

*ELECTRONICALLY FILED*

**COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION  
CIVIL ACTION NO. 20-CI-00332**

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v. **GRADDY CR 59 MOTION TO ALTER, AMEND OR VACATE  
THIS COURT'S ORDER OF APRIL 5, 2023**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Comes now W. H. Graddy & Associates (“Graddy”), the Counsel for the Objectors, Roger Quarles, et al., and MOVES this Court to Alter, Amend or Vacate this Court’s Order of April 5, 2023, denying Graddy’s Renewed Motion for Award of Attorney’s Fees.

Graddy’s Renewed Motion for an Award of Attorney’s Fees was heard on March 24, 2023. Graddy argued to the Court that he was renewing his motion for attorney’s fees where his direct representation of the objectors Roger Quarles, Ian Horn, Rick Horn, Campbell Graddy, David Lloyd and Gary Wilson (Graddy, Lloyd and Wilson have been determined to be excluded from Class Members) and his indirect representation of forty four (44) additional objectors to one specific aspect of the Settlement Agreement – the award by the Burley Coop Board of Directors of a gift of \$1.5 million of Burley Coop assets to a new tobacco nonprofit helped to create a benefit to all Class Members. The Settlement Agreement as tendered did not give the Class Members any control over this gift.

At the March 24, 2023 argument, Graddy tendered his earlier pleadings filed on May 14, 2021 objecting to the proposed ruling on pending motions tendered by Class Counsel, and asked

the Court to find that such gift was illegal and to restore/retain these funds in the settlement funds to be distributed to the Class Members. Graddy then argued in the alternative as follows:

Alternatively, in the event the Court does not have the authority to strike a provision as contrary to statute, these Objectors ask the Court to express its opinion that the \$1.5 million is the property of the Class Members and cannot be taken from these Class Members without their consent.

This alternative would require that Class Members would have to consent to such gift. This alternative was what the Court ordered in the June 11, 2021 order approving and was what the Court ordered in the July 26, 2021 amended order approving. Graddy helped to create a \$1.325 million fund previously unavailable to Class Members that is now available to all Class Members. In fact, the Court has found that Graddy's efforts were beneficial to the Class Members. In its August 20, 21, 2021 analysis, the Court stated that, "Therefore, while he [Graddy] was certainly an effective attorney for the sake of his clients, his role was largely tied to the desires of his clients – even if those desires were beneficial to the class." Graddy reminded the Court of this language in its prior orders that Graddy intended to benefit his clients but also provided a benefit to the class. Video at 10:48:50.

On April 1, 2023, each Class Member was mailed a ballot and given a vote on whether to receive his or her proportionate share of the \$1.325 million or gift his or her share to the new tobacco nonprofit, the Burley and Dark Fired Tobacco Producers Association.

Graddy was the only attorney who asked the Court to approve this benefit to every Class Member, and Graddy's advocacy was either opposed by all other attorneys or they took no position.

Graddy argued on March 24, 2023, that each Class Member can now vote on the distribution of his or her proportionate share to retain for the member or give to the new entity.

Video at 10:48:00. Graddy was concerned that this wording indicated that his representation benefitted his clients in a different way than class, as a whole, benefitted. Video at 10:49:50. Graddy argued that this was not the case. Video at 10:50:40. Graddy further asked the Court to reconsider its position that the common fund did not change, only the distribution of certain assets. Graddy argued that this was objectionable where previously the \$1.5 million would go entirely to the new entity, not the BGTCA members. BGTCA members did not have a say in that distribution. Video at 10:52:10. Graddy called into question this Court’s assertion that his advocacy “alone” was the cause of the change in distribution of the \$1.5 million. Graddy argued that was not the standard for awarding of attorney’s fees. Video at 11:03:23.

