QUAN-EN YANG, *et al.*	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
G&C GULF, INC. d/b/a G&G TOWING, *et al.*	*	MONTGOMERY COUNTY
	*	Case No.: 403885V TRACK VI
Defendants.	*	
	*	Hon. Ronald B. Rubin Specially Assigned

* * * * * * * * * * *

SUGARLOAF PARTNERSHIP, LLC'S STATUS REPORT

Defendant Sugarloaf Partnership, LLC—improperly named as "Germantown Plaza"—by Gardner M. Duvall, Patrick D. McKevitt, and WHITEFORD, TAYLOR & PRESTON, LLP, files this *Status Report* to protest that several critical motions have been awaiting resolution for nearly two years, and in one instance the Plaintiff Class has not even answered a dispositive motion. This delay has caused, and continues to cause, prejudice to Sugarloaf by allowing an unmeritorious claim to linger indefinitely. Sugarloaf opposes any case management plan that contemplates a further "stay," "delay [in] consideration," or other mechanism that prevents the swift adjudication of dispositive motions and motions to de-certify the Defendant Class.

3. SUGARLOAF'S POSITION ON THE PLAINTIFF CLASS'S STATUS REPORT.

Sugarloaf agrees with certain positions taken in the *Status Report Regarding Litigation Going Forward and Request for Status Conference/Scheduling Hearing*, [Dkt. No. 885] filed on January 17, 2020 ("Plaintiffs' Report"). Specifically, Sugarloaf consents to Part 2 (withdrawal of Patner/Kramon & Graham); Part 4 (communication with defendants); and Part 5 (settlement without Court approval). Sugarloaf joins in the request for a Status Conference in Part 8.

Sugarloaf takes no position with respect to Part 1, which reflects statistics known only to Plaintiffs' Class Counsel. Sugarloaf emphasizes, however, the statement in Plaintiffs' Report that there remain only ***nine*** Defendant Class Members with economically viable claims. This figure, combined with other reasons explained in more detail elsewhere, belies the continued validity of maintaining this case as a bilateral class action.

2. SUGARLOAF OPPOSES THE ADDITION OF "NEW DEFENDANTS".

It is not entirely clear what, exactly, Plaintiffs' Report contemplates with respect to the New Defendants. Plaintiffs' Report at § 3. As explained in more detail below, Sugarloaf's position is that the Defendant Class should be de-certified, obviating the need for any discovery on the issue of adequacy. Should Plaintiffs wish to involve additional parties in this matter, the proper mechanism to do so is through proper service in accordance with the Maryland Rules.

3. SUGARLOAF DESIRES RESOLUTION OF SEVERAL PENDING AND PLANNED MOTIONS.

Sugarloaf previously filed a dispositive motion on its own behalf, and also adopted (i) papers filed by the undersigned, on behalf of now-settled parties, and (ii) papers filed by Kramon & Graham, as Defendant Class Counsel. *E.g.* [Dkt. Nos. 357, 358, 395, 418, 535, 536, & 654]. Of those, the following remain outstanding:

- *Motion De-Certify Defendant Class*, [Dkt. No. 357], filed on January 2, 2017. This motion is fully briefed, in accordance with the Court's briefing schedule. *See* Dkt. No. 376. Plaintiffs filed an opposition on February 12, 2018. Sugarloaf did not file a reply memorandum. [Dkt. No. 399].

- *Motion to Opt Out of Defendant Class Action*, [Dkt. No. 358], filed on January 2, 2017. This motion is fully briefed. Plaintiffs filed an opposition on February 12, 2018. Sugarloaf did not file a reply memorandum. [Dkt. No. 400].

- *Motion for Partial Summary Judgment*, [Dkt. No. 395], filed by the Defendant Class on February 8, 2018. This motion is fully briefed. Plaintiffs filed an opposition on February 26, 2018. [Dkt. No. 413].

