

10/24

JASON ROYAL, et al. * IN THE
 Plaintiff * CIRCUIT COURT
 v. * FOR
 EASTERN HOMES, INC. * HOWARD COUNTY
 Defendant * Case No. 13-C-04-059581

* * * * *
 *

ORDER

Upon consideration of the Plaintiff's Motion for Class Certification, Defendant's Opposition thereto, and having heard oral argument on the Motion, and for reasons more fully explained in the Memorandum Opinion of even date, it is this 15th day of August, 2006, by the Circuit Court for Howard County,

ORDERED, that Plaintiff's Motion in regards to Certification of Class I, represented by Cordelia and John Walser and Lawrence Corwin against Eastern Homes, and defined as:

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. after August 25, 2000 and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

is GRANTED; and it is further

ORDERED, that potential plaintiffs of Class I may "opt-out," of the class pursuant to Maryland Rule 2-231(b)(3); and it is further

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Margaret D. [Signature]

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ORDERED, that Plaintiff's Motion in regard to Certification of Class II, represented by Jason Royal and Leonard and Melinda Stewart against all named Defendants, and defined as:

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. on or prior to August 25, 2000 or resides in a named mobile home park herein or in which Gilbert A. Mobley, Sr. has an ownership interest in the land or in the park and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors that utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

is DENIED.


Lenore R. Gelfman, Judge

ENTERED

AUG 18 2006

CLERK, CIRCUIT COURT
HOWARD COUNTY

JASON ROYAL, et al.

Plaintiff

v.

EASTERN HOMES, INC.

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* HOWARD COUNTY
* Case No. 13-C-04-059581

* * * * *

MEMORANDUM OPINION

This case came before the Court on Plaintiff's Motion for Class Certification filed August 24, 2004. Defendant Brentwood Manor filed a Motion in Opposition to Plaintiff's Motion for Class Certification on May 11, 2005. On February 15, 2006, Defendants Eastern Homes, Brentwood Manor and the Mobleys filed a Joint Supplemental Memo in Opposition to Plaintiff's Motion. The Court heard oral arguments on March 3, 2006. Thereafter, the Court held the matter *sub curia*.

Background

The named Plaintiffs (TIs) all purchased their mobile homes from Eastern Homes, Inc and either live at Brentwood Manor or Maple Park. Eastern Homes, Inc. is a retail distributor and installer of mobile homes in Maryland. Brentwood Manor and Maple Park are mobile home parks. Defendant Mobley owns Eastern Homes and Brentwood Manor, as well as the land upon which Brentwood Manor sits. Plaintiffs state that The Retailers' Plain Language Purchase Agreement includes as part of the purchase price the delivery, set up and installation of the manufactured home. Plaintiffs assert that for many years Eastern has negligently represented and warranted that these manufactured homes would be installed in accordance with the building code of the State of Maryland, when in fact they were not.

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Margaret D. [Signature]
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Plaintiffs have made the following claims for relief:

- Violation of the Maryland Consumer Protection Act (For class purposes Plaintiffs Royal and Stewart (Class 2) v. All Named Defendants)
- Breach of Contracts and Title 8A (For class purposes Plaintiffs Royal and Stewart (Class 2) v. Parks and Mobleys)
- Unjust Enrichment/Constructive Trust (All Plaintiffs v. All Defendants)
- Injunctive/Declaratory Relief (All Plaintiffs v. All Defendants)
- Breach of State Law Express/Implied Warranty (For class purposes Plaintiffs Walser and Corwin (Class 1) v. Eastern)
- Violations of the Magnuson-Moss Warranty Act (For class purposes Plaintiffs Walser and Corwin (Class 1) v. Eastern)
- Strict Liability in Tort (All Plaintiffs v. All Defendants)
- Negligence (For class purposes Plaintiffs Royal and Stewart v. All Named Defendants)
- Breach of Contract (All Plaintiffs v. All Defendants)

The Classes

Plaintiff defines the proposed classes as follow:

Class 1 (represented by Cordelia and John Walser and Lawrence Corwin against Eastern Homes)

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. after August 25, 2000 and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors which utilize either a stabilizer

plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

Plaintiff suggests a Maryland Rule 2-231 (b)(3) "opt out" for this class. Plaintiff doesn't expect that there is substantial damage for Class I. Damages would be the reasonable cost to correct Defendant's alleged failure to comply with the regulations.

