Circuit Court for Baltimore County
Case No. 03-C-18-012567

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 533

September Term, 2021

KENISHA WRIGHT, ET AL.

v.

MORGAN PROPERTIES MANAGEMENT COMPANY, LLC

Wells, C.J.,
Arthur,
Kenney, James A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: February 13, 2026

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellants Kenisha Wright and Lisa Knight (together, "Tenants") filed a class action complaint alleging their landlord, appellee Morgan Properties Management Company, LLC ("Morgan"), defined and collected rent in a way that violated sections of Title 8 of the Maryland Code's Real Property Article and other Maryland statutes. Tenants sought a declaration that Morgan's practices are illegal and require Morgan to disgorge money it obtained as a result of allegedly illegal fees it collected from Tenants, and the class they represent, since December 14, 2015. After discovery, both parties moved for summary judgment. The Circuit Court for Baltimore County denied Tenants' motions for class certification and summary judgment and granted Morgan's motion for summary judgment. Tenants filed this timely appeal.

Tenants put forth six questions for our review, which we rephrase and condense into five:[1]

1. Did Morgan's lease provisions and practices violate § 8-208 of the Real Property Article?

[1] Tenants' verbatim questions are:

1. Whether Morgan violated Real Property § 8-208(d)(3)(i)'s prohibition against landlords imposing additional charges related to the late payment of rent beyond a 5% late fee, and, if so, whether the circuit court erred in granting Morgan summary judgment.

2. Whether Morgan's residential lease defining all charges as "rent" and permitting allocation of payments for rent to fees and other non-rent charges violated Real Property § 8-208(d)(2), and, if so, whether the circuit court erred in granting Morgan summary judgment.

2. Are Tenants' claims under § 8-208 of the Real Property Article barred by the collateral attack doctrine?

3. Did Morgan's lease provisions and practices violate the Maryland Consumer Debt Collection Act?

4. Did Morgan's lease provisions and practices violate the Maryland Consumer Protection Act?

5. Did the circuit court err by denying Tenants' class certification?

For the reasons set forth below, we determine that based on the Supreme Court of Maryland's holding in *Westminster Management, LLC v. Smith*, 486 Md. 616 (2024), a remand without affirmance or reversal is appropriate. *Westminster* was decided after this appeal was filed. We conclude it is prudent for the circuit court to first reevaluate the evidence considering *Westminster* before we undertake any analysis of potential error.

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3. Whether a landlord that charges its tenants illegal fees and threatens eviction if they do not pay them violates the Maryland Consumer Debt Collection Act and the Maryland Consumer Protection Act, and, if so, whether the circuit court erred in granting Morgan summary judgment.

4. Whether the Maryland Uniform Declaratory Judgments Act entitles Tenants to declaratory relief on their claims under the Real Property Code, the MCDCA, and the MCPA, and, if so, whether the circuit court erred in granting Morgan summary judgment.

5. Whether, when the legal grounds on which the circuit court based its summary judgment decisions have been reversed, the circuit court's denial of summary judgment to Tenants on their RP § 8-208(d) and declaratory relief claims should also be reversed.

6. Whether, when the identity of class members and the amount of their damages are objectively determinable from tenant records and the other requirements of Rules 2-231(b) and/or (c) are satisfied, the circuit court erred or abused its discretion in denying class certification.

Further, as we discuss, either the record is insufficiently developed for us to make a legal assessment of the other issues Tenants raise, or as is the case with the issue of class certification, the circuit court should have the opportunity to reevaluate its findings, including holding additional hearings, if it wishes.

FACTUAL AND PROCEDURAL BACKGROUND

Morgan is a property management company that, in September 2019, managed 47 residential properties in multiple counties in Maryland. Both tenants lived in multi-family apartment buildings located in Baltimore County and managed by Morgan.

Wright signed a lease in June 2017 and started living at the Seneca Bay apartment complex in July 2017. Seneca Bay was an apartment complex Morgan acquired in November 2015. Wright vacated the property in November 2018 after she failed to pay rent. Wright stated her final account balance with Seneca Bay when she moved out was $2,100.84, but she disputes whether that balance is accurate as she does not believe she owes that amount.

Knight signed a lease and resided at Oak Grove apartments beginning in August 2016. According to Morgan, Knight is still a resident at Oak Grove, and the record shows she was a resident through at least 2021.

In their individual affidavits, both dated January 19, 2021, Tenants stated Morgan filed multiple failure to pay rent complaints against them in the District Court of Maryland

for Baltimore County.[2] Tenants also stated they "often" paid the full amount of rent Morgan claimed was owed before summary ejectment proceedings scheduled in district court occurred, so there was no judgment entered against them. Tenants both stated they never attended summary ejectment proceedings because they were working, so any judgments entered against them were default judgments.