- *Motion for Summary Judgment*, [Dkt. No. 418], filed on March 1, 2018. Despite the motion being pending for nearly two full years, the Plaintiff Class has not filed a response.

Sugarloaf cannot discern a good reason why these motions continue to linger, in one critical instance without any response being filed. *See* Plaintiffs' Report § 6. Sugarloaf desires, and is entitled to, timely resolution of the pending motions, and asks that the Court enter a scheduling order that addresses: (1) any outstanding briefing; (2) a date certain for oral argument; and (3) a date certain for the Court's ruling on the outstanding motions.

Additionally, Sugarloaf intends to file two new motions in the next several weeks. *First,* Sugarloaf will file a second motion to de-certify the Defendant Class, which calls for de-certification for additional, independent reasons that have emerged since the 2017 submission. Specifically, the reduction to only nine defendants with economically viable claims, and the change to Maryland Rule 2-231 issued by the Court of Appeals last year provide additional reasons for de-certifying the Defendant Class. By way of summary, the latter argument is distilled in the attached letter submitted to the Court of Appeals in support of the change to Maryland Rule 2-231. *See* Letter from G. Duvall to Rules Committee (April 4, 2019), attached as ***Exhibit 1***. The prudent act at this time is to decertify the Defendant class action, have the Plaintiff Class serve the defendants it wishes to sue, and allow the case to proceed in accordance with the Maryland Rules and sound case management. *Second,* Sugarloaf will file an additional motion for summary judgment, which asserts dispositive facts unique to Sugarloaf and, on

information and belief, not shared by any other parking lot owner.[1] Specifically, Sugarloaf's agent terminated its contract with G&G Towing before the start of the class period. Under Plaintiffs' three statutory causes of action, Sugarloaf has no liability for G&G's conduct that occurred after it terminated the parties' contract.

As with the pending motions, Sugarloaf asks the Court to enter a scheduling order that addresses: (1) any outstanding briefing; (2) a date certain for oral argument; and (3) a date certain for the Court's ruling on the outstanding motions.

Respectfully submitted,

Gardner M. Duvall
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Tel: (410) 347-9447
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Attorneys for Sugarloaf Partnership, LLC

[1] Sugarloaf was not a movant when Dkt. No. 418 was filed, it had not appeared in the case, and it had not retained counsel. Subsequently Sugarloaf intervened and adopted the pending motions previously filed by its retained motion. Facts unique to Sugarloaf could not have been the subject of the motions it adopted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this January 22, 2020, copies of the foregoing were mailed to:

Richard S. Gordon
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EXHIBIT 1

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April 4, 2019

Via Federal Express

Ms. Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, MD 21401

Re: 200th Report for the Standing Committee on Rules of Practice and Procedure
Support for Proposed Amendment to Rule 2-231

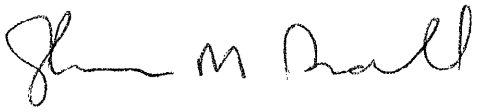
Dear Ms. Haines:

Please find attached:

1. My letter in support of the Proposed Amendment to Rule 2-231
2. The letter of Maryland Defense Counsel, Inc., in support of the Proposed Amendment to Rule 2-231

Your cooperation is greatly appreciated.

Yours truly,



Gardner M. Duvall

GMD:gmd

Attachments
cc w/ Attachments:
John T. Sly, Esq.

WHITEFORD, TAYLOR & PRESTON L.L.P.

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April 4, 2019

Ms. Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, MD 21401

Re: 200th Report of the Standing Committee on Rules of Practice and Procedure Support for Proposed Amendment to Rule 2-231

Dear Ms. Haines:

I write in support of the Committee's proposed amendment to Rule 2-231 concerning class actions, which "recommends that actions against a defendant class not be permitted at all[.]"[1] A defendant class action threatens defendants with loss of the right to service of process and an opportunity to defend—the most basic elements of constitutionally guaranteed due process. Efficiency cannot justify denial of due process, but the chief point of this letter is that accepted methods of case management in multi-defendant litigation obviate the usefulness of defendant class actions in Maryland. The Court should amend Rule 2-231 as proposed because defendant class actions are a historical artifact with no remaining utility but significant unfairness risks for defendants.

