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Homeowners win \$2.5M verdict

Plaintiff's attorney says developer could have settled for as little as \$50,000

By Katheryn Hayes Tucker, Staff Reporter

Forsyth County Superior Court Judge Jeffrey S. Bagley ordered Pulte Home Corp. to improve storm water runoff controls for a Cumming subdivision Thursday, one week after the conclusion of a three-week trial resulting in a \$2.5 million verdict against the developer.

The lawyer for the first family to file suit said his client initially offered to settle the entire case for \$50,000.

Pulte has already announced it will appeal the verdict, most of which would go to legal costs of the three homeowners who live beside Harris Creek downstream from the Fieldstone and Notting Hill subdivisions. The judge gave the developer 90 days to narrow the opening in a dam-like water flow control structure called a weir and to clean out sediment clogging large culverts. He also ordered Pulte engineers to report on the progress of the work to the county engineering department.

A team of environmental lawyers for the homeowners said after Thursday's two-hour hearing they were satisfied with the judge's order, and they believe the changes will protect their clients' property from further damage. But they expressed dismay over the bitter fight that played out in court this month.

"They could have fixed the problem for a lot less than the cost of litigating it for nearly three years," said Martin A. Shelton, attorney for homeowners Dwayne and Sally Lawson as well as Mrs. Lawson's mother, Ruth Bennefield.

Donald D.J. Stack, lead plaintiffs' counsel and attorney for homeowners Richard and Susan Trent, estimated the court-ordered changes will cost the developer less than \$100,000.

"I will be bewildered until the day I die," he said, over why the company didn't alter storm water controls when homeowners downstream began experiencing flooding, erosion and sedimentation in the creek flowing by their homes.

Michael P. Carvalho, who represents homeowners Timothy and Adele Simerly, estimated Pulte spent \$2 million defending the case. Pulte already paid \$406,000 to the homeowners lawyers this year under a court sanction for spoliation because of destruction of emails and electronic evidence the plaintiffs asked for in discovery.

Carvalho's trial cost estimate combined with the spoliation sanction and the \$2.5 million verdict puts Pulte's litigation price tag at \$5 million. Carvalho said his client initially offered to settle for \$50,000.

"They spent over \$5 million in a case they could have settled for \$50,000," said Carvalho, who estimated his legal fees at that time at around \$13,000. Since then, legal expenses have grown dramatically.

Bagley's judgment after the verdict awarded \$1.5 million in fees for the three homeowners' attorneys and \$271,664 in legal expenses. Total compensatory and punitive damages awarded to the three homeowner families was \$753,516.

Pulte's lead counsel, W. Gordon Hamlin Jr. of Bryan Cave, declined comment, deferring to the Pulte corporate office in Bloomfield Hills, Mich. Company spokeswoman Leanne Wandoff said the company will appeal.

"We are, of course, disappointed by the verdict and the resultant judgment," a corporate statement said. "We believe the evidence introduced at trial demonstrated that the company took all reasonable steps and complied with all local, state and federal requirements related to the detention and runoff of storm water from our development. We look forward to reaching a fair conclusion to this matter."

The homeowners' lawyers contend the company ignored thousands of warnings from its own engineering firm about the environmental problems, according to court records. But Simon H. Bloom III, who successfully defended Pulte executive George Theodore Turner in the lawsuit, said he believes the company did try to solve the problems and clean up damage.

"This case was 5 percent about real injury and the rest was about attorneys fees," said Bloom. "The trial should have never taken three weeks." Bloom also noted "no shortage of vitriol" in the courtroom.

Stack told the jury that Pulte employs a "scorched earth" approach and compared the developer's business practices to General William T. Sherman's march to the sea.

Hamlin compared the homeowners' environmental lawyers to a swarm of locusts destroying everything in sight, according to other attorneys present in court. Hamlin also told the jury he's retiring from Bryan Cave and that this was his last trial.

It was a complex case that combined two lawsuits filed in 2009: the Simerlys' in January and the Trents' in July. By the time the case got to trial, it also included a third-party defendant—the Lawson family—and counterclaims made by the Lawsons against Pulte.

Homeowners began to notice erosion problems soon after Pulte cleared the land for construction in 2004, according to their lawyers. Carvalho said he negotiated a confidential settlement with Pulte for the Lawsons to repair damage to their property. The damage included the destruction of a 1-acre pond that their home overlooked. It's now completely filled in with dirt and silt.

After the Simerly and Trent lawsuits were filed in 2009, Pulte countersued the Lawsons, contending that they, not the developer, were responsible for damage to their downstream neighbors' property. Shelton represented the Lawsons in the trial.

The jury rejected Pulte's third-party lawsuit and sided with the Lawsons in their counterclaim against the developer, awarding the Lawsons \$65,000 in compensatory damages, \$419,000 in attorney fees and \$95,000 for litigation costs and expenses, plus an additional \$15,000 for breach of contract for

disclosing the confidential settlement—a total of \$594,000. Shelton said the verdict will allow the Lawsons to repair erosion damage to their bridge over Harris Creek that they drive over to get to their home.

Despite suggestions made by the defense team, Stack said the case wasn't about money. Emotions ran high, Stack said, because the homeowners love their property and were heartbroken by the damage.

"Instead of living on quarter-acre lots, they'd saved every penny they could and bought there. They all have 7 or 8 acres," said Stack. The main appeal of the land was the creek and the ponds—which have now been clogged with dirt.

He said one of the homeowners, Timothy Simerly, sobbed so hard on the witness stand while telling the story that Carvalho had to pause his direct examination.

Upstream from the homeowners' wooded, rolling hills, the Pulte development cleared 280 acres to build 744 homes, according to the plaintiffs' counsel.

"They took pasture land and turned it into a table top," said Stack. "The water had to go somewhere."

All three homeowners' lawyers have busy practices with similar kinds of environmental lawsuits related to development around Georgia. They said the Forsyth County verdict was the largest of its kind in Georgia's history.

The case is Simerly v. Pulte, No. 09 CV 0089.

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