

ORIGINAL

1 DECN

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Electronically Filed
03/14/2007 02:35:33 PM
ELECTRONICALLY SERVED
03/15/2007 11:52:44 AM

Cheryl Stein
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

CLASSIC PLUMBING, INC.,)

Plaintiffs,)

v.)

IPEX, INC., IPEX USA, LLC, FERGUSON)
ENTERPRISES, INC., STANDARD)
WHOLESALE SUPPLY COMPANY,)
TODD PIPE & SUPPLY - LAS VEGAS,)
INC., DOES I through X; and ROE)
CORPORATIONS I through X, inclusive,)

Defendants.)

Case No.: A493302

Dept. No.: XVI

CONSOLIDATED WITH

Case No.: A510543

Case No.: A517493

Case No.: A518156

Case No.: A523714

QUINTERRO, et al.,)

Plaintiffs,)

v.)

IPEX, INC., et al.,)

Defendants.)

AND ALL RELATED CLAIMS.)

DECISION REGARDING FEBRUARY 16, 2007
EVIDENTIARY FAIRNESS HEARING

This matter having come on for hearing on the 16th day of February, 2007, on Plaintiff Quinterro, et al.'s ("Class Plaintiffs") Ex Parte Application for Request for Evidentiary Fairness Hearing ("Application") against Del Webb/Pulte Homes ("Pulte") with Class Plaintiff

1 represented during the hearing by their attorneys, J. Randall Jones, Esq., William L. Coulthard,
2 Esq., and P. Kyle Smith, Esq., of Harrison, Kemp & Jones, LLP., and Francis Lynch, Esq.,
3 Charles "Dee" Hopper, Esq., and Sergio Salzano, Esq., of Lynch, Hopper & Salzano, LLP
4 ("Class Counsel") and Pulte represented by its counsel, Robert C. Carlson, Esq., and Megan K.
5 Dorsey, Esq., of Koeller, Nebeker, Carlson & Haluck, LLP, and after reviewing the Points and
6 Authorities and a transcript of the proceedings, the Court hereby holds the following:

7
8 **FINDINGS OF FACT**

9 The Court incorporates by reference the prior Findings of Facts and Conclusions of Law
10 as reflected in the Court's Order dated January 24, 2007.

11 On October 20, 2006, despite being represented by Class Counsel, Pulte gave notice
12 unauthorized by this Court to Class Members in Sun City Anthem, whose homes contained
13 allegedly defective Brass Kitec plumbing fittings, set and performed inspections, and offered to
14 settle Class Member Claims.

15 On January 8, 2007, Pulte, by letter, sent offers in the sum of \$7,800 to individual Sun
16 City Anthem homeowners to settle claims relating to allegedly defective Kitec plumbing
17 fittings installed during construction. Pulte, in its letter, frames the offers simply as proposals
18 for monetary compensation. However, Pulte's claim is illusory and contrary to its own actions.
19

20 The Pulte letter failed to make a "simple or pure" offer of monetary compensation
21 resulting from estimates of the cost of repair submitted by Anthem homeowners. Instead, Pulte
22 secured the repair bids and based the \$7,800 proposal on its own repair estimate. Further, Pulte
23 recommended the names of "selected" contractors it was familiar with and willing to perform
24 the drywall and plumbing repair. Also, Pulte informed Anthem homeowners the time
25

26
27 ...
28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

period necessary to perform the individual repairs. The Pulte letter provided in pertinent parts:

This amount was calculated based on performing a repair consisting of re-plumbing your home overhead. The repair does not use the brass Kitec plumbing fitting which were subject of the construction defect notice. The re-plumbing will take approximately 16-18 hours to perform over the course of 3-4 days. Following are names of contractors who are familiar with and willing to perform the plumbing and drywall work in connection with the re-plumbing repair....

Pulte even determined the means and methods of the repair and possible replacement plumbing fittings. Clearly, instead of paying the Pulte "selected" contractors directly for the repairs, Pulte used the Anthem homeowners as a conduit to funnel the cost of repairs to its "selected" contractors.

Offers of money, coupled with repair estimates, securing bids and arrangement of the repairs by contractors, directing the means and methods of repair and recommending replacement plumbing fittings is much more than a simple proposal of monetary compensation. Clearly, Pulte is controlling the repair and re-plumbing of the Anthem homes, yet, attempting to circumvent the entitlements, warranties and other homeowner protections arising from an election to repair pursuant to Chapter 40. Consequently, the Court has determined the Pulte offer is not merely monetary compensation but the exercise of the right to repair.

