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2/31/05  
FOURTH DIVISION  
Filed: 03/31/05

No. 1-03-1763

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

PENELOPE BAIM BLOCK, BRIJ M.	)	Appeal from the
SHARMA, CHARANJIT SINGH, LISA	)	Circuit Court of
M. BERTINI, VANDANA MAKKER,	)	Cook County.
BALA M. KRISHNA, TY C.	)	
GERHARDT, JEFFREY ZIMMERMAN,	)	
MUKESH MITTAL SANJAY AGARWAL	)	
and SAVITA REDDY,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	
	)	
MCDONALD'S CORPORATION,	)	No. 01 CH 9137
	)	
Defendant-Appellee,	)	
	)	
<hr/>		
MARK EPSTEIN, JOHN MCDUGALL,	)	
M.D., T. COLIN CAMPBELL, PhD,	)	
LYNN GRUDNIK, ALEX HERSHAFT,	)	
MARY LIRO, RHODA SAPON,	)	
STANLEY SAPON, PhD, JOANNE	)	
STEPANIAK, GENE BAUSTON, LORRI	)	
BAUSTON and JIM GLACKIN	)	Honorable
	)	Richard A Siebel,
Intervenors-Appellants.	)	Judge Presiding.

O R D E R

The appellants, Mark Epstein, John McDougall, M.D., T. Colin Campbell, PhD, Lynn Grudnik, Alex Hershaft, Mary Liro, Rhoda Sapon, Stanely Sapon, PhD, Joanne Stepaniak, Gene Bauston, Lorri Bauston, and Jim Glackin (Intervenors), appeal the trial court's

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orders which approved a class action settlement agreement (the Settlement Agreement) between the plaintiffs, Penelope Baim Block<sup>1</sup>, Brij M. Sharma, Charanjit Singh, Lisa M. Bertini, Vandana Makker, Bala M. Krishna, Ty C. Gerhardt, Jeffrey Zimmerman, Mukesh Mittal Sanjay Agarwal, and Savita Reddy and the defendant, McDonald's Corporation (McDonald's). On appeal, the Intervenor argue that the trial court erred when it: (1) awarded cy pres funds intended for "vegetarian organizations" to groups which did not meet the eligibility requirements, and (2) awarded attorneys fees to plaintiffs' counsel and the law firm of Pedersen & Houpt, P.C.<sup>2</sup> For the following reasons, we affirm the decision of the trial court.

#### BACKGROUND

In 2001, several similar class action lawsuits were filed against McDonald's in state courts across the country. The cases were: (1) Block v. McDonald's Corp. filed on June 4, 2001, in the

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<sup>1</sup>By order entered on August 19, 2002, the trial court dismissed Penelope Baim Block as a class representative because of the appearance of a conflict arising from a relationship with an attorney.

<sup>2</sup>A notice of cross appeal was filed in the trial court on June 27, 2003 and January 9, 2004 in the appellate court that appealed from the orders of the trial court entered on October 30, 2002, April 2, 2003, and May 19, 2003. That cross appeal was filed on behalf of plaintiffs-appellants, Sara Mujahid and Simone Siddique, by their attorneys, Pederson & Houpt, P.C. No briefs were filed on behalf of the cross-appellants and their issues are thereby waived.

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Circuit Court of Cook County, Illinois, (2) Sharma v. McDonald's Corp., No. 01-2-12267 (King County Superior Court, Washington, filed May 1, 2001), (3) Makker v. McDonald's Corp., No. 841162-4 (Alameda County Superior Court, California, filed May 10, 2001), (4) Bansal v. McDonald's Corp., No. GN101758 (District Court, Travis County, Texas, filed June 11, 2001), and (5) Zimmerman v. McDonald's Corp., No. L-4057-01 (Superior Court, Camden County, New Jersey, filed June 27, 2001).

The lawsuits alleged that McDonald's made misrepresentations or omissions regarding the french fries and hash browns sold at its restaurants. In particular, it was alleged that McDonald's and its agents represented in advertising campaigns that its french fries and hash browns were only cooked in 100% vegetable oil. However, McDonald's failed to inform the plaintiffs and its consumers that its french fries and hash browns are in fact prepared in oil containing beef tallow or beef extract. Each lawsuit referenced a proposed class of individuals for whom dietary restrictions were a matter of concern. In each case, the individuals alleged that they had eaten these foods at McDonald's restaurants believing them to have been completely free from any animal products.

