

**IN THE SIXTEENTH CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

DEL HEDGEPATH,
Plaintiff/Counterclaim Defendant,

vs.

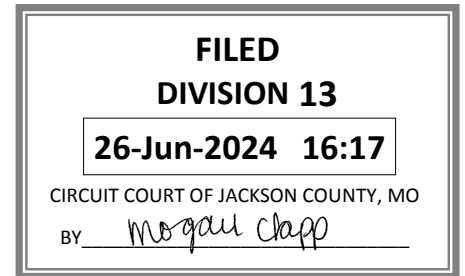
DERRICK KAUFFMAN,
Defendant/Counterclaim Plaintiff.

Case No. 1916-CV01507
Division 13

DERRICK KAUFFMAN *on behalf of
himself and all others similarly situated,*
Counterclaim Plaintiff,

vs.

DEL HEDGEPATH
(dba Del Properties),
Counterclaim Defendant.



ORDER

NOW, before the Court, is Defendant/Counterclaim Plaintiff Derrick Kauffman's ("Kauffman") *Motion for Preliminary Approval of Class Action Settlement*, filed May 6, 2024; Plaintiff/Counterclaim Defendant's *Response to Motion for Preliminary Approval of Class Action Settlement*, filed May 14, 2024; and Counterclaim Plaintiff's *Reply in Support of Motion for Preliminary Approval of Class Action Settlement*, filed May 16, 2024. The Court held a hearing on the Motion on May 17, 2024. Counsel appeared in person. On June 13, 2024, Defendant/Counterclaim Plaintiff Derrick Kauffman filed an *Amended Motion for Preliminary Approval of Class Action Settlement*.

Kauffman seeks an Order granting preliminary approval to a class action settlement of three classes pertaining to various claims. Kauffman also seeks an Order appointing Kauffman as Representative Plaintiff and Kauffman's counsel as Class Counsel for the settlement classes,

approving the proposed forms and methods of giving Class Members notice of the proposed settlement, directing that notice be given to Class Members in the proposed forms and manners, and setting procedures for Class Members who fall within the class definition to exclude themselves and for Class Members to comment or object on the proposed settlement.

Legal Conclusions Regarding Certification

“The party seeking class certification has the burden of proof.” *Dale v. Daimler Chrysler Corp.*, 204 S.W.3d 151, 164 (Mo. App. 2006). “This burden is satisfied if there is evidence in the record, which if taken as true, would satisfy each and every requirement of the rule.” *Id.* At 164-65. In order to establish a basis for certification, the plaintiff must establish the four prerequisites set forth in Missouri Supreme Court Rule 52.08(a), as well as one of the requirements under Missouri Supreme Court Rule 52.08(b). *Plubell v. Merck & Co., Inc.*, 289 S.W.3d 707, 712 (Mo. App. 2009). In addition, the plaintiff must establish that the motion seeks certification of a properly defined class. *Wright v. Country Club of St. Albans*, 269 S.W.3d 461 (Mo. App. 2008). These five prerequisites are generally referred to as (1) Numerosity; (2) Ascertainability; (3) Commonality; (4) Typicality; and (5) Adequacy. Mo. Sup. Ct. R. 52.08(a); *Dale v. Daimler-Chrysler Corp.*, 204 S.W.3d 151, 177-78 (Mo. App. W.D. 2006).

“Determination of whether an action should proceed as a class action under Rule 52.08 ultimately rests within the sound discretion of the trial court.” *Ralph v. Am. Family Mut. Ins. Co.*, 835 S.W.2d 522, 523 (Mo. App. 1992). Missouri Courts are to err on the side of allowing certification in cases where it is a close question. *Dale*, 204 S.W.3d at 164.

The Settlement Classes are Certified

Kauffman seeks to have three settlement classes certified.

Class A is a class of tenants at the Normandy Apartments located at 501 W. 11th St. Kansas City, Missouri who resided at that apartment building from January 1, 2014 through January 1, 2024. Their claim would relate to an allegation that the Normandy Apartment building was uninhabitable due to an infestation of bed bugs. The allegation is that though Hedgepath had actual knowledge of an infestation of bed bugs, Hedgepath's prevention and treatment efforts were inadequate.

Class B is a class of tenants of the Normandy Apartments as well as other tenants of other apartment buildings owned and/or managed by Hedgepath who were sued by Hedgepath for terminating their lease prior to the original end date of the lease from January 1, 2014 through January 1, 2024. The allegation in this claim is that Hedgepath utilized unconscionable lease provisions to charge attorneys' fees regardless of the outcome of the lawsuit.

Class C is a class of tenants of the Normandy Apartments as well as other tenants of other apartment buildings owned and/or managed by Hedgepath for which it collected security deposits from January 1, 2014 through January 1, 2024. The claim is that Hedgepath used deceptive, illegal, and unconscionable lease provisions to withhold security deposits based on inappropriate cleaning fees.

Kauffman has requested that Derrick Kauffman serve as the Class Representative for each class and that Bryce B. Bell, Jenilee V. Zentrich, Jeffrey M. Lipman, Gina Chiala, and Amy Sweeny Davis serve as Class Counsel.

The Court has reviewed the briefing and permitted evidence to be considered at the hearing on May 17, 2024. Neither party presented evidence, so the Court considers the matter based on the pleadings referenced in this Order, including exhibits attached to those pleadings, and arguments made at the May 17, 2024 hearing in making its determination. The Court also considers the

Amended Motion for Preliminary Approval filed on June 13, 2024. Further, the Court has considered the express and implied prerequisites of Mo. Sup. Ct. R. 52.08(a) for certifying classes.