The operative complaint for this appeal, amended from Tenants' first complaint,[3] was filed by Tenants on October 9, 2019, in the Circuit Court for Baltimore County. The complaint is a class action brought in the Tenants' individual capacities and on behalf of the class, comprised of former or current tenants of Morgan properties since December 14, 2015, who were charged late fees for not paying rent that exceeded 5% of their monthly rent.

[2] The process for landlords to remove residential tenants who fail to pay rent is through a summary ejectment proceeding in district court under Maryland Code § 8-401 of the Real Property Article. The parties sometimes refer to these proceedings as "failure to pay rent" or "FTPR" proceedings. To maintain consistency with the Maryland Code and precedent, we refer to these district court proceedings as "summary ejectment proceedings."

[3] Tenants filed their initial class action complaint on December 14, 2018, and discovery took place in the months before the amended complaint was filed on October 7, 2019. The amended complaint originally had four named class members: Latonya Roberson, Kenisha Wright, Jeff Forbes, and Lisa Knight. The circuit court struck the appearance of Tenants' counsel on behalf of Latonya Roberson on December 10, 2019, and she never hired new counsel nor participated in discovery afterward. Forbes eventually decided he did not want to be a class representative, and his case was dismissed on April 8, 2020.

Tenants' complaint stems from their allegations that Morgan's lease provisions and practices violated two provisions of Maryland Code § 8-208(d) of the Real Property ("RP") Article, which make it illegal for a landlord to use a lease provision that "(2) [h]as the tenant agree to waive or to forego any right or remedy provided by applicable law; [or] (3)(i) [p]rovides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent . . . ." In other words, if the resident(s) of a residential building fail to timely pay their monthly rent, RP § 8-208(d)(3)(i) caps the amount that a landlord can charge the resident a "late fee" at 5% of the residents' monthly rent. At the time Tenants' complaint was filed, the definition of "rent" under Title 8 of the Real Property Article was not yet defined by statute or case law.

Tenants' complaint alleged Morgan's lease provisions and practices violated RP § 8-208(d) in several ways.[4] Tenants primarily alleged Morgan's lease and practices violated

[4] Tenants' verbatim allegations of Morgan's illegal lease provisions and practices in their amended complaint state:

> First . . . Morgan has charged, attempted to collect, and/or collected what are effectively penalties related to the late payment of rent in excess of 5% of the amount of rent due for the period for which the rent was delinquent, namely the premature and excessive "filing fees." The "filing fees" are often charged at the same time as 5% late fees, without having been incurred by Morgan, and without having been awarded by any court.
>
> Second . . . Morgan charges a 5% late fee on the full amount of tenants' monthly rent, even when the tenant has partially paid.
>
> Third . . . pursuant to the form residential leases used by Morgan, including the leases signed by [Tenants], Morgan defines all charges allegedly due and owing to Morgan, including the illegal and excessive fees described above, and numerous other charges, as "rent," and claims the right to misallocate

the 5% cap in RP § 8-208(d)(3)(i) because, when Tenants failed to pay their rent, Morgan charged them a "late fee" that was equal to 5% of their monthly rent ("5% Late Fee"), and on the same day, Morgan also charged Tenants "filing fees" that were applied to one or more of the following: court costs for filing a summary ejectment complaint in district court; payment to Morgan's court filing agent, "eWrit," to file the summary ejectment complaint; and other general "overhead" costs for filing the summary ejectment complaint ("Filing Fees"). Tenants alleged Morgan's lease provisions and practices of charging both the 5% Late Fee and Filing Fees on the same day—without first receiving a judgment in district court for the Filing Fees—amounted to an illegal late fee that exceeded the 5% of monthly rent cap for late fees under RP § 8-208(d)(3)(i).

Next, Tenants alleged Morgan's form leases violated RP § 8-208 by illegally defining the term "rent" to include both the "Base Monthly Rent"—the amount owed solely for one month of a typically 12 or 13 month lease—and "Additional Rent," which included "late charges, insufficient funds charge, attorney fees, court costs, collections costs, utility charges, pet rent and related charges, damages charges, amenity fees and parking charges." Tenants argue the Additional Rent charges are actually "non-rent" charges, and it is illegal for a landlord to include non-rent charges as rent in the lease and file a summary ejectment action for non-rent charges.

> tenants' payments intended as rent first to these non-rent and/or illegal charges . . . .

Finally, Tenants alleged Morgan violated RP § 8-208(d)(2) because, when Tenants made a partial payment toward their monthly rent, Morgan's leases allowed them to allocate the partial payment toward Additional Rent, which Tenants argue are non-rent charges, before allocating it to Base Monthly Rent. Further, Tenants alleged Morgan still charged a 5% late fee when Tenants made partial payments toward their monthly rent. This violated RP § 8-208(d)(2), according to Tenants, because it allowed Morgan to file a summary ejectment proceeding in district court for failing to pay rent even though Tenants paid, or partially paid, rent for the month.