Thereafter, on October 18, 2001, Block filed a motion to file an amended complaint. In the amended complaint, which was attached to the motion, Cherie Travis was added as a plaintiff.

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The trial court granted Block's motion on October 25, 2001.

Following depositions and document discovery in several of the cases, counsel for the plaintiffs and McDonald's participated in settlement negotiations. As part of these efforts, counsel participated in mediation with Judge Eugene Lynch, a former federal and state judge. Subsequently, a Settlement Agreement was executed by the parties and their counsel on March 22, 2002. The proposed nationwide settlement of plaintiffs' claims against McDonald's included, inter alia, the following terms and conditions.

Section 1.10 of the Settlement Agreement provides that:

"'Plaintiff Settlement Class' means all persons resident in the United States including, but not limited to, vegetarians and Hindus, who: (I) have consumed food products from or at McDonald's Restaurants in the United States since July 23, 1990; and (ii) have concerns, objections, or dietary restrictions, whether ethical, moral, religious, philosophical, or health-related, with respect to the consumption of beef or meat; and who do not opt out."

Additionally, section 3.1 of the Settlement Agreement states that:

"The Settlement Amount shall consist of \$10 million, to be placed in a cy pres fund for

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distribution to charitable and/or other tax-exempt organizations to be mutually agreed upon by the Parties on or before the Effective Date. Such funds shall be divided, to the extent practicable, as follows: 60 percent to vegetarian organizations; 20 percent to Hindu and/or Sikh organizations; 10 percent to children's nutrition and/or children's hunger relief organizations; and 10 percent to organizations promoting the understanding of Jewish law, standards and practices with respect to Kosher foods and dietary practices, and the observance of such standards by persons of the Jewish religion. Where appropriate and practicable, donations to organizations shall be designated for use to benefit educational programs and children's programs. The Parties agree that the following principles govern the selection of organizations to share in the cy pres fund:

- (a) The organizations' nonprofit status;
- (b) The organizations' dedication to the values of Hindu, Sikh and other beef-less dietary rules, vegetarianism, Kosher dietary rules, and the purposes set forth above (as applicable to the category of the organization);
- (c) The organizations' exclusive or majority concentration of services in the United States;

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- (d) The organizations' geographical reach within the United States; and
- (e) The organizations' willingness to use the donation for the stated purpose (e.g., children, education, vegetarianism and/or nutrition)."

On March 22, 2002, Block filed a motion requesting leave to file a second amended complaint, which was attached to the motion. Effectively, the second amended complaint consolidated the state court actions pending against McDonald's. Also, in the motion, it was stated that Travis did not agree with the settlement or the second amended complaint. Travis was not named in the motion as she was not represented by counsel that filed the motion. Additionally, the motion stated that Travis only remained a party to the action and the claims asserted on her behalf in the first amended complaint. On March 29, 2002, the trial court granted Block's motion instanter.

Furthermore, on March 22, 2002, the plaintiffs filed a "motion for preliminary approval of class action settlement agreement and notice to the class." That same day, McDonald's also filed a memorandum in support of preliminary approval of the settlement.

On May 1, 2002, the trial court entered an order granting the plaintiffs' motion for preliminary settlement approval. The court stated that the Settlement Agreement, "and the terms set

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forth therein, are preliminarily approved as fair, reasonable, and adequate, \*\*\*." The trial court in its preliminary approval order also amended the Settlement Agreement to provide that, inter alia, "selection of recipient organizations and distributions of payments from the cy pres fund shall be subject to court approval."

Thereafter, notice was published pursuant to the trial court's order in USA Today, Vegetarian News, Satya, India Abroad (U.S. distribution only), India Tribune, India West, and The Forward. Approximately 2000 opt-outs and 600 objections to the Settlement have been received.

On October 30, 2002, the trial court entered a memorandum and opinion order granting final approval to the Settlement Agreement. The court found that:

"There is no serious objection to the concept of utilizing cy pres distribution to eliminate the prohibitive costs of separately proving and distributing each class member's damages or to the amount of the cy pres fund. The two-step selection process agreed to by the parties obligates the parties to work together to recommend suitable recipient organizations that meet the established criteria. The Court retains the right of final approval of cy pres fund recipients."

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In a separate order, the trial court ordered the parties to submit final cy pres recipient recommendations by November 15, 2002, objectors were permitted to file submissions by December 3, 2002, and reply briefs were due by December 17, 2002.

