

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
LEE COUNTY, FLORIDA CIVIL ACTION

TINA BROWN, individually and on behalf
of others similarly situated, FIRST HOME
BUILDERS OF FLORIDA, a Florida
partnership, on its own behalf and on behalf
of other general contractors similarly
situated and LEE BUILDING INDUSTRY
ASSOCIATION, INC., a Florida corporation,
on its own behalf and on behalf of its members
and others similarly situated,

Plaintiffs,

v.

CASE NO. 01-011623-CA-H

LEE COUNTY, FLORIDA,

“CLASS REPRESENTATION”

Defendant.

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, a class action is pending before the Court entitled Patricia Shatto, et al. v. Lee County, Florida, Case No. 01-011623 CA-H (the “Action”);

WHEREAS, the parties having made application for an order preliminarily approving the settlement of this Action, in accordance with a Settlement Agreement dated September 2, 2008 (the “Agreement”), which, together with the Exhibits attached to the Motion for Preliminary Approval of Class Action Settlement, sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Agreement and the Exhibits attached to the Motion for Preliminary Approval of Class Action Settlement; and

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Agreement and the settlement set

forth therein, subject to further consideration at the Settlement Hearing described below and subject to the following conditions:

a. The interest bearing account referred to in numbered paragraph one of the Settlement Agreement shall be a "Certificate of Deposit Account Registry Account" or similar account that can provide insurance for the entire amount on deposit.

b. The right of the Class Attorneys to recover attorney's fees and the amount thereof shall be determined at the Final Approval Hearing. Attorney's fees, if any, shall be paid to the Class Attorneys upon Court approval only, prior to the commencement of the proceedings of the Special Master.

c. The \$1,000,000.00 sum agreed upon in settlement of the class action was inclusive of costs and each party has waived the right to pursue costs from the opposing party. As such, the costs incurred by the Plaintiffs in the prosecution of the class action shall be borne by the class and shall be determined at the Final Approval Hearing.

d. The time periods contemplated in the PROPOSED SCHEDULE OF EVENTS contained in PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT shall be adjusted to increase the time provided for Notice Published to Class from 30 to 45 days; the date for filing papers in support of the request for fees and costs from 7 to 10 days and the time for the Final Approval Hearing from 75 to 90 days.

e. The Special Master shall file a report every thirty (30) days and a final report shall be filed within 6 months of the order appointing the master. In the event that the Special Master is not able to complete his task within 6 months, the Special Master shall file a report with the Court documenting the progress and estimating the time for completion.

f. The Special Master shall charge no more than \$300.00 per hour for his services with a

cap on his fees of \$30,000.00, which can only be exceeded by order of this Court.

2. A hearing (the "Settlement Hearing") shall be held before this Court on Aug 27, 2009, at 1:30 a.m./p.m., at the Lee County Justice Center, 1700 Monroe Street, Hearing Room #4, Fort Myers, Florida, 33901, to determine whether the proposed settlement of the Action on the terms and conditions provided for in the Agreement is fair, reasonable and adequate to the Class and should be approved by the Court; and whether a judgment adopting the terms of the Settlement Agreement should be entered herein. The Court may adjourn the Settlement Hearing without further notice to Members of the Class.

3. The Court approves, as to form and content, the Notices of Proposed Class Action Settlement (the "Notice") attached to the Motion for Preliminary Approval of Class Action Settlement as Exhibit B and B1, and finds that the distribution of the Notice substantially in the manner and form set forth below of this Order meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

(a) Individual notice substantially in the form attached to the Motion for Preliminary Approval of Class Action Settlement as Exhibit B1 shall be provided by ordinary mail within thirty (30) days of the date of this order to all class members who can be identified through reasonable effort.

(b) A short form of the notice, substantially in the form attached as Exhibit B to the Motion for Preliminary Approval of Class Action Settlement, advising that there is a proposed settlement and that additional information can be received by mail or via the internet shall be published once a week for three (3) successive weeks in a local newspaper having county-wide circulation to all class members; and

(c) At least seven (7) calendar days prior to the Settlement Hearing, counsel for Plaintiffs shall file with the Court proof, by affidavit or declaration, of such distribution.

4. All Members of the Class shall be bound by all determinations and judgments in the Action concerning the settlement, whether favorable or unfavorable to the Class.

5. Any Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiffs' counsel.

6. Unless and until the settlement is canceled and terminated, neither the Plaintiffs nor any Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Persons, any action or proceeding in any court or tribunal asserting any of the Settled Claims.

7. Any Member of the Class may appear and show cause, if he, she or it has any reason why the proposed settlement of the Action should or should not be approved as fair, reasonable and adequate, or why the judgment should or should not be entered thereon provided, however, that no Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed settlement, or, if approved, the judgment to be entered thereon approving the same unless that person has filed said objections, papers and briefs with the Clerk of the Circuit Court of the Twentieth Judicial Circuit, Lee County, Florida, Post Office Box 310, Fort Myers, FL, 33902, and delivered by hand or sent by first class mail copies thereof to Jeffrey R. Garvin, Esquire, Garvin Law Firm, 7800 University Pointe Drive, #100, Fort Myers, FL 33907, and to Gregory T. Stewart, Esquire, 1500 Mahan Drive, Suite #200, Tallahassee, FL 32308, such that they are both filed and received on or before 14 days prior to the "Settlement Hearing" referred to in paragraph (2) above. Any Member of the Class who does not make his,

her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Agreement unless otherwise ordered by the Court.

8. The parties shall file all papers including any memoranda or briefs in support of the settlement and request for attorneys' fees and costs no later than seven (7) calendar days prior to the Settlement Hearing.

9. Neither the Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind.

10. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

DONE AND ORDERED in Chambers, Fort Myers, Lee County, Florida, this 7
day of April, 2009.

S/JAY B. ROSMAN

JAY B. ROSMAN, Circuit Court Judge

Copies furnished to:

Jeffrey R. Garvin, Esquire
David Owen, Esquire
John Turner, Esquire
Gregory T. Stewart, Esquire
Keith B. Martin, Esquire
Mark A. Boyle, Esquire