

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

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Douglas Saville
CLERK SUPERIOR COURT

In the Superior Court
of Forsyth County
State of Georgia

Michael D. Peck on Behalf of)	
Himself and All Homeowners)	Civil Action File Number
Adjacent to Lanier Golf Club)	<i>07 CV 2147</i>
f/k/a Canongate on Lanier)	
Golf Club,)	
Plaintiffs,)	
v.)	
Lanier Golf Club, Inc.,)	
Defendant.)	

Plaintiff's Motion for
Class Certification and Memorandum
of Law in Support Thereof

Comes now Michael D. Peck ("Plaintiff"), individually and on behalf of all others similarly situated being homeowners adjacent to Lanier Golf Club f/k/a Canongate on Lanier Golf Club (Class") and states as follows:

Preliminary Statement

This class action concerns the civil action filed herewith on behalf of all homeowners adjacent to Lanier Golf Club f/k/a Canongate on Lanier Golf Club ("Defendant"). The purpose of the litigation is to have the court declare and enforce against the current owner (Defendant) and any subsequent owners an implied restriction limiting use of this property to golf course purposes

only.

Due to the common factual issues relating to the rights of these adjacent homeowners and the common legal relief sought for all eligible recipients, this action is appropriate for class action treatment. As demonstrated below, Plaintiff satisfies all of the requirements of O.C.G.A. § 9-11-23, and there can be no serious dispute that, under the circumstances present here, a class action is the superior method for fairly and efficiently vindicating the rights of absent class members who may be unable or unwilling to bring an individual case.

Accordingly, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Class Certification and enter an order that certifies the Class defined by Plaintiff, appoint Plaintiff as the Class Representative of the Class, and appoint Plaintiff's attorneys as Class Counsel.

Statement of Facts

In the 1960's, a very large tract of property in this county was developed into a Planned Unit Development just west of Buford Dam. The centerpiece of the development was a 177-acre championship golf course ("Property") to be known as Canongate on Lanier ("Golf Course").

Approximately 100 lots in this development were located adjacent to the Golf Course that was to be known as Canongate on Lanier. With the addition of town homes on the west side of the Golf Course, this number has increased to approximately 136 homeowners.

In 1986, Defendant purchased the Golf Course from its then owner. In January of 2006, Defendant announced that they planned to

discontinue the Golf Course and sell the Property for high density development.

It is undisputed that the Class will claim that when they purchased their property, the Golf Course was a material part of the value of their property. The Golf Course was the principal incentive for the Class or their predecessors in title to purchase their property, and the Class paid a premium value for the Golf Course lots they purchased.

Further, it undisputed that the Class purchased these lots according to a recorded plat that clearly depicted the Golf Course. The Class will attempt to establish that in purchasing the Golf Course Lots, each of them acquired an easement, or an implied covenant, in the Golf Course. Therefore, the Class should have an irrevocable property interest in the Golf Course that is not extinguished by the Defendant's election to sell the Property.

Argument and Citation of Authority

Class action lawsuits have long been recognized in Georgia as an efficient way of resolving the problems of many persons who have a common interest in the outcome. *Macon & B. R. Co. v. Gibson*, 85 Ga. 1 (1890). Traditionally, Georgia courts have given class action lawsuits liberal treatment. *O'Jay Spread Co. v. Hicks*, 185 Ga. 507 (1938).

This case is the quintessential class action because it will allow Plaintiff to vindicate the rights of individuals who might not otherwise consider litigation. *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980)¹. The United States Supreme Court

¹ Georgia courts may look to federal case law interpreting Federal Rule of Civil Procedure 23 to determine whether the

has noted that class actions are intended to protect groups of people who individually would be unable to bring their opponents into court at all:

The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997)

Class actions provide a mechanism to resolve numerous related claims in one forum, establishing a uniform standard for conduct and preserving judicial resources. Accordingly, "when a court is in doubt as to whether to certify a class action, it should err in favor of allowing a class." *Adair v. England*, 209 F.R.D. 5, 8 (D.D.C. 2002). "Any doubts regarding the propriety of class certification should be resolved in favor of certification." *Buford v. H&R Block*, 168 F.R.D. 340, 346 (S.D. Ga. 1996).