The first three counts of Tenants' complaint alleged Morgan's illegal lease provisions and practices violated: (1) RP § 8-208(d); (2) the Maryland Consumer Debt Collection Act ("MCDCA"), Maryland Code § 14-202(8) of the Commercial Law ("CL") Article; and, (3) the Maryland Consumer Protection Act ("MCPA"), CL §§ 13-301 and 13-303.

Tenants' fourth count alleged restitution and unjust enrichment because of Morgan's allegedly illegal practices, but Tenants voluntarily dismissed this count on July 8, 2020.

Tenants' fifth count sought a declaration under the Maryland Uniform Declaratory Judgments Act, Maryland Code § 3-406 of the Courts & Judicial Proceedings ("CJP") Article that: Morgan is not entitled to charge the allegedly illegal fees; rent for Tenants is defined only as base monthly rent; Morgan must disgorge all illegal fees obtained from Tenants and class members; and Morgan is enjoined from attempting to collect allegedly

illegal fees. In the alternative, Tenants seek a declaration that "Morgan is not entitled to assistance of Maryland courts in enforcing" the allegedly illegal fees. Accordingly, Tenants' complaint requested certification of their class, declaratory judgments, preliminary and permanent injunctions, and a damages award in excess of $75,000.

The parties engaged in extensive discovery. Both parties include discovery information in the record that shed light on their arguments, including Tenants' leases,[5] Tenants' ledgers,[6] some late payment and eviction notices sent to Tenants, and Morgan's Delinquent Rent Collections SSOP.[7] Tenants included excerpts of depositions for Morgan's Vice President covering properties in Baltimore County, Sean Organ, as a corporate designee, and the depositions for Angela Wingate, property manager at Seneca Bay (where Wright lived), and Christen Cortes, property manager at Oak Grove (where

[5] Although Morgan states leases across its properties vary, the substantive provisions of Wright's and Knight's leases relevant to this appeal were identical.

[6] Morgan maintained ledgers detailing payments made by residents and charges assessed by Morgan, which included the date, a "charge code," and description of each payment or charge.

[7] Morgan states the "Delinquent Rent Collections SSOP" is the only company-wide operating procedure relevant to this case, "which contains general guidelines regarding late fees and delinquency but does not discuss filing fees." The SSOP is an 11-step procedure providing guidance to individual building managers on handling late rent payments, assessing 5% Late Fees, and filing summary ejectment complaints with minor deviations noted on some steps for certain counties. Morgan states the SSOP provides individual properties with discretion in collecting late or unpaid rent across jurisdictions.

Knight lived).[8] Morgan included excerpts of depositions of the Tenants and some formerly named class representatives of Tenants' class action complaint.

On May 5, 2020, Tenants filed a motion to certify the class and appoint Wright and Knight as class representatives. Morgan opposed the motion. On October 20, 2020, the court denied class certification in a written order and explained its denial in a memorandum.

On November 5, 2020, Morgan filed a motion for summary judgment. On January 19, 2021, Tenants filed a cross-motion for summary judgment. On May 20, 2021, the court denied Tenants' motion for summary judgment and granted Morgan's motion for summary judgment.

On June 16, 2021, Tenants appealed the court's order denying Tenants' motion to certify the class and the court's order granting Morgan's motion for summary judgment and denying Tenants' cross-motion for summary judgment. On November 1, 2021, briefing for this appeal was stayed pending the appeal of *Smith v. Westminster Management, LLC*, 257 Md. App. 336 (2023), which involved facts and questions of law like those in this appeal. This Court issued its *Westminster* opinion on March 3, 2023, and Tenants' appeal was stayed a second time when the Supreme Court of Maryland granted certiorari. On

[8] Sean Organ, the Vice President for Morgan covering Tenants' region, was deposed as Morgan's corporate designee. Angela Wingate, property manager at Seneca Bay, and Christen Cortes, property manager at Oak Grove, were also deposed.

March 25, 2024, the Supreme Court affirmed our decision in *Westminster Management, LLC v. Smith*, 486 Md. 616 (2024).

STANDARD OF REVIEW

> Summary judgment is proper when "there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law." Md. Rule 2-501(a). We review the circuit court's grant of summary judgment de novo. We conduct an independent review of the record to determine whether a general dispute of material facts exists and whether the moving party is entitled to judgment as a matter of law. This Court does not endeavor to resolve factual disputes, but merely determines whether they exist and are sufficiently material to be tried. In reviewing a declaratory judgment entered pursuant to a motion for summary judgment, we determine whether it was correct as a matter of law and accord no deference to the circuit court's legal conclusions.