The parties met the trial court's deadline, submitting their joint memorandum in support of distribution of cy pres funds on November 15, 2002. The parties recommended that the \$6 million set aside for "vegetarians organizers" be as follows:

1. Vegetarian Resource Group (VRG) - \$1.4 million
2. ADAF Vegetarian Nutrition Dietetic Practice Group (ADAF) - \$500,000
3. Preventative Medicine Research Institute (PMRI) - \$500,00
4. North American Vegetarian Society (NAVS) - \$1 million
5. Vegetarian Vision, Inc. (VVI) - \$250,000
6. The American Vegan Society (AVS) - \$500,000
7. Loma Linda University (Loma) - \$250,000
8. Tufts University (Tufts) - \$800,000
9. UNC-Chapel Hill, Department of Nutrition (UNC) - \$250,000
10. Muslim Consumer Group for Food Products (MCGFP) - \$100,000
11. Islamic Food and Nutritional Council of America

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(IFANCA) - \$450,000

In addition to written submissions, the trial court held several hearings regarding the proposed distributions. The hearings were held on January 13, 2003, January 27, 2003, February 19, 2003, February 25, 2003, and March 25, 2003.

On February 14, 2003, the Intervenors filed a motion to intervene. The Intervenors sought intervention arguing that:

"the recommended allocation of the \$6 million in cy pres funds to vegetarian organizations fails to achieve the purpose of the settlement because: (1) the money is being allocated to non-vegetarian organizations, some of which are Muslim organizations; (2) the money is being allocated to organizations whose work is antithetical to promoting a vegetarian diet; and (3) the money is being disproportionately allocated to vegetarian organizations that have scant membership and limited geographical reach."

On February 19, 2003, the trial court granted the Intervenors' motion to intervene.

Thereafter, on April 2, 2003, the trial court filed an order in which it, inter alia, approved all recommended allocations with regards to the \$6 million vegetarian organizations except the recommended allocation to the UNC and ordered that the parties submit a supplemental proposal for the distribution of

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the remaining cy pres funds. The April 2, 2003 order also provided that:

- "1. The Court awards class counsel \$2,000,000 for fees, costs, and expenses.
2. The Court has been advised that class counsel have entered into a fee and expense allocation agreement, and the Court authorizes class counsel to allocate this award under this agreement.
3. The Court awards additional attorneys fees (but not costs and expenses) to Pedersen & Houpt in the amount of \$18,297.50, for a total of \$114,042.00 for all fees, costs, and expenses."

Pursuant to the April 2, 2003 order, plaintiffs' and McDonald's counsel submitted a joint memorandum in support of reallocated distribution of cy pres funds. The parties recommended that the \$250,000 that had been allocated to the UNC be reallocated among four of the groups that the trial court had already approved: (1) \$100,000 to the ADAF, (2) \$50,000 to the PMRI, (3) \$50,000 to Loma, and (4) \$50,000 to Tufts.

On May 19, 2003, the trial court issued an order which provided that:

- "1. The Court finds that the following cy pres recipients recommended by the parties meet the criteria established by the Settlement Agreement

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for distribution of the \$10,000,000 cy pres fund and, in the exercise of the Court's discretion, the Court approves the following cy pres recipients for funding in the amounts and percentages indicated:

- (a) Vegetarian Resource Group, \$1,400,000  
[14%]
- (b) ADAF Vegetarian Nutrition Dietetic  
Practice Group, \$600,000 [6.0%]
- (c) Preventive Medicine Research Institute,  
\$550,000 [5.5%]
- (d) North American Vegetarian Society,  
\$1,000,000 [10%]
- (e) Vegetarian Vision, Inc., \$250,000 [2.5%]
- (f) American Vegan Society, \$500,000 [5.0%]
- (g) Loma Linda University, \$300,000 [3.0%]
- (h) Tufts University, \$850,000 [8.5%]
- (I) Muslim Consumer Group for Food Products,  
\$100,000 [1.0%]
- (j) Islamic Food and Nutrition Council of  
America, \$450,000 [4.5%]

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2. In addition, the unallocated incentive award of \$17,000 shall be allocated to the above groups in

accordance with the above-referenced percentages.

