

The Order of the Court is stated below:

Dated: May 27, 2022
04:18:28 PM

/s/ JEFFREY C WILCOX
District Court Judge



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**IN THE FIFTH JUDICIAL DISTRICT COURT IN
AND FOR WASHINGTON COUNTY STATE OF UTAH**

WASHINGTON TOWNHOMES, LLC, et al.

Plaintiffs,

vs.

WASHINGTON COUNTY WATER
CONSERVANCY DISTRICT, et al.

Defendants.

**ORDER APPOINTING SPECIAL
MASTER**

Case No. 130500465 PR

Judge Jeffrey C. Wilcox

On August 21, 2021, Plaintiffs, Washington Townhomes, LLC et al., motioned the Court for an Order Appointing a Special Master. Defendant opposed Plaintiffs' Motion by memorandum filed September 30, 2021, to which Plaintiffs replied on December 3, 2021, and

submitted for decision on January 19, 2022. Having taken Plaintiffs' Motion under advisement, along with two other cross motions, on April 7, 2022, the Court entered an order referring the case to a special master pursuant to Rule 53 of the Utah Rules of Civil Procedure "to regulate all proceedings in every hearing"; "do all acts and take all measures necessary or proper for the efficient" resolution of this dispute; and, provide a report to the Court of his/her findings of fact and conclusions of law . . ."

On April 28, 2022, Defendant petitioned the Utah Supreme Court for permission to appeal this Court's order referring this case to a Special Master (the matter of Defendant's petition was transferred by the Supreme Court to the Utah Court of Appeals on Friday, May 6, 2022). On May 10, 2022, the Court of Appeals invited Plaintiffs to file a response to the Defendant's petition.

At a hearing on May 5, 2022, the Parties jointly nominated retired Judge Ben Hadfield of Box Elder County, Utah, to serve as Special Master. At that hearing, Defendant represented that it had filed a petition for interlocutory appeal and that Defendant's agreement to the nomination of Judge Hadfield was subject to Defendant's ongoing objections to the appointment as set forth in (A) Defendant's Opposition to Plaintiffs' Motion to Appoint a Special Master and (B) Defendant's Petition for Leave to Appeal.

Having heard relevant information and comments from both Parties and having considered the Parties' joint nomination, pursuant to its April 7, 2022, Order to Refer this Case to a Special Master, and subject to the Court of Appeal's ruling on Defendant's pending Petition, the Court enters the following:

ORDER

1. Retired Judge Ben Hadfield is hereby appointed as Special Master pursuant to Utah R. Civ. P. 53 “to regulate all proceedings in every hearing”; “do all acts and take all measures necessary or proper for the efficient” resolution of this dispute; and, provide a report to the Court of his findings of fact and conclusions of law pursuant to Utah R. Civ. P. 53(c).”
2. Specifically, all pending and future motions in this case shall be heard and decided by the Special Master, unless the parties agree and stipulate to a request that a particular motion or issue be heard and decided by the district court.
3. Additionally, prior to entering findings of fact and conclusions of law, the Special Master will resolve all pending and future motions, hold a trial, receive evidence, and hear argument from the parties.
4. Prior to submitting his recommended findings of fact and conclusions of law to the district court, the Special Master shall provide a draft report in the form of a proposed report to counsel for the parties, who may elect to file an objection or response within 14 days of receiving the report. Either party may apply to the Special Master for an extension of the deadline for the response, which shall be granted upon a showing of good cause.
5. In undertaking these tasks, the Special Master shall proceed in accordance with and apply both the Utah Rules of Civil Procedure and the Utah Rules of Evidence as if the proceedings before the Special Master were occurring before a regularly appointed district court judge in this state.

6. The Special Master shall be compensated for his time at the rate of \$350 per hour, and \$175 per hour for any time required for traveling.
7. The Special Master's time and costs, and the logistical costs of trial, if any, shall be borne 50% by the parties Plaintiff and 50% by Defendant.
8. The Special Master's fees, costs, and costs for a venue or a court reporter, if any, necessary for the proceeding and trial shall be subject to further allocation and apportionment as part of the final report and recommendation, subject to the review and final order of the Court.
9. Subject to the Supreme Court's health and safety protocols, all proceedings shall either be in-person or via the Court's Webex system, and will be of record.
10. In light of the Defendant's pending petition for leave to appeal the Court's referral order, and except for proceedings addressing the class notice issue, this action is stayed pending a decision on the Defendant's petition. If the petition is granted, this action, with the exception of the issuance of notice to the class, is stayed until resolution of the appeal. If the petition is denied, the parties and Special Master are to meet and confer within 14 days of the denial, or as soon as otherwise possible given their respective schedules and travel plans, to address scheduling and other necessary issues.
11. In approving the form of this Order, the Defendant does not waive any arguments or objections preserved through its opposition to Plaintiffs' motion to appoint a special master or in its pending petition for leave to appeal.

END OF ORDER

****The Court's Entry and Date of the Order are Affixed to the Top of the First Page****

APPROVED as to form:

SNOW CHRISTENSEN & MARTINEAU

By: /s/ Robert C. Keller (with permission)

Robert C. Keller
Scott Powers
Nathanael Mitchell

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2022, I caused a true and correct copy of the foregoing proposed **ORDER APPOINTING SPECIAL MASTER** to be served on the following by the method(s) indicated below:

Robert C. Keller	() U.S. Mail, Postage Prepaid
Scott Powers	() Hand Delivered
Nathanael Mitchell	() Overnight Mail
Snow Christensen & Martineau	() Facsimile
10 Exchange Place, 11 th Floor	() Email
Salt Lake City, UT 84111	(X) E-filing Notification
rck@scmlaw.com	
scp@scmlaw.com	
njm@scmlaw.com	

Jodi Richins	() U.S. Mail, Postage Prepaid
Washington County Water Conservancy	() Hand Delivered
District	() Overnight Mail
533 East Waterworks Drive	() Facsimile
St. George, UT 84770	() Email
jodi@wcwcd.org	(X) E-filing Notification

By: /s/ Juelene Smith