Bd. of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken, 483 Md. 590, 616 (2023) (some internal citations and quotations omitted) (cleaned up).

DISCUSSION

I. The Circuit Court Should Have the Opportunity to Reevaluate its Summary Judgment Decision in Morgan's Favor Considering *Westminster*.

A. Circuit Court's Summary Judgment Decision

In the circuit court's opinion and order granting Morgan's motion for summary judgment and denying Tenants' cross-motion for summary judgment, the court found Morgan's Filing Fees and other allegedly illegal non-rent charges are not precluded by RP § 8-208 because

> the statute does not preclude such "costs" and the legislature has had the ability to add such a provision to the statute and has failed to do so. [Tenants'] argument that only costs awarded by courts can be changed is not contemplated by the statute and would encourage more litigation and require

> landlords to obtain further judgments to reclaim costs they incurred due to the tenant's failure to pay rent.

Additionally, the circuit court said Tenants' claims under RP § 8-208 "pose[] problems with regard to the [Tenants] as judgments have been entered in the District Court against them in FTPR actions. To allow this case to go forward would constitute a collateral attack on those judgments as this Court noted in its earlier Opinion on class certification." In the circuit court's opinion on class certification, which was issued prior to its summary judgment decision, the court explained one of the reasons Tenants' class did not meet the "typicality" requirement was because the class did not exclude individuals who already had enrolled judgments against them in district court summary ejectment proceedings:

> Ms. Wright was evicted from her apartment. Such an event would require a judgment in the District Court for Baltimore County. The validity of that judgment, and the other judgment of the District Courts in the other counties where the putative [Tenants] may have done business with Morgan cannot now be attached. *See LVNV Funding v. Finch*, 463 Md. 586, 607–11 (2019). Under Maryland Rules 2-535 and 3-535, such judgments are only reviewable, at this date, for fraud, jurisdictional mistake or irregularity. None of these conditions appear to be present here and, if they were present, would be best taken up in the individual cases at the District Courts that granted the various judgments.

It is unclear whether the circuit court was provided, or reviewed, any district court judgments entered against Wright or Knight, or if the court simply assumed they must exist.[9] Additionally, the court's analysis of the definition of "rent" in RP § 8-208 was

[9] In the circuit court's memorandum and order denying class certification, it stated "Morgan filed failure to pay rent actions against [Knight] on 33 separate occasions and on none of these occasions did she attend the court proceedings." We do not see anything in the record explaining what relief was granted to Morgan, or how many summary ejectment actions were filed against Wright.

written prior to the Supreme Court's decision in *Westminster*, which, as discussed below, defined rent under Title 8 of the Real Property Article.

B. Parties' Contentions

Tenants contend the circuit court erred in finding Morgan's definition of rent in its lease and rent collection practices did not violate RP §§ 8-208(d)(2) and 8-208(d)(3)(i), especially following the Supreme Court's decision in *Westminster*. Tenants argue Morgan's lease provisions and practices are similar to the lease provisions and landlord practices deemed illegal in *Westminster*. Additionally, Tenants argue Morgan's practice of charging Filing Fees in addition to the 5% Late Fees whenever Tenants were late on monthly rent payments falls squarely within activity the *Westminster* Court identified as a violation of RP § 8-208(d)(3)(i).

In its brief, Morgan does not argue their lease or practices did not violate RP § 8-208 but instead argues Tenants' claims are an impermissible collateral attack on district court summary ejectment judgments. Before addressing Morgan's collateral attack argument, we discuss *Westminster* and its impact on RP §§ 8-401(a) and 8-208. \

C. Analysis

RP § 8-401(a) provides a process for landlords to repossess a residential property "[w]henever the tenant or tenants fail to pay the rent when due and payable . . . ." *See also Westminster*, 486 Md. at 627. Compared to filing a complaint in circuit court, RP § 8-401(a) provides a more efficient and expedited way for landlords to initiate summary ejectment proceedings and evict residents who fail to pay rent. It also provides detailed

procedures for landlords to follow when conducting summary ejectment proceedings. *Id.* Landlords of apartment buildings with five or more apartment units, like Morgan, are also subject to RP § 8-208. Specifically at issue in this appeal are two provisions of RP § 8-208(d), which state in relevant part:

> **(d) A landlord may not use a lease or form of lease containing any provision that:**
>
> (1) Has the tenant authorize any person to confess judgment on a claim arising out of the lease;
>
> **(2) Has the tenant agree to waive or to forego any right or remedy provided by applicable law;**
>
> **(3)(i) Provides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent;** or . . . .