We have been unable to identify any published or unpublished instance of defendant class actions in Maryland prior to the Montgomery County case styled *Yang v. G&C Gulf, Inc.*, No. 403885V. The *Yang* case exemplifies the serious threat to due process created by defendant class actions. It would be unwise, however, to assume that the unconstitutional deprivation of due process presenting in *Yang* will be limited to that case. The utility of defendant class actions is so minimal, and the constitutional risk so severe, that it is appropriate to amend Rule 2-231 at this time to prevent future defendant class actions.

In 2015 Yang sued the company doing business as G&G Towing on behalf of a class of plaintiffs who claimed that their trespassing cars had been towed in violation of laws govern towing procedures. The class of trespassers first settled with G&G Towing, with an agreement

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[1] I represent six defendant property owners in the in the *Yang* case, each of which has objected to the original defendant class settlement and intervened in the matter.

prior to any hearing on the merits, including the term that the class would collect only 1.5% of the agreed settlement.

The plaintiff class then sued and served one owner of real property from which G&G towed trespassing vehicles, naming him as representative of a class of defendants numbering approximately 575. The members of the defendant class are not alleged to be jointly liable with each other. Many defendants *first learned* of the class action when it was settled on their behalf, years after being filed and after the course of the proceeding had been established. One of our clients learned of the action when he received a judgment for $140,000, which we had to have vacated for lack of prior notice.

The defendant class action was certified as a non-opt out Rule 2-231(b)(1) class, though the only plausible relief sought was money damages. *See* Rule 2-231(b)(3). The trial court justified omission of the constitutionally required right to opt out of a class action seeking primarily money damages[2] by reasoning that the defendant class action would fall apart because of opt outs.

The defendant class was certified over the objections of the defendant class representative, who recognized that he suffered a horrible conflict of interest because he was compelled to defend others at his own expense, unless he negotiated out of this personal predicament by settling the liability of the entire defendant class and thereby shifted most of his counsel fees onto other class members. While that defendant and his counsel have put up a valiant fight, the reality is that settlement is more valuable to him than to the absent defendant class members, and a much better economic proposition for him than litigating to a defense verdict.

The question posed by the *Yang* case at this juncture is why the Maryland Rules allow a plaintiff to single out a defendant, name him class representative against his will, and make him litigate on behalf of others at his own expense, without notice to absent class members that litigation of their rights is occurring. Although seemingly unknown to Maryland practice before, there is a limited history of defendant class actions at common law in England and the U.S. *See* 2 *Newberg on Class Actions*, § 5:2 (5th ed. 2012). Defendant class actions today "constitute a minute proportion of all class actions." *Id.*, § 5:3, p. 411.

Does an obscure and unfamiliar history ever justify litigation without notice to a defendant because he is the member of a certified class, or do other procedures suitably address mega-defendant litigation with due process and reasonable efficiency? Other provisions of the Maryland Rules are much better equipped to address complex multi-defendant litigation without the due process problems attendant to defendant class litigation.

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[2] *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct 2541, 2559 (2011); *Phillips Petroleum Co. v. Shutts*, 72 U.S. 797 (1985).

All class actions require at least one common issue of law or fact. Rule 2-231(a)(2). The same threshold permits the consolidation of actions in accordance with Rule 2-503(a), which provides:

> When actions involve a common question of law or fact or a common subject matter, the court, on motion or on its own initiative, may order a joint hearing or trial or consolidation of any or all of the claims, issues, or actions. An action instituted in the District Court may be consolidated with an action pending in a circuit court under the circumstances described in Code, Courts Article, § 6-104(b). The court may enter any order regulating the proceeding, including the filing and serving of papers, that will tend to avoid unnecessary costs or delay.