This Court ruled on this matter orally on March 24, 2023. The Court recited that this matter came to the Court as a settlement class; that Haynes Properties, representing the putative class members had reached a settlement with BGTCA. The Court in determining the fees, looked closely at CR 23.08 in determining the reasonableness of fees. When looking at CR 23.08, the Court looked at the language “by the parties agreement.” Nothing in the agreement agreed to grant attorney’s fees to anyone other than those specifically referenced therein. The Court found no legal grounds to change its original decision to deny Graddy attorney’s fees based on the clear language of CR 23.08. Because this matter came as a settlement class with a settlement agreement, the Court stated that it was constrained by that agreement. Video at 11:19:35-11:23:40.

**I. THIS COURT INCORRECTLY FOUND THAT CR 23.08 COMPELLED A DENIAL OF ATTORNEY’S FEES IF SUCH FEES WERE NOT PART OF AN AGREEMENT.**

CR 23.08 clearly states “[i]n a certified class action the court shall approve or award reasonable attorney’s fees and nontaxable costs that **are authorized by law** or by the parties’ agreement.” (emphasis added).

CR 23.08 governs the award of attorney’s fees in a class action providing that, “[i]n a certified class action the court shall approve or award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” CR 23.08. This rule was introduced into the Kentucky Civil Rules of Procedure in 2010, to be effective in 2011 and, to date, only one unpublished opinion has discussed the requirements in any length. In *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112 (Ky. App. Jan. 16, 2015), the Kentucky Court of Appeals examined an award of attorney’s fees pursuant to CR 23.08. The *Rink* Court noted that “no Kentucky appellate court has addressed how a trial court is to determine a reasonable fee under CR 23.08” and it relied upon the federal courts’ interpretation of the analogous Fed. R. Civ. P. 23(h). An award of a reasonable attorney’s fees in this case is authorized by Kentucky law relating to common-fund recoveries. The common fund doctrine recognizes that a “lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The Notes of Advisory Committee on 2003 amendments to Fed.R. Civ. P. 23, state that “[s]ubdivision (h) applies to ‘an action certified as a class action.’ This includes cases in which there is a simultaneous proposal for class certification and settlement. . .” “In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or **attorneys who represented objectors to a proposed settlement** under Rule 23(e) or to the fee motion of class counsel.” (emphasis added).

This Court’s finding that it was constrained by the settlement agreement reached between Haynes Properties and BGTCa conflicts with these Notes. Objectors and their counsel provide a

benefit for the class, as a whole, when they advocate against the stated terms of the agreement and then successfully have the objectionable terms amended or removed. This Court agreed in its August 24, 2021 Order stating “while he was certainly an effective attorney for the sake of his clients, his role in this case was largely tied to the desires of his clients – even if those desire were **beneficial to the class.**” (emphasis added).

The Court is requested to reconsider the analysis it stated on March 24, 2023, and recognize that Graddy application for a fee award was not governed by the proposed Settlement Agreement and that he relies upon the “are authorized by law” language in Civil Rule 23.08.

**II. UNDER THIS COURT’S ANALYSIS, NO COUNSEL FOR OBJECTORS WILL BE GRANTED ATTORNEY’S FEES.**

This Court’s finding that it was constrained by the settlement agreement regarding attorney’s fees would preclude counsel for any objector receiving attorney’s fees as, by definition, there can be no objector to the settlement agreement until the settlement agreement had been reached and presented to the court for approval in a settlement class action. Objectors would not have representation as parties to the settlement agreement until after an agreement has been reached, thus said counsel would not have a fee award provision contained in the settlement agreement.

This undermines the incentive contained in Rule 23 for attorney’s fees to “attract competent counsel” *Rink, supra*, at 10.

**III. GRADDY REQUESTS THE LEAVE OF THIS COURT TO SEEK AN AGREEMENT WITH OPPOSING COUNSEL REGARDING TO ATTORNEY’S FEES.**

If this Court is unpersuaded by Graddy’s above argument, Graddy requests leave of this Court to attempt to reach an agreement with Class Counsel and the attorneys of record regarding

attorney's fees. If an agreement is reached, Graddy requests that the Court consider the agreement and submit the matter to a fairness hearing.