(emphasis added). In *Westminster*, the Supreme Court of Maryland interpreted the term "rent" under Title 8 of the Real Property Article and determined whether the standard form lease and eviction practices of Westminster Management Company, the apartment building owner, violated RP § 8-208(d). 486 Md. at 637–661.

The tenants in *Westminster* alleged Westminster's lease provisions and practices were illegal because it charged unpaid rent that exceeded the 5% cap under RP § 8-208(d)(3)(i). *Id.* at 633–34. Additionally, the tenants alleged Westminster's leases were illegal because they allowed for tenants' rent payments to first be applied to non-rent payments, violating RP § 8-208(d)(2). *Id.*

Westminster's standard form lease defined rent as "[a]ll payments from Tenant to Landlord required under the terms of this Lease, including, but not limited to, Court

costs[.]" *Id.* at 631. If tenants violated the lease by failing to timely pay their monthly rent payments, several lease provisions added extra charges, including: "a 'Late Charge' provision obligating the tenant to pay, 'as additional rent,' a charge of 5% of the monthly rental"; "an administrative fee in the amount of 10% of 'current monthly rental' and obligating tenants to pay attorney's fees"; and a "provision stating that if the landlord employs an agent to institute proceedings to collect rent or repossess the premises, the tenant must pay the reasonable costs incurred for the agent's services if the rent was due and payable when the proceedings were initiated[.]" *Id.* at 631–32. Additionally, the lease specified that any monthly rent payments could be applied to late charges, agent's fees, court costs, and other non-rent obligations before being applied to past or current rent due.[10] *Id.* at 632.

Westminster took the following actions if the tenant did not pay by the fifth day of the month:

> (1) charges a 5% late fee on or about the sixth day of the month; (2) submits information about the delinquent tenants to its agent, eWrit, which then files summary ejectment actions against those tenants; and (3) charges each tenant, sometimes before a complaint is filed, both a "summons fee" of at least $20 and an "agent fee" or "filing fee" of $10. The "summons fee" is

[10] Westminster's leases' "Application of Payments" provision stated:

> All payments from Tenant to Landlord may, at Landlord's option, be applied in the following order to debts owed by Tenant to Landlord: late charges, agent's fees, attorney's fees, court costs, obligations other than rent (if any) due Landlord, other past due rent other than monthly rent, past due monthly rent, current monthly rent.

Westminster, 486 Md. at 651–52.

> reimbursement for the amount the District Court charges to file the complaint, which varies by jurisdiction. The "agent fee" or "filing fee" is reimbursement for the amount Westminster pays eWrit to prepare and file summary ejectment complaints. Each of the Tenants was charged one or more of those fees on one or more occasions after being late with their rent.

Id. at 632. Another round of fees would be charged to the tenants if Westminster continued with further eviction actions and a judgment was entered in District Court.[11] Westminster also sent notices to tenants advising they would be evicted if they did not pay rent, including the extra filing and agent fees, before Westminster filed for a warrant of restitution. *Id.* at 633.

Our Supreme Court explained the legislative purpose underlying RP § 8-208 is "to regulate leases for residential property in Maryland for the protection of tenants." *Id.* at

[11] The Court summarized:

> Westminster charges a second set of fees if it proceeds further toward eviction. If the District Court enters judgment for Westminster in a summary ejectment action, and if the tenant has not paid in full by midmonth, Westminster, through eWrit, files for a warrant of restitution authorizing the sheriff to carry out an eviction. Upon taking that step, Westminster charges tenants a "writ fee" of up to $50, depending on the jurisdiction. Through January 2018, Westminster charged tenants at Baltimore City properties a "writ fee" of $80 even though the court fee at that time was only $50. Westminster also charged tenants an additional $12 "agent" or "writ agent" fee when eWrit filed for a warrant of restitution, even though eWrit did not charge Westminster any additional fee for that service. After this litigation began, Westminster credited the $12 agent fees and the $30 overcharge for the Baltimore City writ fees to the accounts of then-current tenants who had been charged those fees, including two of the named plaintiffs. The credits did not include interest, nor were any reimbursements made to former tenants.
>
> *Westminster*, 486 Md. at 632–33.

657. The Court further recognized RP § 8-208(d) is remedial in nature such that "we construe [RP § 8-208] liberally to further its protective purpose."[12] *Id.* at 657–58.

