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OCT 13 2023

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**IN THE COURT OF COMMON PLEAS  
CIVIL DIVISION  
BROWN COUNTY, OHIO**

**TINA MARCK, et al.** : **CASE NO. 2020-0399**  
**Plaintiffs,** : **(JUDGE SCOTT T. GUSWEILER)**  
**vs.** :  
**THOMAS PARTIN, et al.** : **DECISION ON OBJECTIONS**  
**Defendants.** :

This cause having been heard on Defendants' Objections to Magistrate's Decision and Order Granting Plaintiffs' Motion for Class Certification filed on August 3, 2023. Plaintiffs' Response to Defendants' Objections to Magistrate's Decision and Order Granting Plaintiffs' Motion for Class Certification was filed on September 11, 2023.

The Court has reviewed the transcript of proceedings of February 14 and 15, 2023 and filed with this Court on March 13, 2023. The Court has further revisited all previous pleadings filed in this matter and undertaken an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.

1. Counsel for Defendants had suggested to the Court that the Magistrate did not give full credence to recent decisions. They seem to come to this conclusion because of the order in which the Magistrate addressed the various decisions of the Supreme Court. The Magistrate's Decision followed the applicable Supreme Court and lower court decisions which set forth the procedures for a rigorous investigation and analysis of the Motion for Class Certification. The Court agrees with the various distinctions in the applicable case law as addressed by the Magistrate. The findings were adequately explained and are consistent with the law. The first objection is overruled.

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2. The second objection suggests that the Magistrate's Decision failed to consider the context of the contracts and the relationships in determining whether the Plaintiffs suffered any damages. Further, they suggest that the Magistrate was unduly influenced by a prior finding that the contracts were poorly drafted and ambiguous. A simple reading of the various documents in context with the provisions of the Ohio Revised Code concerning landlord-tenant law and land contract law demonstrates multiple violations of the respective provisions of those laws. The Magistrate reviewed over 2,000 pages of testimony, depositions and exhibits in making the findings concerning the various documents. To suggest that the trier of fact was swayed by a sentence in a prior finding ignores the rigorous analysis made in reaching the decision. The second objection is overruled.
3. The Defendants suggest that there is not an identifiable class. Every person who entered into any of the agreements with the Defendants is a member of the class. Each was subjected to unlawful provisions of contracts they entered into with the Defendants. They are a group of people who incurred monetary damages as the result of the actions of the Defendants. Anyone who signed such an agreement is a member of the class of persons damaged by the actions and illegal practices of Mr. Partin and his organizations. The third objection is overruled.
4. The fourth objection assumes that the Defenses' position regarding an identifiable class would be sustained. That is not the case herein. The Magistrate's Decision identified nine questions of law common to the entire class, and also identified 12 common questions of fact. The defense claims that the analysis is incorrect, but fails to demonstrate any actual errors in those findings. The fourth objection is overruled.
5. The fifth objection suggests that there is no commonality, that is, no presence of common facts or common questions of law. Considering the Court's findings in item 4 above, this objection is overruled.
6. The defense claims that the claims are not typical for the class. It is well established that each member of the class does not have to have the exact same claim as all of the other members of the class. All the members of the class appear to be damaged by the illegal actions of the Defendants. The Court is at a loss to understand how that is not typical. The sixth objection is overruled.
7. (A)The defense suggests that the requirements of Civil Rule 23 (B)(2) are not met. The decision holds that declaratory and injunctive relief would be similar and class wide and that the critical terms of every contract of every class member are the same. The Magistrate followed the decision of the

Twelfth District in Barrow v. New Miami, 2016-Ohio-340 and the Supreme Court in Hamilton v. Ohio Savings Bank, 82 Ohio St. 3d 67, 1998-Ohio-442 and Warner v. Waste Management, Inc., 36 Ohio St. 3d 91. The Court agrees with the finding that Civil Rule 23 (B)(2) has been satisfied by the rigorous inquiry made by the Magistrate. Objection 7(A) is overruled.


(B) The defense claims that the Magistrate was incorrect in finding that the criteria of Civil Rule 23 (B)(3) were met. The decision found that common questions predominate over questions affecting individualized members of the class and that the class action is superior to other available methods for a fair and efficient adjudication of the controversy. Clearly, with the potential for as many as 200 members of the class and subclass, it is much more efficient to resolve all matters in this one action. The mere fact that some members of the class may have different measures of damages is not a basis for denial of class certification. Ojalvo v. Ohio State Univ. Bd. of Trustees, 12 Ohio St. 3d 230. The defense does not convince the Court of their position. Objection 7(B) is overruled.

The Court notes that the standard of review on appeal is that of an abuse of discretion. The Court finds that the Magistrate exercised good discretion in making the decision.

In all other respects, the Court further having made an independent review of the facts pursuant to Civil Rule 53(D)(4) of the Ohio Rules of Civil Procedure and legal analysis that the Magistrate applied during his decision making, finds the Magistrate properly determined the factual issues and appropriately applied the law.

**BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court does hereby adopt in total the Magistrate's Decision filed on July 25, 2023. Defendants' Objections to Magistrate's Decision and Order Granting Plaintiffs' Motion for Class Certification is hereby overruled. Costs assessed to Defendants.

**THERE BEING NO JUST REASON FOR DELAY. THIS IS A FINAL APPEALABLE ORDER.**



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**JUDGE SCOTT T. GUSWEILER**

**TO THE CLERK:** Serve upon the following notice of the within Decision:

1. John Woliver, *Attorney for Plaintiffs*, 204 North Street, Batavia, OH 45103
2. Michael J. O'Hara, Aaron M. Beck, *Attorneys for Plaintiffs*, O'HARA, TAYLOR, SLOAN & CASSIDY, 25 Town Center Boulevard, Suite 201, Covington, KY 41017
3. Konrad Kircher, *Attorney for Defendants*, RITTGERS & RITTGERS, 12 E. Warren Street, Lebanon, OH 45036
4. Richard L. Goettke, *Attorney for Defendants*, ROSE & DOBYNS CO., L.P.A., 97 N. South Street, Wilmington, OH 45177