

TENAE SMITH, *et al.*,*Plaintiffs,*

v.

WESTMINSTER MANAGEMENT, LLC, *et al.*,*Defendants.*

IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No. 24-C-17-004797

MEMORANDUM OPINION

Plaintiffs Tena Smith, Howard Smith, Simone Ryer, Dechonne McBride, and Louvinia Sneed (“Plaintiffs” or “Tenants”) originally brought this lawsuit on September 27, 2017, against Defendants Westminster Management, LLC, JK2 Westminster, LLC, Carroll Park Holdings, LLC, Dutch Village, LLC, Pleasantview, LLC, Whispering Woods #3299 Limited Partnership, and Whispering Woods #250, LLC (“Defendants”). In a Second Amended Complaint filed January 7, 2019, Plaintiffs alleged claims for violation of Md. Code Ann., Real Property § 8-208, violation of the Maryland Consumer Debt Collection Act (“MCDCA”) Md. Code Ann., Commercial Law Article (“CL”) §§ 14-201 to 14-204, violation of the Maryland Consumer Protection Act (“MCPA”), CL §§ 13-101 to 13-501, Unjust Enrichment, Breach of Contract, and Declaratory and Injunctive Relief. (Pl’s Second Am. Compl.) In a Third Amended Complaint filed May 15, 2019, Plaintiffs dropped all Defendants other than Westminster Management, LLC and Jk2 Westminster (“Westminster”) and revised their claims. (Pl’s Third Am. Compl.)

Pending before the Court is Plaintiffs’ second motion for class certification. The parties appeared before the Court remotely for a hearing on the second motion for class certification on February 3, 2025. Upon consideration of Plaintiffs’ second motion for class certification, Westminster’s opposition thereto, the supplemental briefing on

remand, and the entire record in this case, the Court will grant Plaintiffs' second motion for class certification, certify the proposed class, appoint the named Plaintiffs as class representatives, and appoint Plaintiffs' counsel as class counsel.

Background

The factual and procedural background of this case is set forth in the Supreme Court of Maryland's March 25, 2024, Opinion. *Westminster Management, LLC v. Smith*, 486 Md. 616, 631-37 (2024). With respect to this Court's decision denying Plaintiffs' second motion for class certification, the Supreme Court of Maryland reversed and remanded directing this Court to consider the merits of Plaintiffs' second motion for class certification.¹ *Id.* at 675. In concluding that Plaintiffs' second motion for class certification presented a material change in circumstances, the Supreme Court of Maryland provided guidance to this Court on remand. *Id.* at 672-73. First, the Supreme Court of Maryland instructed that this Court "must address the merits of the Second Class Motion, including holding a hearing if requested and issuing a written decision explaining its findings and reasons." *Id.* at 672. Second, the Supreme Court of Maryland stated that this Court "is not limited to considering the grounds on which it granted or denied an earlier motion." *Id.* Third, the Supreme Court of Maryland explained that "[t]he need to review Westminster's tenant ledgers to identify whether tenants were charged particular fees is not necessarily the same as requiring mini-trials[.]" *Id.* In accordance with the instructions and guidance of the Supreme Court of Maryland, the Court now considers the merits of Plaintiffs' second motion for class certification.

¹ At the February 3, 2025, hearing before this Court, Westminster argued that the Court should find that there are no material changes in circumstances in Plaintiffs' second motion for class certification. The Supreme Court of Maryland, however, was clear in stating that Plaintiffs' second motion for class certification "presented a material change in circumstances" and that this Court must address the merits. *Westminster Management, LLC*, 486 Md. at 673.

Class Certification

A class action “is a procedural device, created by the judiciary’s adoption of a court rule to facilitate management of multiple similar claims.” *Cutler v. Wal-Mart Stores, Inc.*, 175 Md. App. 177 (2007). The requirements for class certification are set forth in the Maryland Rules. Md. Rule 2-231. A class action must meet four initial requirements: “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims of the representative parties are typical of the claims of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” Md. Rule 2-231(b). In addition to the four express requirements of Md. Rule 2-231(b), the class must be “definite” or “ascertainable” and “the class representative [must] be a member of the class.” See Newberg and Rubenstein on Class Actions § 3:1 (6th ed.) (recognizing the “implicit requirements” of class certification).