The Court finds that each prerequisite is satisfied. Specifically, the Court finds that the class definitions are ascertainable and administratively feasible, as supported by the fact that the Parties have already identified the class members. The Court finds that each class is sufficiently numerous as to make joinder impracticable. The Court finds that each class presents at least one common question, the answer to which will advance the case to class-wide resolution. The Court finds that Kauffman's claims are typical of those of each of the three classes he seeks to represent. The Court further finds that Kauffman and his counsel are and will be adequate in representing these three classes.

Kauffman asks these classes to be certified pursuant to Mo. Sup. Ct. R. 52.08(b)(3). Accordingly, the Court has also considered the requirement of that rule. The Court finds that the common questions presented by each class outweigh any potentially individual questions. The Court also finds that a class action is superior to the other ways of adjudicating the claims presented in this case.

Having found all the express and implied requirements of Mo. Sup. Ct. R. 52.08 satisfied, the Court hereby certifies the three settlement classes.

Legal Conclusions Regarding Preliminary Approval of Class Action Settlement

A class action cannot be settled without court approval. Rule 52.08(e). This Court's role as gatekeeper, and "in reviewing the proposed settlement before preliminarily approving it and sending out notice to the class," is set forth in *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 382 (Mo. App. 1997). The Court conducts "a preliminary examination of the record before it and make[s] a preliminary determination as to whether it appears that a settlement class should be

tentatively certified." *Id.* at 383. The standard of review at this preliminary stage "is at most a determination that there is what might be termed 'probable cause' to submit the proposal to class members and hold a full-scale hearing as to its fairness." *Id.*

The Court factors considered are: "(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of Plaintiffs' counsel, class representatives and absent class members." *Id.* at 378 n.6; *see also Ring v. Metropolitan St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. 2000) (reciting *Byrd* factors and stating: "The most important consideration in determining if a settlement is fair, reasonable, and adequate is the strength of the plaintiffs' case on the merits balanced against the offered settlement.").

The Class Action Settlement is Preliminarily Approved

Kauffman asserts that this settlement was the product of mediation and was based on a mediator's proposal. Nothing in the settlement itself, the parties' briefing, or the history of this case suggests impropriety or dishonesty. The settlement does not preferentially favor Kauffman and appears to be the product of serious, informed, non-collusive negotiations. The Court finds that there is no existence of fraud or collusion behind the settlement, and that the settlement was the product of arms-length negotiations between experienced, capable counsel after meaningful discovery.

This matter has been pending before this Court for over five (5) years, with the Court having been presented to several issues and motions, including discovery motions, dispositive motions, and Rule 52.08 certification motions. The Court finds that the complexity, expense, and likely duration of the litigation favors settlement.

The hard-fought litigation and substantial discovery as evidenced by the record and docket in this matter demonstrates that there remain serious questions of law and fact which place the ultimate outcome of the litigation in doubt. The Court finds this factor likewise favors approval.

Here, the value of an immediate recovery heavily outweighs the mere possibility of future relief after protracted and expensive litigation. This is particularly true because the settlement includes injunctive relief to remedy the ongoing issues at Normandy Apartments and the alleged unconscionable lease provisions. Therefore, the Court finds this factor favors approval.

Finally, Class Counsel believe the settlement is fair and reasonable based on their long track record of overseeing multiple class settlements. Moreover, by executing the settlement agreement, Kauffman indicates his agreement that the settlement is fair and reasonable. Therefore, this factor also favors preliminary approval of the settlement.

Having found all factors favor finding that the proposed settlement satisfied Rule 52.08(e) for the purposes of the preliminary approval stage, the Court preliminarily approves the proposed settlement.

The Court hereby **GRANTS** Kauffman's *Amended Motion for Preliminary Approval of Class Action Settlement*.

THE COURT HEREBY ORDERS that the following three settlement classes are certified:

Class A: All Missouri tenants who resided at 501 W. 11th St., Kansas City, Missouri from January 1, 2014 through January 1, 2024.

Class B: All Missouri tenants sued by Hedgepath¹ pursuant to a residential lease from January 1, 2014 through January 1, 2024, who terminated their lease prior to the original end date of the lease. Membership in this Class does not

¹ "Hedgepath" as defined in the settlement agreement and as used herein includes Del Hedgepath, Del Properties, Del Hedgepath d/b/a Del Properties, as well as The Alps Apartment LLC, 4301 Main LLC, 220 Admiral, LLC, Congress Lofts, LLC, The Loretto, LLC, and the Norman School Lofts LLC.

depend on which name Hedgepath used in interacting with the class member.

Class C: All Missouri tenants from whom Hedgepath² collected a security deposit pursuant to a residential lease from January 1, 2014 through January 1, 2024. Membership in this Class does not depend on which name Hedgepath used in interacting with the class member.

THE COURT ORDERS that Hedgepath and his immediate family, along with the Court, its staff, and immediate family of the Court and its staff, are excluded from these three settlement classes.

THE COURT ORDERS that Derrick Kauffman is hereby appointed to be the Representative Plaintiff for each of the three settlement classes and Kauffman's counsel are hereby appointed as Class Counsel for each of the three settlement classes.

THE COURT FURTHER ORDERS that notice be provided to the class members in the proposed forms and manner presented in *Defendant/Counterclaim Plaintiff's Amended Motion for Preliminary Approval of Class Action Settlement*, as Exhibit A, Exhibit B, and Exhibit C thereto.

IT IS SO ORDERED.

June 26, 2024
DATE



THE HONORABLE CHARLES H. MCKENZIE

² "Hedgepath" as defined in the settlement agreement and as used herein includes Del Hedgepath, Del Properties, Del Hedgepath d/b/a Del Properties, as well as The Alps Apartment LLC, 4301 Main LLC, 220 Admiral, LLC, Congress Lofts, LLC, The Loretto, LLC, and the Norman School Lofts LLC.