Class 2 (represented by Jason Royal and Leonard and Melinda Stewart against all named Defendants)

All persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. on or prior to August 25, 2000 or resides in a named mobile home park herein or in which Gilbert A. Mobley, Sr. has an ownership interest in the land or in the park and: 1) does not have footings under each pier that extend below the locally established frost line; or 2) does not have load carrying portions of the ground anchors that extend below the locally established frost line; or 3) does not have ground anchors that utilize either a stabilizer plate or a concrete cylindrical collar; or 4) does not have anchoring equipment that is capable of resisting an allowable working load equal to or exceeding 3,150 pounds and capable of withstanding 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

Excluded from both classes are:

- i) Defendant, any person, firm, trust, corporation or other entity affiliated with Defendant;
- ii) any claims for actual personal injuries or moisture damages or the like arising from the failure to properly prepare the site and ventilate the crawlspace under the home, or any other damages or the like arising from the alleged defects herein; and (iii) class members who timely opt-out of any stipulation.

Legal Analysis

Prior to class certification, the court must make an initial finding that all of the requirements of Maryland Rule 2-231(a) are met and at least one of the prerequisites of section (b) are met. Pursuant to Maryland Rule 2-231(a) one or more members of a class may sue on behalf of the class if:

- (1) The class is so numerous that joinder of all members is impracticable; (numerosity)
- (2) The questions of law or fact are common to the class; (commonality)
- (3) The claims of the representative parties are typical of the class; and (typicality)
- (4) The representative parties will fairly and adequately protect the interests of the entire class. (adequacy)

Pursuant to 2-231 (b), the parties must show that separate actions by individual class members would create a risk of one of the following:

- (1) Inconsistent or varying judgments that would establish incompatible standards for the defendants or adjudications that are inconsistent and thereby impede or preclude the interests of people not parties to the action;
- (2) The party opposing the class certification has acted or refused to act on grounds applicable to the class making injunctive relief or a declaratory judgment appropriate; or
- (3) The court finds that questions of law or fact common to the members of the class predominate over questions affecting only individual members such that a class action is superior to other methods of adjudication. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling

the prosecution or defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (C) the desirability or understanding 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.

The party seeking class certification bears the burden of proving that a class meets all the requirements of class certification. *Creveling v. Gov't Emp. Ins. Co.*, 376 Md. 72, 89 (2003) (emphasis added). To this burden, Maryland trial courts "should accept [the party's] allegation as true...but may look beyond the pleadings [but may not conduct a review of the merits of the lawsuit] to determine whether a class certification is appropriate." *Id.*

I. Requirements of Maryland Rule 2-231(a)

A. *Numerosity*

Numerosity is where the class is so numerous that joinder of all members is impracticable. *Phillip Morris Inc. v. Angeletti*, 358 Md. 689, 732-33 (2000). It's purpose of to promote judicial economy and ensure access to the legal system, particularly to those with small individual claims. *Id.* Consequently, whether numerosity is met depends on a court's practical judgment, given the facts of a particular case. *Id.*

Here, Plaintiffs contend that the number in the classes would be in the hundreds at a minimum. Defendants contend that Plaintiff's counsel has asked each and every resident of Brentwood Manor (containing more than 170 homes) to join this suit; yet only eleven have accepted that invitation. Thus, Defendants argue Plaintiffs cannot fulfill the numerosity requirement.

Class 1 and Class 2

The Court finds that although many potential plaintiffs have not yet joined the suit, the number of plaintiffs is likely to exceed one hundred. This number of plaintiffs is large enough that joinder of all members is impracticable. Plaintiffs have met the requirement for numerosity.

B. *Commonality*

Commonality is where there are questions of law and fact common to the class. *Phillip Morris Inc.*, 358 Md. at 733-37. Similar to numerosity, the purpose of commonality is to promote convenience, uniformity of decision, and judicial economy because the common issues are litigated only once. *Id.* Maryland law does not require commonality amongst all or most issues, nor that common issues predominate, but only that common issues exist. *Id.* Alternatively stated, there must exist in a class action a "common nucleus of operative facts." *Id.* Maryland courts recognize the burden to meet commonality is not high but the court has held that "an issue of law and fact should be deemed common only to the extent its resolution will advance the litigation of the entire case." *Id.*

Here, Plaintiffs assert that some of the common questions include (but are not limited to):

- Whether the footings and foundation systems extend below the locally established frost line and/or were laid in a defective and un-workmanlike manner and do not conform to minimum HUD or State standards, building code requirements and/or comply with the Defendants own procedures and instructions;
- Whether the support system stabilizing devices, piers, footings and foundation systems were not bonded to the existing foundation in accordance with accepted construction industry standards nor the Defendants own procedures and instructions.