I. Class Definition

In their supplemental brief in support of their second motion for class certification filed on remand, Plaintiffs rely on the following proposed class definition:

all persons who (1) are or were tenants at Westminster-managed properties in Maryland, (2) have been charged fees related to the alleged late payment of rent since September 27, 2014, and (3) have paid those fees.

(Pls’ Supp. Brief at 5.) Westminster argues that Plaintiffs’ proposed class definition has changed numerous times. At the March 7, 2019, hearing, the Court relied on the following modified class definition submitted by Plaintiffs:

All persons who are or were tenants in a residential rental property in Maryland managed by Westminster Management, LLC and/or JK2 Westminster, LLC, and who, since September 27, 2014, have been charged one or more of the following fees by Westminster

and/or JK2 Westminster: agent fee, summons fee, writ fee, warrant fee, legal fee, court fee, and/or filing fee.

(April 22, 2019, Order Denying Class Certification at 3.)

While it is true that Plaintiffs proposed class definition has changed several times, the class definition has been made less complicated by the Supreme Court of Maryland's March 25, 2024, Opinion. The Supreme Court of Maryland ruled "that when applied to residential leases, 'rent,' for purposes of Real Property § 8-401, means the fixed, periodic payments a tenant owes for use or occupancy of a rented premises." *Westminster Management, LLC*, 486 Md. at 649. It concluded that "[n]othing in the [summary ejectment statute] supports Westminster's position that the General Assembly intended to make summary ejectment available to landlords as a mechanism to collect any and all fees, costs, and other obligations residential tenants may owe in addition to 'rent.'" *Id.* at 648. This conclusion was based on the principle that summary ejectment arises out of the landlord's right to take possession of the premises once the tenant stops paying "rent." *Id.*

Given the Supreme Court's ruling, Plaintiffs' proposed class definition understandably has changed on remand. There is no need for Plaintiffs to separate out "agent fee, summons fee, writ fee, warrant fee, legal fee, court fee, and/or filing fee" as presented in Plaintiffs' March 7, 2019, modified class definition. This is because the Supreme Court of Maryland found that "rent" for purposes of Real Property § 8-401 is limited to the "periodic payments a tenant owes for use or occupancy of a rented premises." In other words, *any* charged fees related to the alleged late payment of rent would now be included in the proposed class definition. For these reasons, the Court accepts the proposed class definition set forth in Plaintiffs' supplemental brief on remand for purposes of analyzing this second motion for class certification.

A. Ascertainability

The crux of the dispute among the parties in this case concerns the ascertainability requirement for class certification. The members of the proposed class must be “readily identifiable” for purposes of the class action proceeding through “objective criteria.” *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (analyzing the implicit requirements of the federal counterpart to Md. Rule 2-231.) In determining ascertainability, the Court considers whether the burden of identifying class members would be too difficult because the Court would need to rely on “extensive and individualized fact-finding or ‘mini-trials[.]’” *Id.*

This Court previously agreed with Westminster’s argument that Plaintiffs’ modified class definition would require “mini-trials” to determine the class when it denied Plaintiffs’ initial motion for class certification,. (April 22, 2019, Order Denying Class Certification at 7.) As the Supreme Court of Maryland stated, however, “[a] mini-trial, in this context, is a proceeding that would involve ‘extensive and individualized fact-finding,’ thus rendering a class action ‘inappropriate.’” *Westminster Management, LLC*, 486 Md. at 649. It explained that reviewing Westminster’s tenant ledgers to see whether tenants were charged particular fees is not the same as a mini-trial. *Id.*

Given the Supreme Court of Maryland’s guidance, the proposed class members here are identifiable without resorting to mini-trials. The proposed class consists of tenants who “have been charged any fees related to the alleged late payment of rent since September 27, 2014[.]” A review of Westminster’s ledgers constitutes objective criteria for determining whether tenants were charged fees related to the late payment of rent and is not too burdensome for purposes of identifying class members. As Plaintiffs point out, the fees can be identified using Westminster’s “‘Yardi’ accounting

software.” (Pl.’s Supp. Brief at 6.) There is no extensive fact-finding required as the ledgers will reveal whether fees related to the late payment of rent were paid by tenants pursuant to the simplified definition of “rent” in the Supreme Court of Maryland’s March 25, 2024, opinion. In their motion for summary judgment filed in 2019, Plaintiffs presented evidence of their ability to identify tenants who paid illegal fees. (Pl.’s Mot. for Summ. Judgment, October 3, 2019, Affidavit of Shane Doyle).

