Riverside Home Owners Association, Inc., on Its Own Behalf and on Behalf of Its Members and Individual Unit Owners v. University Commons Morgantown, LLC, et al.*, Civil Action No. 09-C-85 MON (“underlying action”), pursuant to Rule 19 of the West Virginia Rules of Civil Procedure.
2. Counsel for the HOA sent a letter to all individuals who were members of the HOA as of the date of Judge Tucker’s October 5, 2011 order, but did not send the letter to prior unit owners.
3. The letter advised current members of the HOA that: a) the HOA was representing them; b) the fee arrangement for the representation; and c) this lawsuit is their opportunity to bring suit against Defendants for any potential claim for damage to their unit.

4. On March 28, 2013, the Supreme Court of Appeals of West Virginia answered the following certified question from the circuit court of Monongalia County, West Virginia:

Is a Unit Owners' Association an adequate representative when a lawsuit is instituted by a Unit Owners' Association on behalf of two or more unit owners pursuant to W. Va. Code § 36B-3-102(a)(4) and the damages sought include unit specific damages affecting only individual units?

Answer: Yes.

University Commons Riverside Home Owners Association, Inc. v. University Commons Morgantown, LLC, et al., 230 W.Va. 589, 741 S.E.2d 613, 620 (2013).

5. After answering the first certified question affirmatively the Supreme Court advised,

Having concluded that this case should proceed under Rule 26, we need not answer the remaining certified questions. To the extent necessary, the issues raised in those questions can be addressed by the Mass Litigation Panel. It is the Panel's duty to "develop and implement case management and trial methodologies to fairly and expeditiously resolve" the matters before it. W.Va. Tr. Ct. R. 26.05. Nonetheless, given that this case is not typical of the cases referred to the Mass Litigation Panel in that there are not multiple cases involved but, rather, one case involving multiple individuals and entities represented by one party, we believe that individual notice should be immediately given to all the members of the HOA to make them aware of the existence of this lawsuit and to advise them that they are currently represented by the HOA.

Id. The Supreme Court recognized these notice provisions were not exclusive and that the Panel may add additional requirements as it deems necessary. Id., Footnote 10.

Consistent with Judge Tucker's October 2011 Order and the Supreme Court's March 18, 2013 Memorandum Opinion, the Mass Litigation Panel **ORDERS** the HOA to individually

notify every person or entity in the chain of title for the 84 units comprising the UCR **on or before August 9, 2013**, regarding:

- a. the existence of this lawsuit;
- b. their potential claims against Defendants for alleged damage to their unit;
- c. that they are currently represented by the HOA;
- d. the fee arrangement with counsel for the HOA;
- e. their ability to “opt out” of representation by the HOA and seek separate representation; and
- f. that this lawsuit is their only opportunity to bring suit against Defendants for alleged damage to their unit.

The HOA is further **ORDERED** to notify every person or entity in the chain of title for the 84 units comprising the UCR that a declaratory judgment action styled, *University Commons Riverside Home Owners Association, Inc., on Its Own Behalf and on Behalf of Its Members and Individual Unit Owners v. R.E. Crawford Construction, Inc., et al.*, Civil Action No. 10-C-637 MON, has also been filed on their behalf seeking insurance coverage. Counsel for the HOA shall e-file and e-serve a Certificate of Compliance with Court’s Order by no later than **August 9, 2013**.

ENTER: July 24, 2013

/s/ Derek C. Swope
Lead Presiding Judge
University Commons Litigation