O.C.G.A. § 9-11-23 provides that a class action is authorized if the members of the class share a common right, and common questions of law or fact predominate over individual questions of law or fact. See *Hooters of Augusta, Inc. v. Nicholson*, 245 Ga. App. 363 (2001). More specifically, Plaintiff must establish the following four criteria embodied in O.C.G.A. § 9-11-23:

- The class is so numerous that joinder of all members is impracticable ("numerosity").
- There are questions of law or fact common to the class ("commonality").

requirements of class certification have been met. See, e.g., *Sta-Power Industries, Inc. v. Avant*, 134 Ga. App. 952 (1975).

- The claims or defenses of the representative parties are typical of the claims or defenses of the class ("typicality").
- The representative parties will fairly and adequately protect the interests of the class ("adequacy").

Numerosity

The Class satisfies numerosity requirement because the class is so numerous that joinder of all class members would be impracticable. *Ford Motor Credit Co. v. London*, 175 Ga. App. 33 (1985). "Numerousness is thus the threshold factor, the sine qua non for class actions. If the number is so large that each cannot practically represent himself, either in the same or in separate lawsuits, then the court may allow this representative suit to bind all, if the other factors to be considered favor it." *Id.* A class with as few as twenty-five members is sufficiently numerous to satisfy this criterion. *Sta-Power, Supra.*

Here, there can be no dispute that Plaintiff easily satisfies the numerosity requirement. Plaintiff asserts that at least 136 persons would have the same claim against the Defendant. It would be impractical, if not impossible, to join all of these class members in this Court.

Commonality

The second requirement, commonality, requires an assessment of whether Plaintiff's claims raise at least one question of law or fact common to the members of the Class. *Nicholson, Supra.* "The threshold of commonality is not high" and "[f]actual differences between class members do not preclude a finding of commonality." *Sta-Power, Supra.* 901. "Plaintiff need only show that there is a common nucleus of operative facts and that such questions predominate over any individual questions affecting individual

class members." *Trend Star Continental, Ltd. v. Branham*, 220 Ga. App. 781 (1996).

Typicality

The typicality requirement ensures that the class representatives have the same interests as the class. Typicality is established "if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). "The focus of the inquiry is on the conduct of the defendants, not the plaintiff." *Nicholson, Supra*. Plaintiff has a home on the Golf Course and he will be impacted by the proposed development just as will all other members of the class.

Adequate Representation

The adequacy of representation requirement is met if (1) the interests of the plaintiff are not antagonistic to those of the rest of the class and (2) plaintiff's counsel are qualified, experienced and able to conduct the proposed litigation. *Kirkpatrick v. J. C. Bradford & Co.*, 827 F.2d 718, 727 (11th Cir. 1987).

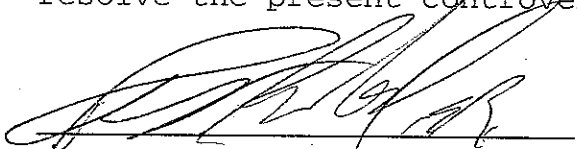
Plaintiff has no conflict of interest with the Class. Plaintiff's claims arise from the same common nucleus of operative facts as the claims of the Class. Plaintiff seeks the same relief for himself as for the Class. Finally, Plaintiff is cognizant of, and determined to, faithfully discharge his fiduciary duties as Class representative and is willing to vigorously prosecute this action on behalf of the absent Class members.

Plaintiff does not anticipate that Defendant will challenge the adequacy of counsel. Plaintiff's counsel has been a member of the

State Bar since 1977 and has litigated real estate issues for a number of years. He has argued four real estate related cases to the Georgia Supreme Court. Plaintiff's counsel is competent and adequately prepared to prosecute this action. Thus, the adequacy of representation requirement is met.

Conclusions of Fact and Law

Given the predominance of common legal and factual issues established by the Complaint and the size of the Class, there can be no question that a class action is a superior method to resolve the present controversy.



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² This motion and the hearing notice is to be served with the original complaint.