Westminster argues that the lack of consistency in the tenant ledgers make the class not readily identifiable. They rely on testimony from their corporate representative suggesting that no tenants are alike and claim that the tenant ledgers will not reveal “how and why [unlawful] fees were assessed” and “whether those fees were actually paid[.]” (Westminster Supp. Resp. at 5.) While it is certainly true that there are differences among tenants, the Court concludes that the tenant ledgers constitute objective criteria to determine whether the tenants were charged fees related to the payment of rent regardless of the differences among the tenants. A detailed review of the tenant ledgers will still be necessary, but not the “extensive and individualized fact-finding” that would be too onerous to identify class members. *See Kelly v. RealPage, Inc.*, 47 F.4th 202, 224 (3rd Cir. 2022)(“a straightforward ‘yes-or-no’ review of existing records to identify class members is administratively feasible even if it requires review of individual records with cross-referencing of voluminous data from multiple sources.”).

The ascertainability of class members through review of Westminster’s ledgers was recognized by both the Supreme Court of Maryland and the Appellate Court of Maryland. In distinguishing the proof problems present in *Cutler*, the Appellate Court of Maryland addressed the fees Westminster charged to tenants related to the late payment of rent stating that “the amount of the fees were fixed and Westminster

certainly knew when a tenant paid them.” *Smith v. Westminster Management, LLC*, 257 Md.App. 336, 415 n. 62 (2023). The Supreme Court of Maryland recognized that Westminster used a standard form lease containing a definition of rent provision stating “[a]ll payments from Tenant to Landlord required under the terms of this Lease, including, but not limited to, Court costs, shall be deemed rent[.]” *Westminster Management, LLC*, 486 Md. at 631. Considering the guidance of the Supreme Court of Maryland on remand, the Court finds that the proposed class meets the ascertainability requirement. Plaintiffs identified the records in Westminster’s possession that will serve as an objective means of determining class members without resort to the considerable fact finding that would negate class certification.

II. Md. Rule 2-231(b) Requirements

A. Numerosity

The numerosity requirement “helps to promote the objectives of judicial economy and access to the legal system, particularly for persons with small individual claims.” *Philip Morris v. Angeletti*, 358 Md. 689, 732 (2000) Plaintiffs only need provide a good faith estimate of the number and are not required to propose a specific number for class certification. *Id.* In its initial decision denying Plaintiffs’ motion for class certification, this Court concluded that Plaintiffs met the numerosity requirement. Specifically, the Court found that “the numerosity requirement has been satisfied to the extent that the evidence shows that there are numerous persons who have been charged the alleged illegal fees only as it relates to late rent payments and warrant of restitution proceedings.” (April 22, 2019, Order Denying Class Certification at 9.) The Court reached that conclusion despite its ruling regarding the class definition discussed above.

There is no reason to depart from the Court's numerosity conclusion in this second motion for class certification.

B. Commonality

For purposes of class certification, the commonality requirement means that “there are questions of law or fact common to the class[.]” Md. Rule 2-231(b)(2). The Appellate Court of Maryland has instructed that the Court “must do more than look at the class members’ shared factual and legal questions in the abstract. What matters is how these questions would be answered—how the parties would go about making their case—at trial.” *Silver v. Greater Balt. Md. Ctr., Inc.*, 248 Md.App. 666, 693 (2020). There is undoubtedly common questions of law and fact among the proposed class members here.

In its ruling on Plaintiffs’ initial motion for class certification, this Court explained that “at this stage of the analysis commonality is not difficult to prove[.]” (April 22, 2019, Order Denying Class Certification at 9.) It stated that commonality “is generally satisfied by the existence of a single issue of law or fact that is common across all members[.]” *Id.* Relying on Plaintiffs’ allegations that class members had been subject to a “common course of conduct” by Westminster, the Court found that the commonality requirement had been met. (April 22, 2019, Order Denying Class Certification at 9-10.) As with numerosity, there is no reason to depart from that conclusion here.