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7. In each instance in which a cy pres fund recipient has been approved by the Court, the recipient, by an authorized officer, shall execute an Agreement Regarding Use of Cy Pres Funds and Disbursement Procedures in a form approved by the Court which identifies the programs(s) or project(s) which have been approved for funding in which the recipient acknowledges and agrees that:
- (a) Disbursements being made shall be used only for such approved program(s) or project(s), except as the Court may otherwise permit on notice and motion in cases of extraordinary necessity,
  - (b) Disbursements shall be made through a Disbursing Officer, as provided in this Order by written application to the Disbursing Officer,
  - (c) Expenditures made by the recipient shall be accounted for by written report to the Disbursing Officer,
  - (d) The recipient and the officer signing the acknowledgment and agreement (and/or his or

her successors, as appropriate) shall at all times be subject to the jurisdiction of the Circuit Court of Cook County, Illinois in connection with all proceedings arising out of or relating to the disbursements made to the recipient."

On June 16, 2003, the Intervenors, filed their notice of appeal. In their notice, Intervenors appealed from the following orders:

"The Order entered by Judge Richard A. Siebel on April 2, 2003, memorializing the awards and rulings from the proceedings of March 25, 2003, which were related to a hearing on final approval regarding the proposed cy pres recipients and other matters.

The...Intervenors are limiting their appeal to paragraphs 1-3 and 4(a)-(j) of the April 2, 2003 order.

\*\*\*[.]

The Order entered by Judge Richard A. Siebel on May 19, 2003, granting final approval of the proposed cy pres recipients and other matters. The...Intervenors are limiting their appeal to paragraphs 1(a)-(j) and 2 of the May 19, 2003 Order. \*\*\*[.]"

On June 27, 2003, Sara Mujahid and Simone Siddique, by and through their attorneys Pederson & Houpt, filed a cross-appeal.

ANALYSIS

I

The Intervenor contend that the trial court abused its discretion when it approved the selected recipients as "vegetarian organizations" to receive \$6 million in cy pres funds.

"As a general matter, we are asked to decide whether the circuit court abused its discretion or erred in its application of the law in finding that the settlement was fair, reasonable, and in the best interest of the class. '[T]he trial court's decision may be reversed only on a clear showing that the trial court was guilty of an abuse of discretion.' City of Chicago v. Korshak, 206 Ill. App. 3d 968, 971-72 (1990). 'The standard to be used in evaluating the compromise settlement of a class action is that the agreement must be fair, reasonable, and adequate.' Langendorf v. Irving Trust Co., 244 Ill. App. 3d 70, 78 (1992)."  
Steinberg v. System Software Associates, Inc., 306 Ill. App. 3d 157, 169 (1999).

"Our supreme court in Equity Funding stated that a settlement must be 'in the best interest of all those who will be affected by it.' (Equity Funding, 61 Ill. 2d at 316.) We believe that absent class members are necessarily included in 'all those.' In a class action, the court is the guardian of the

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interests of the absent class members. (Zerkle v. Cleveland-Cliffs Iron Co., 52 F.R.D. 151, 159 (S.D.N.Y.1971); see Fiorito v. Jones, 72 Ill. 2d 73, 88 (1978).) A settlement which is unfair to a subclass or a fraction of the class should not be sustained. (See In re General Motors Corp. Engine Interchange Litigation, 594 F.2d 1106, 1133 (7th Cir. 1979), cert. denied (1979), 444 U.S. 870, 100 S. Ct. 146, 62 L. Ed. 2d 95.)" Waters v. City of Chicago, 95 Ill. App. 3d 919, 924 (1981). "The reviewing court cannot re-write the parties' settlement to excise unfair portions; it can only approve or disapprove of the entire agreement. [Citation.]" Waters, 95 Ill. App. 3d at 925.

"The cy pres doctrine takes its name from the Norman French expression, cy pres comme possible, which means 'as near as possible.' In re Airline Ticket Comm'n Antitrust Litig., 268 F.3d at 625 (citing Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n, 84 F.3d 451, 455 n. 1 (D.C.Cir.1996)). The doctrine originated to save testamentary charitable gifts that would otherwise fail. See Note, Damage Distribution in Class Actions: The Cy pres Remedy, 39 U. Chi. L. Rev. 448, 452 (1972). Under cy pres, if the testator had a general charitable intent, the court will look for an alternate recipient that will best serve the gift's original purpose. See id. In the class action context, it may be appropriate for a court to use cy pres

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principles to distribute unclaimed funds. In such a case, the unclaimed funds should be distributed for a purpose as near as possible to the legitimate objectives underlying the lawsuit, the interests of class members, and the interests of those similarly situated. See In re Airline Ticket Comm'n Antitrust Litig., 268 F.3d at 625-26." In re Airline Ticket Com'n Antitrust Litigation, 307 F.3d 679, 682 -683 (C.A.8 (Minn.),2002)

The Intervenor's argue that the trial court abused its discretion because the recipients it approved to receive \$6 million in cy pres funds either: (1) are not vegetarian organizations, (2) do not satisfy the requirements as set out in section 3.1 of the Settlement Agreement, or (3) suffer from both infirmities.