In light of these findings, *Westminster* made three important holdings. *First*, the Court defined "rent" for purposes of residential summary ejectment proceedings under RP 8-401 as "the fixed, periodic payments a tenant owes for use or occupancy of a rented premises[,]" and stated the terms of any lease that expand the definition further "are ineffective for purposes of § 8-401." *Id.* at 625, 649–51. *Second*, the Court held any lease provision allowing a landlord to "allocate all tenant payments, including those expressly designated as 'rent,' to other, non-'rent' obligations" violated RP § 8-208(d)(2) because it "allows a landlord to bring a summary ejectment proceeding based on allegedly overdue 'rent' that the tenant has already paid." *Id.* at 625, 651–54. *Third*, the Court held the penalty or fees landlords can charge for late payment of rent, which the statute caps at 5%, "is inclusive of any costs of collection other than court-awarded costs." *Id.* at 625. Therefore, RP § 8-208(d)(3)(i):

> precludes a landlord from including provisions in a lease permitting it to charge late penalties or fees greater than 5% of the rent due for the period at issue. When a lease provides for a 5% late penalty/fee, the lease may not also

[12] This is contrasted by the Court's discussion of the purpose of RP § 8-401, the summary ejectment statute, which it explained "is to allow landlords to repossess a rented premises upon nonpayment of rent quickly and efficiently, subject to the right of tenants to become current on their rent obligation (plus late fees and any awarded court costs) at any time before eviction." *Westminster*, 486 Md. at 648. In doing so, the Court expressly rejected the idea that RP § 8-401 was considered a remedial statute for landlords to be construed liberally in landlords' favor. *Id.* at 648 n.19. The Court said the differing purposes behind the statutes, among other things, shows "[t]he General Assembly's statutory scheme does not subject tenants to summary ejectment proceedings for failure to pay non-'rent' obligations." *Id.* at 652.

> permit the landlord to charge additional fees triggered by late payment. Section 8-208(d)(3)(i) does not, however, preclude a landlord who prevails in a summary ejectment proceeding from recovering fees properly awarded as court costs, as provided in Real Property § 8-401(e).

Id. at 625, 661.

At this point we end our analysis and remand to allow the circuit court to make an independent assessment of the facts in light of our Supreme Court's decision in *Westminster*. We emphasize that this remand is not a reversal or affirmance of the circuit court's prior decision. We also leave open for the circuit court's determination whether additional testimony need be taken, or evidence received, particularly considering our overall remand, as we discuss the next sections of this opinion.

II. We Remand for the Circuit Court to Determine Whether Tenants' Claims Under RP § 8-208 Are an Improper Collateral Attack on Prior Summary Ejectment Judgments in District Court.

A. Parties' Contentions

Morgan argues Tenants' claims under RP § 8-208 are barred because it amounts to an impermissible collateral attack on enrolled district court judgments entered against Tenants in prior summary ejectment proceedings. Specifically, Morgan states in its brief to this Court:

> Tenants' claim arising under RP § 8-208 is based on the theory that Morgan "charges late fees of $29.00 to $50.00 above the 5% late fee rent allowed by Maryland law and calculates its 5% late fee o[n] the gross monthly rent even if the tenant has paid a portion of the rent in violation" of RP §8-208(d). (E1595). As the Trial Court recognized, however, both the allegedly excessive late fees and allegedly improper "rent" were already awarded to Morgan and against Tenants as part of enrolled judgments entered by the District Court in underlying RP §8-401 proceedings. (E.1593-94, 1166-67). Notwithstanding the Supreme Court's decision in *Westminster*, Tenants' subsequent challenge to both the charges comprising "rent" and the

> calculation of late fees is an impermissible collateral attack on those enrolled judgments that runs afoul of the Supreme Court's holding in *LVNV Funding LLC v. Finch*, 463 Md. 586 (2019).

Morgan cites to a transcript of Knight's deposition, where she agrees that Morgan filed summary ejectment cases in district court for each of the 33 months she failed to make timely rent payments and states she did not show up to court for any of those cases.

In Tenants' reply brief, they agree Morgan obtained default judgments but contend they were only for summary ejectment proceedings in which Morgan repossessed the apartments and collected the 5% Late Fee. Tenants argue their lawsuit requests damages related to the extra $29 and $50 fees, not the 5% Late Fee recovered in the summary ejectment proceedings. Since Tenants are not seeking to void or vacate the summary ejectment judgments, and the $29 and $50 fees were not a part of the judgments in Tenants' summary ejectment proceedings, Tenants argue their complaint is not a collateral attack on the prior summary ejectment judgments against them.[13] Tenants also argue summary ejectment proceedings are for possession of real property via *in rem* or *quasi in rem* actions, which are not money judgments. Finally, Tenants say Morgan failed to meet its burden to prove the suit was a collateral attack because it failed to cite any district court judgments that would be invalidated by Tenants' claims in this case.

[13] Tenants point out that Morgan expressly disclaimed a collateral estoppel defense. In Morgan's opposition to Tenants' cross-motion for summary judgment, it states "Morgan Properties does not assert a collateral estoppel defense."**]** Likewise, in Morgan's appellee brief, it only argues collateral attack doctrine. Therefore, we only consider the collateral attack doctrine here.