C. Typicality

With regard to named plaintiffs serving as class representatives, the Court must determine that their claims “are typical of the claims of the class.” Md. Rule 2-231(b)(3). In *Philip Morris*, the Supreme Court of Maryland stated that the typicality

requirement “demands a common-sense inquiry into whether the incentives of the plaintiffs are aligned with those of the class, and is meant to ensure that representative parties will adequately represent the class.” *Philip Morris*, 358 Md. at 737-38. This Court also previously noted that while numerosity and commonality focus on the characteristics of the class, “typicality and adequacy of representation, focus on the characteristics of the representatives.” (April 22, 2019, Order Denying Class Certification at 10.)

Westminster challenged the typicality requirement in Plaintiffs’ initial motion for class certification in 2019 claiming that unique defenses would be applicable to individual class members but not others. *See* Newberg § 3.45 (“a proposed class representative’s claim may not be typical if it is subject to a so-called ‘unique defense’ that does not apply to the other class members’ claims.”) Westminster continues to assert the presence of unique defenses in opposing Plaintiffs’ second motion for class certification here. For example, they point to the fact that some potential class members may have been subjected to judgments in summary ejectment actions generating a collateral estoppel defense. As Plaintiffs point out, however, a summary ejectment proceeding is a quasi in-rem action for repossession of the property. *See* Real Property § 8-401; *Westminster Management, LLC*, 486 Md. at 626 (explaining that summary ejectment is a process for a landlord to obtain a judgment for possession). Plaintiffs concede that they do not seek to invalidate any of those judgments but only seek to recoup the fees related to the late payment of rent as defined by the Supreme Court of Maryland. (Pl’s Supp. Reply at 4.)

Moreover, the Appellate Court of Maryland rejected Westminster’s recoupment defense explaining that recoupment is not properly invoked by a party who has “unclean

hands.” *Id.* at 402. With respect to limitations defense, the Appellate Court of Maryland stated that “Westminster’s contention overlooks the fact that the parties entered into new lease agreements each year.” *Id.* at 392. As a result, it concluded that the relevant leases were signed within the three-year limitations period. *Id.*

In finding that typicality had not been satisfied in Plaintiffs’ initial motion for class certification, this Court stated that “[w]ithout sufficient evidence that Westminster’s alleged practice was applied to all its properties, there is no way for the court to determine typicality.” (April 22, 2019, Order Denying Class Certification at 11-12.) The appellate court decisions make clear that Plaintiffs have presented sufficient evidence to meet their burden at this stage with respect to Westminster’s uniform practices. In reversing the Court’s decision on summary judgment, the Appellate Court of Maryland found Plaintiffs “presented viable claims pursuant to Real Prop. § 8-208 as well as viable claims for breach of contract, violations of the Maryland Consumer Debt Collection Act, and violations of the Maryland Consumer Protection Act.” *Smith v. Westminster Management, LLC*, 257 Md.App. 336, 419 (2023). Similarly, the Supreme Court of Maryland recognized that Plaintiffs “added factual support for their contention that Westminster’s alleged practices were uniform across their Maryland properties in the form of deposition testimony of two Westminster corporate deponents.” *Westminster Management, LLC*, 486 Md. at 666.

Even if there are differences amongst the tenants, those differences do not mean that Plaintiffs’ claims are not typical of class members for purposes of class certification. Plaintiffs proposed class here is defined as those persons who were charged fees related to the late payment of rent. The Supreme Court of Maryland’s March 25, 2024, Opinion leads to only one conclusion – Plaintiffs claims are typical of those persons who were

charged any fees related to the late payment of rent. Whether the tenants were charged the unlawful fees is the linchpin of class membership and not the number of inconsequential differences among them. Given that the tenants may be identified using objective criteria, the differences do not render the class atypical.