The Intervenor's acknowledge that there is widespread agreement that basic contract principles apply to the interpretation of settlement agreements in Illinois. In doing so, the Intervenor's point out that the Settlement Agreement does not define "vegetarian organization" and in the absence of definitions, a term is given its common meaning during contract construction disputes. The Intervenor's contend that "vegetarian" signifies not eating meat, and "organization" means persons associated for a particular purpose. Consequently, the Intervenor's claim that "vegetarian organization" signifies

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"people joined together for the purpose of vegetarianism."

The Intervenors contend that "vegetarian organization" is itself a restrictive term, limiting "organization" to the adjective modifying it - "vegetarian." In making this argument, the Intervenors rely, inter alia, on United States v. Anglin, 169 F.3d 154, 164 (1999) (explaining that in the phrase "physical restraint," "'physical' is an adjective which modifies and (and hence limits) the noun 'restraint'").

The Intervenors claim that where the parties wished to use a more expansive, non-modifying construction in the Settlement Agreement, they did so. However, with regards to "vegetarian organizations," the Intervenors maintain that the parties intended to restrict distributions to organizations that met the definition of "vegetarianism."

The Intervenors contend that the parties recommended and the trial court erroneously ordered that \$2,850,000 earmarked for vegetarian organizations be awarded to six non-vegetarian organizations, which are: (1) Tufts, (2) Loma Linda University, (3) ADAF Vegetarian Nutrition Dietetic Practice Group, (4) Preventive Medicine Research Institute, (5) Muslim Consumer Group for Food Products, and (6) Islamic Food and Nutrition Council of America. The Intervenors claim that these distributions were beyond the scope of the Settlement Agreement. It is the

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Intervenors position that it is immaterial that these organizations may conduct research or even education involving vegetarian diet because they also endorse or otherwise support the eating of meat, and therefore are not vegetarian organizations. The Intervenors argue that two groups are universities, two are Muslim groups, one is a medicine research center, and one is an offshoot of an organization that actually embraces the eating of meats as part of a healthy diet.

The Intervenors also contend that the trial court's distribution of the funds was erroneous because it disregards the explicit criteria for distribution which is set out in section 3.1 of the Settlement Agreement. Regarding the four remaining organizations, as well as the six aforementioned, the Intervenors claim the awards fail for one or more of the following reasons:

- (1) the recipient's stated use of the cy pres funds does not comport with the next best use standard required of cy pres awards;
- (2) the recipient lacks geographical reach to provide a broad benefit for the nationwide class; and
- (3) the recipient lacks dedication to the values of vegetarianism, as required by the Settlement Agreement.

The Intervenors contend that the 10 organizations chosen to receive cy pres funds are not qualified under the Settlement Agreement. As they have argued, the Intervenors insist that 6 of

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the 10 recipients failed to satisfy the threshold requirement of being a vegetarian organization. As to all of the groups, the Intervenor's contend that none of them satisfy the five eligibility criteria enumerated in section 3.1 of the Settlement Agreement.

The Intervenor's assert the process for picking the recipients was faulty. The Intervenor's contend that instead of selecting vegetarian organizations, which could put the cy pres funds to their next best use and fulfill the requisite criteria, McDonald's offered and plaintiffs accepted a number of McDonald's friendly organizations.

Again, we remind the Intervenor's that "[a] settlement agreement is in the nature of a contract, and construction of such agreements are governed by principles of contract law. Solar v. Weinberg, 274 Ill. App. 3d 726, 731 (1995). The primary objective in contract construction is to give effect to the intent of the parties." (Emphasis added.) City of Chicago Heights v. Crotty, 287 Ill. App. 3d 883, 885 (1997).

Here, the trial court did not abuse its discretion when it approved the 10 recipients as vegetarian organizations. After several hearings, the trial court accepted the position of the settling parties that their intent in referencing "vegetarian organizations" in the Settlement Agreement was to make funds

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available to organizations that would use the funds for programs serving the interests of people following vegetarian dietary practices in the broadest sense, and thus concluded that the distributions presented for final approval were consistent with the Settlement Agreement.

