

## **Notes form the Class Certification Hearing on April 16, 2008.**

These are just a few notes of the hearing. I will have a copy of the transcript if anyone is interested in the actual statements made at the hearing. You can come to my house and look at the transcript if interested. Due to the transcript ownership rights, we cannot freely make copies of it or post it on the web.

A few days before the hearing, counsel for the Defendant filed a motion to limit the testimony at this hearing to only the issue of my standing to bring the case. Therefore, the first hour or so of the hearing was arguments for and against this motion. While it appeared at one time that the court was inclined to grant the motion, he did not, and allowed the hearing on the issue of class certification. Yet, the ultimate issue in the case was continually being discussed.

In opening arguments, Mr. Dillard argued that this case was premature since the Golf Course was now open. Judge Pickett did not agree, since they had been engaged in selling the Course and in fact had a contract with Wellstone.

The plaintiff's first witness was Carol McGregor. Bob McFarland conducted the direct examination. Carol withstood a thorough and sifting cross-examination by Andrea Jones. Carol's testimony covered the development of the approximately 1000 acres from about the mid 1970's to present day. Her testimony began when Arasom, a German Development Company, acquired some of the holdings from the fallout of the UniCity bankruptcy. Andy McGregor, Carol's former husband, started the development of all the areas that were not originally Habersham. Then Carol finished the development after her divorce from Andy.

I believe everyone in the courtroom was impressed by Carol as a very credible and knowledgeable witness. Many in attendance stated that her testimony was very interesting as she gave a lot of historical information on the development of the golf course community. Bob and I were able to get a good number of documents into evidence via her testimony.

Bob called me as his second and last witness. I presented a map that I had developed of the course that showed the tax evaluations of the land values in neighborhoods surrounding the Golf Course. Bob felt good about my testimony and the expected cross-examination by Andrea Jones.

My main concern was when the judge asked me point blank, "If you win this lawsuit, do you expect there to be a golf course in your backyard if the operators of the golf course operate in the red?" I responded that no one should be required to operate a business if they have no choice but to lose money. On redirect, Bob asked me about other persons that had showed an interest in purchasing the golf course as a Golf Course. I recounted part of George Bagley's testimony at his deposition that at one time Cannongate was interested. We can revisit this issue at the final hearing, and we may bring other witnesses that have made offers to Jack Manton. I believe that the judge will be convinced that Jack and George can make a good profit from their

investment by selling to a golf course owner rather than a developer.

The Defendant's first witness was Edmund Burke who is a real estate attorney. He testified that he originally performed an exhaustive title search for Wellstone for the contract with the Defendant. While Bob consented to Mr. Burke as an expert in title examination, we objected to him being an expert in the interpretation of legal documents as requested by Defendant's counsel. The judge ruled in our favor.

Mr. Dillard led him through the title search in painstaking and boring detail. He explained applicable laws and his research method. The essence of his testimony is that in the 50 year search, there is no record of an expressed easement for any adjacent lot owner to have rights on the Golf Course.

Of course, we would have stipulated to this fact and saved the time. However, Mr. Dillard did tender all the deeds and the record of Mr. Burke's search. As it turns out, this evidence may actually be helpful for our case. Bob cross-examined Mr. Burke and was able to get him to admit certain facts that may also be useful in our final argument later this summer.

Jack Manton was the defense second and final witness. It appeared that the Defendant gained little from Jack's direct testimony. However, on cross-examination, Bob asked Jack the critical question: "Why should Michael Peck not be the class representative?" Jack could only respond with his statement over and over again that, in his opinion, we do not have a claim.

The Judge postponed closing verbal arguments and required post-hearing written briefs with citations to the transcript from the court reporter. After we receive the transcript, we are given three weeks to comply with the order of the court. The Defendant will then have the same amount of time to file a response brief. Bob specifically asked the court for permission to then file a reply brief (so we can have the last word) and the court granted this request.

When all the briefs are in, the issue of class certification would be ripe for a determination by the court. We do not expect this decision before late summer or early fall at the earliest.

Assuming we get class certification, then the trial phase starts. We expect the trial phase to be 6-12 months. Since there is no case on point in Georgia, we expect the losing side to file an appeal to the Georgia Supreme Court. This could take another 12-24 months.

I want to address two personal opinions that I have after this hearing. First, Judge Picket appeared to be very much in control of the situation. Often he would stop council from asking questions and he would ask his own in order to get to the bottom line truth on some important issues. I thought his words were very well chosen.

The second thing that I would like to address is a response to the question that is

often asked of Bob and myself: "Why do we need class certification?" The answer is simple. If I win this case without a class, I will have an implied easement in the Golf Course. If a developer should violate it, I could never ask for more in damages than my house is worth? This would be a small price for a developer to pay. However, if 121 adjacent landowners have the same order that I do, a developer would have 121 claims to settle before moving forward with a development project.

If you have any questions, would like to see the transcript or have information that might be beneficial to the cause, please contact me at [michael@peckvianier.com](mailto:michael@peckvianier.com).

Best regards,

Michael Peck