D. Adequacy

The adequacy requirement for class certification dictates that “the representative parties will fairly and adequately protect the interests of the class.” Md. Rule 2-231(b)(4). The adequacy requirement applies to both the proposed class representatives and class counsel. *See* Newberg § 3.50. With respect to the named Plaintiffs, the Court must ensure that Plaintiffs “possess the same interest” and “suffer the same injury” as the proposed class. *Philip Morris*, 358 Md. at 740 (quoting *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-26 (1997)). As to class counsel, the Court considers facts such as “the vigor of counsel, experience, and diligence.” *Philip Morris*, 358 Md. at 741.

In this Court’s decision on Plaintiffs’ initial motion for class certification, the Court found Plaintiffs failed to establish the adequacy requirement recognizing that “typicality and adequacy are intertwined.” (April 22, 2019, Order Denying Class Certification at 13.) The Court’s reasoning reversing its decision with respect to the typicality requirement similarly changes the conclusion with regard to adequacy. Having now found that Plaintiffs’ claims are typical of class members, it follows that Plaintiffs have an “incentive to pursue the claims of the other class members.” Newberg, § 3:32. With regard to class counsel, this Court previously determined that Plaintiffs presented sufficient evidence to establish the adequacy of class counsel. The Court finds that the adequacy requirement has been satisfied.

III. Md. Rule 2-231(c)

In addition to the requirements above, in order to maintain a class action, Plaintiffs must meet with one of the three requirements of Md. Rule 2-231(c). Plaintiffs primarily rely on Md. Rule 2-231(c)(3) in arguing class certification and the Court will address those requirements first.

A. Predominance

The Court must find “that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members[.]” Md. Rule 2-231(c)(3). The predominance requirement “does not demand that all or even most questions of fact or law involved in the claim be common to all would-be class members.” *Silver*, 285 Md.App. at 692. The Court must “weigh the relative importance of issues common to all class members compared to those issues particular to only some.” *Id.* The Court need only conclude that the issues common to class members are a substantial piece of each case. *Id.*

Applying those legal principles here, the issue common to all class members predominates over any individual questions – whether tenants were charged and paid the unlawful fees related to the late payment of rent. This issue is common to all class members and is sufficient to justify class certification. *See Newberg* 4.51 (“[a] single common issue may be the overriding one in the litigation, despite the fact that the suit also entails numerous remaining individual questions.”)

Westminster’s argument that they have identified more than three dozen liability and damages issues that would need to be resolved in each individual case is unpersuasive. The Court relied on Westminster’s argument in initially denying class certification. The Maryland appellate courts uniformly reversed the Court’s decision

and remanded with instructions that “extensive and individualized fact-finding” may not be necessary “as long as review of the corporate records would produce an objective answer concerning whether the tenants were charged the [unlawful] fees.” *Westminster Management, LLC*, 486 Md. at 672. Plaintiffs have sufficiently identified Westminster records that will show tenants who were charged particular fees for purposes of class certification. The Court concludes that Plaintiffs have satisfied the predominance requirement.

B. Superiority

The final requirement is superiority requiring the Court to determine “that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Md. Rule 2-231(c)(3). In considering the superiority requirement, the Court must consider:

(A) the interest of members of the class in individually controlling the prosecution of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

Id.

In this case, a class action is the superior means of proceeding as it will provide class members with an economically practical remedy. Many tenants who were allegedly charged unlawful fees do not have the resources to pursue costly litigation to recover a small amount of unlawful fees. See Newberg § 4.65 (primary purpose of a class action is to allow litigation of claims where the amount at issue provides no incentive for individuals to pursue their rights). Conversely, it is unlikely that any individual tenant would have claims large enough to justify proceeding separately. For

this reason, consumer protection claims are often pursued as class actions. As with any consumer protection class action case, there will be difficulties in managing the litigation. However, there is nothing to suggest an extraordinary difficulty in this case that would outweigh the benefits of class certification. The Court finds that Plaintiffs have sufficiently established that a class action is the superior method of adjudication.

Conclusion

For the foregoing reasons, the Court finds that class certification should be granted pursuant to Md. Rule 2-231(c)(3). Given the Court's conclusion, the Court need not address Plaintiffs alternative request for class certification under Md. Rule 2-231(c)(2). A separate order follows.

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JOHN S. NUGENT, JUDGE
Circuit Court for Baltimore City