Id.; see also Rule 3-503(a). Cases may be transferred among judicial circuits for consolidated handling of common questions of law or fact. Rule 2-327(d).

In a consolidated action, defendants are served with process notifying them of their alleged liability and right to defend. They get to select their own counsel whose fiduciary duties run only to the defendant, not a class; file their own answer; and present defenses unique to themselves. In a class action like *Yang* certified pursuant to Rule 2-231(b)(1), or pursuant to Rule 2-231(b)(2), none of these rights needs to be honored.

Honoring the rights of civil defendants, however, can be achieved efficiently and effectively without risking deprivations by the class action vehicle. Maryland's consolidation rules expressly empower the trial court to regulate proceedings to avoid unnecessary costs or delay.

There are abundant resources to guide the fair and efficient management of complex proceedings, perhaps first and foremost the *Manual for Complex Litigation, Fourth* (Federal Judicial Center, 2004). For matters of economy and effectiveness, defendants tend to jointly retain counsel, without the courts needing to exercise any control. Defendants then tend to coordinate across the law firms which are retained, for additional economy and effectiveness, again without judicial action.

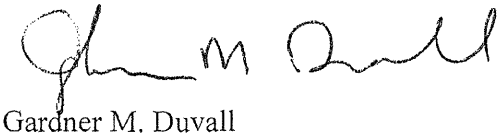
Beyond these self-imposed efficiencies, trial courts can rein order over the proceedings by naming liaison and lead counsel to enhance coordination and reduce burdens on the court. *See, id.*, § 10.2. Discovery can be regulated by imposing standard requests and logical sequencing, pursuant to the Chapter 400 discovery rules, and with the guidance of experience reflected in sources like the *Manual for Complex Litigation*, § 11.4.

The heart of consolidations and class actions is resolution of common issues. The disposition of these may or may not resolve the case, or end the utility of proceedings *en masse*. Rule 2-502 and Rule 2-501 provide efficient means to determine matters of law to advance mass proceedings, without requiring class certification.

Defendant class actions are appropriately characterized as a solution searching for a problem—except for problems associated with depriving defendants of their constitutional rights to due process, which the defendant class action bumps into immediately. Because their essence is redundant of other procedures which protect due process, defendant class actions are rarely used and are an invitation to mischief, where the plaintiff gets to choose which of one of many defendants will have to defend the others. This is simply unfair to every defendant.

Experience shows that the consolidation rules and best practices accomplish the same goals intended to be served by defendant class actions, without the inherent constitutional, procedural, and ethical problems created by defendant class actions under the current version of Rule 2-231. For these reasons, I respectfully support the Rules Committee's recommendation to amend Rule 2-231 to do away with defendant class actions. Your consideration of these thoughts is greatly appreciated.

Yours truly,



Gardner M. Duvall

cc: Patrick D. McKevitt, Esq.

10051002

MARYLAND DEFENSE COUNSEL, INC.

Promoting justice. Providing solutions.

April 3, 2019

Ms. Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, MD 21401

Re: 200th Report of the Standing Committee on Rules of Practice and Procedure
Support for Proposed Amendment to Rule 2-231

Dear Ms. Haines:

I write to express the support of Maryland Defense Counsel, Inc. ("MDC") for the Rules Committee's recommendation to amend Rule 2-231 to eliminate defendant class actions. MDC is a voluntary, statewide organization of defense lawyers dedicated to the integrity and preservation of the civil justice system. MDC endeavors to attain equal justice for all and to improve Maryland's courts and laws.

MDC agrees with and adopts the submission of Gardner M. Duvall regarding to the proposed amendment to Rule 2-231.

Thank you for your consideration of our organization's views.

Very truly yours,

John T. Sly
President
Maryland Defense Counsel, Inc.