- Whether the workmanship and finishes were executed poorly throughout.
- Whether the construction sites were improperly graded causing a serious flooding problem;
- The contractual and agency relationships among the Defendants;
- The applicability of Maryland's version of the Consumer Protection Act to this action;
- Whether the retailer's method of installation complied with the State of Maryland Regulations for installation of mobile homes;
- All members purchased mobile homes without footings extending to the frost line;
- The same liability proof as to footings would be employed by each class member;
- Each class member would represent the same expert witnesses and the same expert proof;
- The same exhibits would be used regarding the necessity of footings; and
- The failure to install footings extending to the frost line is a common issue for each class member and would be the primary focus at trial for each class member.

Defendant asserts that the facts underlying the essential elements of Plaintiffs' Consumer Protection Act claim and common-law claims are different as to each class member and therefore the need to prove these essential elements would cause the case to degenerate into numerous mini-trials. Defendants also state that Plaintiffs seek certification of an injunctive relief class under Rule 2-231(b)(2) and Rule 2-231(b)(3). Defendants asserts that certifying a class pursuant to both sections would create a conflict. A class under Rule 2-231(b)(2) is mandatory and prohibits class members from opting out of the suit, where Rule 2-231(b)(3) has a mandatory opt-out requirement. Plaintiffs reply that they are seeking class certification under Rule 2-

231(b)(2) or Rule 2-231(b)(3) and therefore a conflict regarding the ability to opt-out does not exist. Defendants also argue that the representatives of Class I have not suffered damages and therefore do not have a valid claim for breach of warranty, making them inadequate representatives. However, Plaintiffs stated in their complaint that each respective homeowner has been damaged by having a defective foundation, by loss of use/enjoyment of the home, and the inability to sell the home without first complying with the regulations.

Class 1 and Class 2

The Court that finds that Plaintiffs meet the requirement of commonality because both the class representatives and the proposed class members all have a common factual problem in that all have homes do not have footers installed to the frost line. Dr. Robert Kondner, Plaintiff's expert witness in geotechnical engineering, testified that he investigated the foundation below the mobile homes including the footings, piers and anchor systems. Dr. Kondner looked at approximately 20 homes, none of which had footings extended to the frost line or anchor systems that penetrated to frost line, as required by state regulations. Mr. Roy Bonney, a consultant to the manufactured housing industry and an expert in mobile home installation, also testified for Plaintiffs. He stated that he inspected 21 homes. His inspection focused on the foundation and he found that all footings were set on grade, all homes had anchors set less than 30 inches, and several homes had disengaged anchor straps no longer joined to the I-beam. It was Mr. Bonney's opinion that if the homes were properly installed, one would not see leaning or collapsed piers, loose or disengaged anchor straps, or cracked blocks. Mr. Bonney testified that to correct the improper installation the following would have to occur: 1) the home would have to be removed from the site; 2) the site would have to be properly prepared; 3) thirty-inch holes would have to be dug for the footings, the hole would be filled with concrete; 4) the home would

then be reset and reskirted; 5) anchors would be reset; and 6) utilities would be reattached. The only differences between each Plaintiff would be whether their home was a single-wide or sectional home. A sectional home would require additional footings or piers.

As Plaintiffs are only seeking the reasonable cost to correct Defendants alleged failure to comply with the regulations for installing footers and anchor systems, this Court does not find that the case would degenerate into numerous mini-trials. At this time, Plaintiffs claim that many of the potential plaintiffs have not yet suffered damages. And if a particular plaintiff has already sustained substantial damages, then such plaintiff has the ability to opt out of the class action and pursue his or her claim individually.

C. *Typicality*

Typicality is where the claims or defenses of the representative parties are typical of the claims or defenses of the class. *Phillip Morris Inc.*, 358 Md. at 737-40. The purpose of typicality is to ensure that class representatives will represent the best interest of class members who take a less active role in managing the litigation. *Id.* Maryland courts have stated that "[a] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Id.* Further, the court has indicated that the typicality analysis requires a common-sense inquiry into whether the incentives of the plaintiff's are aligned with those of the class to ensure adequate representation. *Id.* Similar to commonality, typicality does not require the representative claims to be identical to the rest of the class. *Id.* Rather, there must be similar legal remedies and remedial theories underlying the representative claims and the claims of the class. *Id.*

Here, Plaintiff emphasizes that typicality is demonstrated where the plaintiff can show that the issues of law or fact he shares in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed class members. *See Wiess v. York Hosp.*, 745 F.2d 786, 809-810 (1984). Plaintiffs allege a common pattern of wrongdoing typical to all plaintiffs. Plaintiffs assert that Class representatives will present the same evidence (based on the same legal theories) to support their claims and the claims of the Class members. Plaintiffs state that these issues include, but are not limited to: 1) whether footings are required to extend below the applicable frost line and 2) whether the foundation for the home was laid in a defective and unworkmanlike manner and conforms to minimum applicable standards and requirements.