Also, Pulte's letter conditioned settlement with Anthem homeowners by requiring the execution of a General Release of Claims discharging Pulte from all liability and assigning all claims against IPEX, Inc., et al. It is patently apparent, in light of the Court's Findings, election of repair conditioned upon a release of liability is in violation of NRS 40.648.4.

Further, Anthem homeowners were given 35 days to accept Pulte's offer or it was deemed rejected. However, pursuant to NRS 40.660, the 35-day deadline is only effective "...if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement."

1 Material issues such as the impact on home warranties or insurance were never disclosed to
2 Anthem homeowners in the offer. The scheduled time-frame for the overall repairs for all
3 Anthem homeowners was never addressed. Legal recourse, in case of faulty or sub-standard
4 repairs by the Pulte "selected" contractors were never disclosed. Neither were remedies for
5 potential environmental hazards enumerated in the letter. Moreover, Anthem homeowners
6 were never informed of the potential ramifications of settlement and assignment of Class
7 claims to Pulte. Because of Pulte's failure to inform Anthem homeowners of these material
8 issues, it was improbable for Anthem homeowners to make an informed decision. Thus, any
9 non-acceptance of the offer within 35 days will not be considered a rejection.
10

11 **CONCLUSION OF LAW**

12
13 The Court has jurisdiction over Pulte's Offer and Release pursuant to NRCP 23 and
14 Chapter 40.

15 Pulte's offer in the sum of \$7,800, coupled with soliciting bids, arranging repairs by
16 contractor, directing the means and methods of repairs and recommending replacement
17 plumbing fittings results in an election to repair under Chapter 40.

18 Pulte's Release is in violation of Chapter 40 and attempts to circumvent the oversight of
19 Class claims by the Court pursuant to NRCP 23.

20
21 Pulte's offer fails to adequately and fairly address and inform Anthem homeowners of
22 the consequences of acceptance, assignment and/or rejection.

23 **IT IS HEREBY ORDERED** that Pulte has voluntarily appeared and injected itself
24 under the general jurisdiction of the Court for the purposes of offers and settlements with
25 Anthem Class members.

26
27 **IT IS FURTHER ORDERED** that Pulte's release is in violation of NRS 40.648.4.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS FURTHER ORDERED that Pulte's offer constitutes an offer to repair under Chapter 40.

IT IS FURTHER ORDERED that Anthem homeowners' failure to accept Pulte's offer within 35 days shall not be considered a rejection pursuant to NRS 40.660.

IT IS FURTHER ORDERED that Class counsel, upon motion and hearing, shall consider the award of reasonable attorney's fees and costs for all motions related to ex-parte communications with Class counsel and reasonable attorney's fees and any costs regarding communication with Class members related to this matter.

DATED this 14th day of March, 2007.




DISTRICT COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of March, 2007, the foregoing DECISION was served on the following by Electronic Service to:

- J. Randall Jones, Esq., **HARRISON, KEMP, JONES & COULTHARD, LLP**
- William R. Urga, Esq., **JOLLEY, URGA, WIRTH, WOODBURY & STANDISH**
- Jeffrey H. Ballin, Esq., **LEWIS, BRISBOIS BISGAARD & SMITH, LLP**
- James D. Carraway, Esq., **MURCHINSON & CUMMING, LLP**
- James Pengilly, Esq., **PENGILLY ROBBINS SLATER**
- Phillip R. Emerson, Esq., **EMERSON & MANKE, PLLC**
- Peter C. Brown, Esq., **BREMER WHYTE BROWN & OMEARA LLP**
- Charlie H. Luh, Esq., **LUH & ASSOCIATES**
- Sergio Salzano, Esq., **LYNCH, HOPPER & SALZANO, LLP**
- Robert C. Carlson, Esq., **KOELLER, NEBEKER, CARLSON & HALUCK, LLP**
- William H. Stoddard, Esq., **ALBRIGHT, STODDARD, WARNICK & ALBRIGHT**
- David R. Clayson, Esq., **BENNION CLAYSON & MARIAS**
- Kenneth M. Marias, Esq., **BENNION CLAYSON & MARIAS**
- Nikol V. Walters, Esq., 711 Jones Street, Reno, NV 89503


Lynn Berkheimer
Judicial Executive Assistant