The trial court's careful attention to the distributions and desire to avoid making an award to an organization which would be improper was demonstrated when it rejected UNC as a proposed organization for receipt of cy pres funds. Thereafter, the trial court let the parties to reconsider and propose other distributions for the unallocated funds before it granted final approval to the revised distributions. These proceedings evidence a searching review by the trial court and a sound settlement.

The record demonstrates that: (1) the settling parties were in complete agreement as to their intent and as to the construction of the Settlement Agreement; (2) the trial court was aware of this construction at all times relevant to the settlement approval process; and (3) the construction of the Settlement Agreement put forward by the Intervenor is inconsistent with the context of the Settlement Agreement as a whole and the undisputed intentions of the parties.

The record and the briefs reflect that the parties to the Settlement agreement agree as to the intent, purpose, and

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construction of the relevant terms in the agreement, particularly "vegetarian organization." The Intervenors, who were not parties to the negotiations, drafting, or execution of the Settlement Agreement, have no real basis to dispute the intent of the parties of the contract who agree on that intent.

We point out that the Settlement Agreement was not to be effective unless the trial court gave final approval to the agreement and the steps taken to perform it. As such, the intentions of the parties were not only expressed to the trial court, they were also endorsed by the trial court before the contract became fully effective.

Moreover, unlike most contract construction disputes, here, the trial court heard arguments from the Intervenors concerning their interpretation of the contract and determined that the position taken by plaintiffs and McDonald's was the position that should be accepted by the trial court. Consistent with that determination, at the time of the final order, the trial court endorsed the list of distributions proposed by the settling parties.

The language used by the parties in the Settlement Agreement is not self-evident as the Intervenors argue. The term "vegetarian organization" is not a technical term. It is not defined in a dictionary, nor are there any other reference materials which define or set forth qualifications for such a

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group.

The Intervenor's definition for "vegetarian organization," although not absurd, is not the definition used in the Settlement Agreement. Even though the Intervenor's can offer an alternative definition, it does not mean that the construction applied by the parties to the agreement and the trial court was unreasonable. To show an abuse of discretion by the trial court, this court reminds the Intervenor's that they have to show that the trial court acted arbitrarily without the employment of conscientious judgment. The Intervenor's cannot meet this standard simply by putting forth a different definition for "vegetarian organization."

The Intervenor's definition of "vegetarian organization" is inconsistent with the purposes of the Settlement Agreement because it takes an exclusionist approach. For example, the Intervenor's argue that Tufts University is not a vegetarian organization but rather a school of higher learning. However, the Intervenor's in making this argument ignore the fact that Tufts University is the home of the Friedman School of Nutrition and Science and Policy, which is one of the nation's leading nutrition schools, which studies vegetarianism and the vegetarian diet. There is nothing in the Settlement Agreement which prohibits a distribution to a university. On the contrary, the Settlement Agreement endorses such a distribution. Section 3.1

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of the Settlement Agreement states that:

"Where appropriate and practicable, donations to organizations shall be designated for use to benefit educational programs and children's programs."

(Emphasis added.)

Again we remind the Intervenor of the broad definition of the settlement class which encompasses:

"all persons resident in the United States including, but not limited to, vegetarians and Hindus, who: (I) have consumed food products from or at McDonald's Restaurants in the United States since July 23, 1990; and (ii) have concerns, objections, dietary restrictions, whether ethical, moral, religious, philosophical, or health-related, with respect to the consumption of beef or meat; and who do not opt out."

The Intervenor proposed definition as a group of "people joined together for the purpose of vegetarianism" leaves a lot unanswered. The record shows that the objectors noted that there is more than one kind of vegetarian. When the term "vegetarian organization" is considered in the context of the Settlement Agreement as a whole, it reflects an agreement by the parties to provide financial support to a broad range of projects that would have a nexus with the various categories of individuals allegedly affected by McDonald's actions.

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The proposed distributions were consistent with the purpose and intent of the Settlement Agreement, which was to focus on the programs that would be funded, not the membership of the organizations sponsoring the projects. Just because the Intervenor can offer an alternative interpretation of the term "vegetarian organization" as used in the Settlement Agreement, their interpretation does not in any way undermine the appropriateness of the interpretation offered by the parties to the Settlement Agreement, or the trial court's acceptance of this construction. The way that "vegetarian organizations" is used in section 3.1 of the Settlement Agreement in no way limits the distributions to groups sharing the narrow set of criteria which the Intervenor propose.