Defendant asserts that Plaintiff Royal and Plaintiffs Stewart fail to satisfy the typicality prong of Maryland Rule 2-231(a) because their claims are subject to limitations defenses that may or may not apply to other class members. Defendant asserts that discovery has confirmed that Plaintiffs are subject to the defenses of limitations. Plaintiff Royal's claim accrued in 1997, more than 7 years before he filed suit. Plaintiffs Stewarts' filed their complaint more than 11 years after their claims accrued in 1994. Defendant asserts that the Amended Complaint on its face discloses a limitations defense as to Stanhope as well. Maryland law holds that a cause of action accrues and limitations begin to run on the date that plaintiff knew, or in the exercise of reasonable diligence should have discovered, the alleged wrong. An action shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced. Md. Code Ann., Courts & Judicial Proceedings § 5-101.

Class 1

The Court finds that the class representatives were harmed in the same way and same practice as the other plaintiffs. In addition, the Court finds that Defendant will assert the same defense against all Plaintiffs. Therefore, the Court finds Plaintiff meets the typicality requirement.

Class 2

Although the Court finds that the class representatives were harmed in the same way and same practice as the other Plaintiffs, the class representatives are subject to the defense of statute of limitations. This may not be typical for all Plaintiffs. Therefore, the Court finds that the typicality requirement is not met.

D. *Adequacy of Representation*

Adequacy of representation is where the representative parties and counsel will fairly and adequately protect the interest of the class. *Phillip Morris Inc.*, 358 Md. at 740-43. The purpose of the adequacy of representation is to ensure that both the class representative and class counsel are adequate to represent the interest of all class members and serves to uncover conflicts of interest between the named parties and the class they seek to represent. *Id.* In determining whether this prerequisite is met, the court will analyze two factual questions. First, whether the class representative possesses the same interests and suffers the same injury as the class members. *Id.* Second, the court must verify whether the quality, vigor, diligence, and experience of class the class counsel is adequate to represent the class.

Here, Plaintiff asserts that they are adequate representatives of the Class' interests in that they will and have vigorously pursued this action on behalf of the entire Class, have no conflicts

with the Class, have interest completely coincident with the Class' interest, and have retained experienced Class counsel to represent them.

Again, Defendant asserts that discovery has confirmed that Plaintiffs are subject to the defenses of limitations. Plaintiff Royal's claim accrued in 1997, more than 7 years before he filed suit. Plaintiffs Stewarts' filed their complaint more than 11 years after their claims accrued in 1994. Defendant asserts that the Amended Complaint on its face discloses a limitations defense as to Plaintiff Stanhope as well. Defendant asserts that Plaintiff Stanhope's cause of action accrued in 2001, more than 4 years before the Amended Complaint was filed. Defendant also asserts that the addition of new parties, Defendants, in the Amended Complaint precludes the relation back of claims asserted in the Amended Complaint to the original August 24, 2004 filing date of the lawsuit. *See Crowe v. Houseworth*, 272 Md. 471 (1974). For these reasons, Defendant argues that the Plaintiffs are not adequate representatives of Class II. Defendant also points to the fact that Mr. Porter, Plaintiff's witness, found that under Plaintiff Walser's home several piers were on footings set below the frost line. For this reason, Defendant's argue that Plaintiff Walser is not an adequate representative of Class I.

Class 1

The Court finds that there is no conflict between the Plaintiffs or attorneys. To adequately represent the class, the issue is not whether each Plaintiff has the exact same problem, but rather whether there is a common nucleus of facts. For this reason, Plaintiff Walser is an adequate representative of Class I, even if Plaintiff Walser has some footings that comply with regulations. In addition, the Court finds that Plaintiff's attorneys are experienced. Therefore, the Court finds that Plaintiffs meet the adequacy requirement.

Class 2

The Court finds that Plaintiff Royal and Plaintiffs Stewart are not adequate representatives of Class II because their causes of action are barred by the statute of limitations. Although the class is defined as “[a]ll persons in Maryland whose manufactured home was installed by Eastern Homes, Inc. on or prior to August 25, 2000...”, there may be potential plaintiffs whose cause of action did not accrue until several years later. Therefore, not all plaintiffs will be barred by the statute of limitations merely because the installation occurred prior to August 25, 2000 and the Complaint was filed on August 24, 2004.