D. Analysis

1. We Remand to the Circuit Court to Determine Whether Prior District Court Summary Ejectment Judgments in Morgan's Favor Prevent Tenants from Collaterally Attacking Those Judgments in Tenants' RP § 8-208 Claims Here.

After a final judgment is entered by a circuit court or district court, parties have 30 days to file a motion requesting the court to exercise revisory power over the judgment. Md. Rule 3-535(a); *see also* Md. Rule 2-535 (identical circuit court rule). After 30 days, the judgment is enrolled and "the court may revise it only upon a finding of fraud, jurisdictional mistake, or irregularity, which are narrowly construed." *LVNV Funding LLC v. Finch*, 463 Md. 586, 607–08 (2019) (citations omitted). "Collateral attacks, whether in the court that entered the judgment or in any other court, are even more severely limited and are permitted only when the court that rendered the judgment had no jurisdiction to do so." *Id.* at 608.

A collateral attack is:

> an attempt to impeach the judgment by matters dehors the record, before a court other than the one in which it was rendered, in an action other than that in which it was rendered; an attempt to avoid, defeat, or evade it, or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it[.]
>
> In other words, if the action or proceeding has an independent purpose and contemplates some other relief or result, although the overturning of the judgment may be important or even necessary to its success, then the attack on the judgment is collateral.

Klein v. Whitehead, 40 Md. App. 1, 20 (1978) (internal citations and quotations omitted). "The prohibition against collateral attack . . . prevents a person from challenging the validity of the existing judgment from attacking the judgment itself rather than merely its

scope or effect." *Id.* at 21; *see also United Book Press, Inc. v. Md. Composition Co., Inc.*, 141 Md. App. 460, 476 (2001) ("Collateral attacks on judgments are prohibited in order to stop a challenge to the validity of a final judgment, while *res judicata* and collateral estoppel prevent a party from subsequently challenging the effect of a prior judgment.").

Our analysis of whether Tenants' complaint is a collateral attack on Morgan's alleged summary ejectment judgments is frustrated by the fact that the record does not contain any judgments allegedly entered against Wright or Knight in district court summary ejectment proceedings. For this reason, we remand to the circuit court to determine if Morgan was awarded any relief in prior summary ejectment judgments in district court, and if so, whether those judgments included an award for additional illegal fees as rent under the Supreme Court's definition in *Westminster*.

2. The Collateral Attack Doctrine Does not Bar Tenants' MCDCA, MCPA, or Declaratory Relief Claims.

In a footnote, Morgan asserts "Tenants' MCDCA, MCPA, and declaratory relief claims are derivative of their RP §8-208 claim," so those claims are barred by the collateral attack doctrine. We disagree. Our remand only applies to determine whether Tenants' claims *under RP § 8-208* are barred by the collateral attack doctrine. For the reasons below, we conclude the collateral attack doctrine does not bar Tenants' MCDCA, MCPA, or declaratory relief claims.

In *LVNV Funding v. Finch*, the Supreme Court, after holding some of the debtors' claims were barred by the collateral attack doctrine, explained the debtors' relief was not entirely foreclosed because the debtors were also seeking damages through private causes

of action created under the MCALA, Business Regulation Article §§ 7-301 and 7-401, and MCDCA, Commercial Law Article ("CL") § 14-203. 463 Md. at 611. The Court held CL § 14-203 provided a private remedy for "'any damages' including for emotional distress[,]" and:

> Although the District Court judgments may not be collaterally attacked, BR § 7-401, read in conjunction with § 7-101(c) [defining a collection agency], would permit declaratory and injunctive relief precluding LVNV from taking any action to enforce those judgments and for any damages incurred by the plaintiffs as the result of LVNV's collection efforts.

Id. at 612. The Court then remanded for the circuit court to reassess debtors' damages under CL § 14-203.

In this case, Tenants allege violations of the MCDCA and MCPA, both of which provide a private cause of action. CL § 14-203 ("A collector who violates any provision of this subtitle is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury."); CL § 13-408 ("[A]ny person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by this title."). Moreover, summary ejectment proceedings provide limited remedies for landlords, and Tenants would not have been able to bring claims under the MCDCA and MCPA in the summary ejectment proceedings. *See Shum v. Gaudreau*, 317 Md. 49, 60 (1989) ("To accomplish the objective of speedy adjudication, our General Assembly, like legislatures in other states, limited a summary ejectment action to repossession of premises and rent actually due."). The circuit court did not undertake this analysis. Consequently, we remand for the

court, in light of *Westminster*, to determine whether the MCDCA, MCPA, or declaratory relief can provide Tenants with avenues for relief as the collateral attack doctrine does not bar Tenants' MCDCA, MCPA, or declaratory relief claims.