As to the Intervenor complaints that the recipient organizations do not comport to the requirements of section 3.1 of the Settlement Agreement, we find their argument unpersuasive. Again, the Intervenor ignore the fact that the approved projects benefit the settlement class and are consistent with the criteria set forth in the Settlement Agreement. On May 19, 2003, the trial court approved the parties revised recommendations and allocated \$6 million to 10 organizations. Pursuant to the trial court's order, these organizations are required to expend these funds to benefit the settlement class. The Intervenor have failed to sufficiently support their position that these

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"vegetarian organizations" are unable to implement programs which will benefit the settlement class.

Furthermore, the Intervenor's have not shown that there was collusion between McDonald's and the beneficiaries of the cy pres fund as it asserts. As to the Intervenor's claims that some of the recipient organizations may not use the cy pres funds for vegetarian projects, this court points out that the trial court's order mandates that all cy pres funds be used only for court-approved projects, and that appropriate safeguards have been put in place to effectuate proper spending of cy pres funds. The Intervenor's have failed to produce admissible evidence which shows that any of the intended projects will not benefit the broad spectrum which encompasses the settlement class members. As such, we find the trial court's decision to be proper.

## II

Did the trial court abuse its discretion when it awarded \$2 million in attorney fees to plaintiffs' counsel and \$114,042 in attorney fees to objectors' counsel?

"We properly review only the question of whether the trial court abused its discretion in awarding attorneys fees. Lurie v. Canadian Javelin Ltd., 93 Ill. 2d 231, 239 (1982)." Shortino v. Illinois Bell Telephone Co., 279 Ill. App. 3d 769, 772 (1996).

"The benefit to the class, whether monetary or nonmonetary or both, is of major importance in determining the amount of

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attorney fees to be awarded. In In re Clark Oil & Refining Corp., 422 F. Supp. 503, 511 (E.D. Wis. 1976), the court said: "[T]he beneficial result achieved, is to the Court's mind the most important area to be evaluated in considering the question of reasonable attorneys' fees in this matter. In taking this position, the Court echoes the view of Judge Decker who, in speaking of the benefits conferred upon class members, stated: "There is no better test than this of the efficacy of the services rendered." State of Illinois v. Harper & Row Publishers, Inc., 55 F.R.D. 221, 224 (N.D. Ill. 1972)." And in In re King Resources Co., 420 F. Supp. 610, 630 (D.Colo.1976), the court said:

'In awarding attorney fees in class actions the courts have cited "the value of the settlement," Derdiarian v. Futterman Corp., 254 F. Supp. 617, 620 (S.D.N.Y. 1966); "the amount recovered," Trans World Airlines, Inc. v. Hughes, 312 F. Supp. 478, 480 (S.D.N.Y.1970) and Perlman v. Feldmann, 160 F. Supp. 310, 311 (D. Conn.1958); "the results achieved" for the class, Philadelphia Elec. Co. v. Anaconda Amer. Brass Co., 47 F.R.D. 557, 559 (E.D.Pa.1969); "[t]he result of the case, because that determines the real benefit to the client," Rogers v. Hill, 34 F. Supp. 358, 363

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(S.D.N.Y.1940).’ ” Lurie v. Canadian Javelin Ltd., 93 Ill. 2d 231, 238-39 (1982).

“[T]he circuit court is vested with the discretionary authority to choose the percentage-of-the-award method or the lodestar method to determine the amount of fees to be granted plaintiffs’ counsel in common fund class action litigation. Awarding attorney fees to plaintiffs’ counsel based on a percentage of the fund held by the court is, overall, a fair and expeditious method that reflects the economics of legal practice and equitably compensates counsel for the time, effort, and risks associated with representing the plaintiff class. However, because percentage-of-the-fund recovery suffers from certain infirmities, there may be circumstances where the lodestar method will remain the more appropriate method of awarding fees. The decision to award fees based on the lodestar or percentage method is a matter within the sound discretion of the trial court, considering the particular facts and circumstances of each case.” Brundidge v. Glendale Federal Bank, F.S.B., 168 Ill. 2d 235, 243-44 (1995).

The Intervenor argue that the trial court abused its discretion when it awarded attorneys fees. In particular, the Intervenor argue that the trial court’s award of \$2 million to plaintiffs’ counsel is excessive, and that the award of \$114,042

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to Pedersen & Houpt was improper because their clients were not proper cy pres fund recipients.