**NOTICE**

The parties will take notice that the Objectors will bring the foregoing on for hearing, on April 28, 2023, at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

/s/ W. Henry Graddy, IV  
W. Henry Graddy, IV  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing was served via E-Mail, on this the 17th day of April, 2023 on the following:

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/s/ W. Henry Graddy, IV

W. Henry Graddy, IV

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

Civil Action No. 20-CI-00332

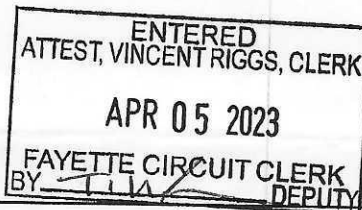
HAYNES PROPERTIES, LLC,  
*et al.*

PLAINTIFFS

vs.

Order  
re Renewed Graddy Motion

BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION,  
*et al.*



DEFENDANTS

This matter came before the Court on March 24, 2023, to hear the Renewed Graddy Motion for Award of Attorney's Fees and Notice ("Renewed Motion"), filed by the law firm of W.H. Graddy & Associates ("the Graddy firm") and seeking an award of attorney's fees in an amount up to \$99,375. Class Counsel and the Co-op having filed responses thereto, the parties having had an opportunity to be heard, and the Court being duly and sufficiently advised, IT IS HEREBY ORDERED as follows:

1. The Court DENIES the Renewed Motion, declining to make any award of attorney's fees to the Graddy firm.
2. This Order is final and appealable, there being no just cause for delay.

Given under my hand this 31<sup>st</sup> <sup>March</sup> day of April, 2023.

/S/ JULIE MUTH GOODMAN  
A TRUE COPY  
ATTEST: VINCENT RIGGS, CLERK  
FAYETTE CIRCUIT COURT  
BY: T.W. DEPUTY

Hon. Julie Muth Goodman  
Judge Fayette Circuit Court

PREPARED and ATTESTED BY the undersigned that this proposed Order was prepared in conformity with rulings made at the hearing and circulated on 3/27/23 to counsel present at the

TW



hearing pursuant to RFCC 19B, and that attorney W. Henry Graddy, IV authorized signing for him as "have seen," but not "agreed."

/s/ Katherine K. Yunker

Katherine K. Yunker (KBA # 79592)

Jason R. Hollon (KBA # 96148)

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201 E. Main Street, Suite 900

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*Counsel for Settlement Class*

HAVE SEEN:

/s/ W. Henry Graddy, IV (w/ permission)

W. Henry Graddy, IV

W.H. GRADDY & ASSOCIATES

137 N. Main Street

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*Counsel for Objectors Roger Quarles et al.  
and representative of the Movant firm*

### CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this filing has been served on this 5th day of April, 2023, via U.S. Mail, first class, to the following:

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*Counsel for Objectors Roger Quarles  
et al.*

And to the following unrepresented objectors to the proposed Settlement, listed on Schedule A of the 6/11/21 Opinion and Order, at the addresses given in their respective objections:

J.B. Amburgey  
David Barnes  
Jacob Barnes  
Robert E. Barton  
Ben Clifford  
Lincoln Clifford  
Wayne Cropper  
Josh Curtis  
George M. Darnell  
Jennifer Darnell  
Brent Dunaway  
Michael Furnish  
William David Furnish  
Leonard Edwin Gilkison

Billy G. Hall  
Dudley Wayne Hatcher  
Steve Lang  
Berkley Mark  
Bruce Quarles  
Steven Quarles  
Travis Quarles  
Jerry Rankin  
Richard Sparks  
Jarrod Stephens  
Addison Thompson  
William A. Thomson  
Danny Townsend  
Judy Townsend



Clerk, Fayette Circuit Court