III. On Remand, the Circuit Court May Reevaluate its Decision on Class Certification, if it Wishes.

A. Standard of Review

"A trial court's decision regarding certification of a class action is ordinarily reviewed for an abuse of discretion." *Westminster*, 486 Md. at 661 (citing *Creveling v. Gov't Emp. Ins. Co.*, 376 Md. 72, 90 (2003)); *see also Freund v. McDonough*, 114 F.4th 1371 (Fed. Cir. 2024) ("Questions of class certification under Rule 23 are reviewed for abuse of discretion.") (citing William B. Rubenstein, 1 Newberg & Rubenstein on Class Actions § 14:19 (6th ed. 2024) (hereinafter "Newberg & Rubenstein")).

> In the class action context, an abuse of discretion occurs when a district court materially misapplies the requirements of Rule 23. A district court also abuses its discretion when it clearly errs in its factual findings. To find that the district court clearly erred in the factual findings underlying a certification decision, we must be left with the definite and firm conviction that a mistake has been committed.

Mr. Dee's Inc. v. Inmar, Inc., 127 F.4th 925, 929–30 (4th Cir. 2025) (internal citations and quotation marks omitted).

"'However, whether the trial court used a correct legal standard in determining whether to grant or deny class certification is a question of law,' which we review without deference." *Westminster*, 486 Md. at 661 (quoting *Creveling*, 376 Md. at 90); Newberg & Rubenstein § 14:19 ("Appellate courts review legal issues *de novo* and show less deference

to a trial judge's statement of law than . . . to her findings of fact."). "Because [Rule 2-231] is similar to Rule 23 of the Federal Rules of Civil Procedure, we consider interpretations of the federal rule to be helpful to our analysis." *Westminster*, 486 Md. at 661–62 (citing *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 724 (2000)).

B. Analysis

Maryland Rule 2-231 provides the rules for certifying class action lawsuits. Under Rule 2-231, the party seeking class certification must first meet all four "prerequisites" of Rule 2-231(b):[14]

> numerosity (the class is so numerous that joinder of all members is impracticable); commonality (there are questions of law or fact common to the class); typicality (the claims or defenses of the representative parties are typical of the claims or defenses of the class); and adequacy of representation (the representative parties and counsel will fairly and adequately protect the interests of the class).

Westminster, 486 Md. at 662 (quoting *Angeletti*, 358 Md. at 727). In addition, a proposed class must meet one of the three conditions in Rule 2-231(c):

> (1) the prosecution of separate actions by individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the

[14] Maryland Rule 2-231(b) specifically states:

> (b) Prerequisites to a Class Action. One or more members of a plaintiff class may sue as representative parties on behalf of all only if (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.

> adjudications or substantially impair or impede their ability to protect their interests; or
>
> (2) 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; or
>
> (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (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.

Tenants' class is defined in their complaint as follows:

> The Class consists of: All persons who are or were tenants in a residential rental property in Maryland managed by Morgan, and who, since December 14, 2015, have been charged fees by Morgan related to the alleged late payment or non-payment of rent (other than a late fee of no more than 5% of the amount of rent due for the period for which the payment was delinquent and/or actual costs awarded by a court).

Excluded from the Class are:

> a. those individuals who now are or ever have been employees of Morgan and the spouses, parents, siblings, and children of all such individuals; and
>
> b. any individual who was granted a discharge pursuant to the United States Bankruptcy Code of state receivership laws after the date of all such improper fees or misallocations of payments.

In assessing class certification, which, in this case, the circuit court decided before summary judgment, the court did not take a position on the legality of Morgan's court fees and collections. The circuit court's analysis regarding the legality of Morgan's court fees

and collections is outdated given the decision in *Westminster*. Considering this, rather than this Court undertaking an analysis of the Rule 2-231(b) class requirements, we remand to allow the circuit court to reassess its analysis, taking additional testimony, if necessary, on the issues raised by each party as to class certification.

CONCLUSION

We remand without affirmance or reversal for the circuit court to determine whether, in light of the Supreme Court of Maryland's decision in *Westminster*, Mogan violated RP § 8-208, as Tenants allege. We conclude either the record is insufficiently developed to resolve the other issues Tenants raise, or in fairness to the circuit court, the court may review its decision on the class certification issue. We stress we have drawn no conclusions on any of these issues.

CASE REMANDED TO CIRCUIT COURT FOR BALTIMORE COUNTY WITHOUT AFFIRMANCE OR REVERSAL TO ADDRESS THE ISSUES CONTAINED HEREIN. COSTS TO BE EVENLY SPLIT BETWEEN THE PARTIES.