The Intervenors point out that the case settled within 6 months of a complaint being filed in Illinois and within 11 months of the filing of the first case. The Intervenors assert that a large portion of plaintiffs' counsel time was spent determining which organizations should receive cy pres funds. The Intervenors claim that the time spent determining the proper "vegetarian organizations" did not benefit the class because none of the chosen organizations met the requirements for eligibility to receive cy pres funds. The Intervenors claim that by recommending organizations that either will not or cannot promote the value of vegetarianism, plaintiffs' counsel breached their fiduciary duty to the members of the settlement class. Consequently, the Intervenors contend that plaintiffs' counsel should not be awarded attorneys fees. Pedersen & Houpt represented the Muslim organizations which received cy pres funds. Because these organizations were not "vegetarian organizations," the Intervenors also claim that they too should not be awarded attorneys fees. The Intervenors are disturbed by the fact that the Muslim organizations' portion of the fund was taken away from the vegetarian's fund.

We find that the trial court did not abuse its discretion when it awarded attorneys fees and expenses to plaintiffs'

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counsel.

On November 15, 2002, plaintiffs' counsel (except Harish Bharti) filed their petition for attorneys fees and incentive awards, with accompanying declarations, and time and expense records, asserting that the amount of fees and expenses sought equaled 19.6% of the \$12,452,000 common fund being paid by McDonald's to plaintiffs' counsel and to benefit the class. Plaintiffs' counsel then submitted a supplemental to their earlier referenced fee petition, with additional declarations and time and expense records, showing a combined lodestar of \$1,167,131 and expenses totaling \$94,957. Thereafter, as requested by the trial court, plaintiffs' counsel again submitted supplemental fee information. During a hearing held on May 25, 2003, the trial court noted that plaintiffs' counsel had submitted petitions supported by declarations demonstrating a collective lodestar of \$1,430,549, paralegal fees totaling \$25,684, and reimbursable expenses of \$67,967, for a total of \$1,524,200.

The trial court analyzed plaintiffs' counsel requested award under both a lodestar and a percentage of the award method of calculation. The trial court confirmed that the common fund consisted of \$12,469,000 which included the \$10 million cy pres fund, the \$2,452,000 attorneys fee and expense fund, plus \$17,000 that the court had not awarded in incentive awards to the named

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plaintiffs. The trial court stated that other courts have repeatedly approved attorneys fees in the range of 20% to 30% of the common fund, with 25% being the benchmark. The trial court then noted that total fee and expense request of class counsel, which was \$2,452,000, would amount to somewhere between 21% and 22% of the common fund. Nevertheless, the trial court awarded plaintiffs' counsel \$2 million in fees, which was less than the court could have awarded.

As discussed earlier, the parties and the trial court properly chose organizations which were vegetarian organizations within the broad class member definition as required by the Settlement Agreement. Thus, we find that the trial court's award was proper.

As to the award to Pedersen & Houpt, who represented the Muslim groups, we find that the trial court's decision was proper. As we determined earlier, "vegetarian organization" as it is used in the Settlement Agreement encompasses a wide range of individuals. Such that, "vegetarian organization" could include any person who cannot ethically or morally eat beef at McDonald's with regard to the consumption of french fries and hash browns at the restaurant. We point out that Muslim's may only eat beef if the animal is killed and blessed in the specific manners prescribed by Halal. Consequently, prior to this litigation, Muslim groups advised their members that in order to

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keep Halal when patronizing McDonald's, they should eat as if they were vegetarians. As such, we find that Pedersen & Houpt represented organizations which were "vegetarian organizations," and as such, they too should be awarded attorneys fees.

CONCLUSION

For the foregoing reasons, the decision of the trial court is affirmed.

Affirmed.

Reid, P.J., with Greiman, J. and Theis, J., concurring.

LAW OFFICES  
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC  
120 S. LaSalle, 18<sup>th</sup> Floor  
Chicago, Illinois 60603  
Phone 312/739-4200  
Fax 312/419-0379

MAC  
CBC  
CSF

**FACSIMILE TRANSMISSION**

TO: Craig Spiegel Cory Fein Michael T. Fantini  
Hagens Berman Caddell & Chapman Berger & Montague, PC

FAX NO.: (206) 623-0594 (713) 751-0906 (215) 875-5715

FROM: James O. Lattuner (via JB2)

RE: Block v. McDonald's Corporation 03-1763

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