II. Requirements of Maryland Rule 2-231(b)

Rule 2-231(b)(2) states that in addition to meeting the requirements of subsection (a), an action may be maintained as a class action if the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

Under Rule 2-231(b)(3), "a court must find predominance (questions of law or fact common to the members of the class predominate over any questions affecting only individual members) and superiority (a class action is superior to other available methods for the fair and efficient adjudication of the controversy), standards which also comprise prerequisites to certifying a class action under Federal Rule 23(b)(3). *Philip Morris*, 358 Md. at 727.

The party seeking class certification bears the burden of proving that a class meets all the requirements of class certification. Because Class 2 Plaintiffs do not meet the requirements of typicality and adequacy, they have failed to satisfy all the requirements of class certification. The Court will not proceed to consider the issues predominance and superiority in regard to Class 2.

A. *Predominance*

In making a finding under Rule 2-231(b)(3), Maryland courts have developed a predominance test that involves an attempt to achieve a balance between the value of allowing individual actions and the economy that can be achieved by allowing multiple party disputes to be resolved on a class action basis. *Id.* at 743. This predominance test does not require that common issues are dispositive of the action or determinative of the liability issues, but rather, the common issues must constitute a significant part of the individual cases. *Id.*

Here, Defendants assert that under *Philip Morris*, the Court of Appeals held private Maryland Consumer Protection Act (MCPA) claims are unsuitable for class action treatment because they require each putative class member to prove their individualized detrimental reliance on the defendant's allegedly deceptive acts or omissions. *Philip Morris*, 358 Md. at 750-53. Defendants argue that here, as in *Philip Morris*, the issue of reliance under the MCPA is unique to each putative class member. That is, Plaintiffs claim Defendants made numerous misrepresentations and/or omitted to disclose various things concerning the installation of their manufactured homes. Each putative class member will have to show: (1) which Defendant(s) made representations to them; (2) the substance of each such representation; and (3) their detrimental reliance on the representations in the purchase of their home.

Plaintiffs argue that courts unanimously presume reliance of obvious facts like whether a homeowner would want her home installed to the building codes and thus a showing of individual reliance is not required under Consumer Protection statutes. *See Tylka v. Gerber*, 1998 U.S. Dist. LEXIS 2321, *15 (N.D. Ill.), *Martin v. Heinbold*, 643 N.E. 734, 754 (1994), *Spark v. MBNA*, 178 F.R.D. 431, 435-36 (D.Del 1998). Therefore, Plaintiffs state that this case qualifies for certification because there are numerous issues of law and fact common to the class

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and these predominate over any questions affecting individual members. *See supra* Section I.

B, Commonality.

Class 1

In consideration of all the counts plead, the Court finds that the issues common to the Plaintiffs of each class constitute a significant part of the individual cases. The predominance test of Rule 2-231(b)(3) is met.

B. *Superiority*

The second consideration of 2-231(b)(3) the court must weigh is superiority. “Before a class may be certified, it must be shown that a class action is the superior method for resolving the conflict; in other words, it must be the most efficient means of adjudicating the matter.” *Philip Morris*, 358 Md. at 762. The Court stated in *Philip Morris*: “Pertinent to the court’s findings are (1) the interests of members of each class in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of each class, (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and (4) the difficulties likely to be encountered in the management of a class action. This list is non-exhaustive.” *Id.* at 762-763.

Here, Plaintiffs state Defendant’s improper activities have been directed toward a large number of low-income producing, uneducated persons to such an extent that the cost of pursuing individual litigation to seek recovery against a well-financed adversary is not feasible.

Because Defendants do not believe that Plaintiffs have met the requirement of predominance, they do not believe that class certification is a superior method for resolving the conflict.


Class 2

The Court finds that class certification is the superior method for resolving Plaintiffs claims.

Conclusion

For the above stated reasons, this Court finds that Plaintiffs have met the burden of proving that Class I class meets all the requirements of class certification. Therefore, Class I is certified as a class for the purposes of this action. Potential Plaintiffs may opt out according to Maryland Rule 2-231(b)(3). This Court finds that the Plaintiffs have not met the burden of proving that Class II meets all the requirements of class certification. This Court will not certify Class II for purposes of this action.

August 15, 2006
Date


Lenore R. Gelfman
Judge

ENTERED

AUG 18 2006

CLERK, CIRCUIT COURT
HOWARD COUNTY