

Circuit Court for Baltimore City
Case No. 24-C-18-000053

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3346

September Term, 2018

GERALD BURTON

v.

CLAUDINE HALE, *ET AL.*

Fader, C.J.
Arthur,
Bair, Gary E.,
(Specially Assigned),

JJ.

Opinion by Bair, J.

Filed: January 24, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the Circuit Court for Baltimore City’s order of final approval of a consumer class action settlement against Mariner Finance, LLC. The class action stemmed from an alleged violation by Appellee-Mariner Finance under the Credit Grantors Closed End Credit Provisions (“CLEC”). Md. Code, Com. Law Art., § 12–1001, *et. seq.* On December 17, 2018, the named plaintiff, Appellee-Claudine Hale and the defendant, Mariner Finance, LLC appeared for a final fairness hearing for the class action settlement. The sole objector to the class action, Appellant-Gerald Burton, also appeared at the fairness hearing. After hearing arguments from all parties, the court issued an oral ruling and a written order approving the settlement and certifying the settlement class. On December 31, 2018, the circuit court granted final approval of the settlement. The sole objector now appeals this grant of final approval.

In Appellant’s opening brief, he presents three related questions:

1. Whether the Circuit Court can determine the fairness of a class action settlement when it was not provided any evidence and made no determination related to the value of the claims asserted?
2. Whether the Settlement was fair, reasonable, and adequate where the Named Plaintiff presented a Settlement that recovered less than one percent (1%) of the damages demanded in the Complaint?
3. Whether a Circuit Court has authority to approve a class action settlement where class members have not been identified and the size of the class is unknown?

Appellant filed a Reply Brief in which he raises two new issues in addition to reiterating arguments presented in the original brief. First, Appellant argues that the trial court erroneously considered the risk of arbitration as a factor in valuing the settlement. Second, Appellant avers that Appellee-Hale was not an adequate representative for the

class because she was in a factually and legally different position than other potential class members, including Appellant, which made Appellee-Hale unable to recover damages under the law.

Appellee-Hale filed a Motion to Strike Appellant/Objector’s Reply Brief and Appellee-Mariner Finance filed a Response to Motion to Strike Appellant/Objector’s Reply Brief arguing that Appellant raised new issues in the reply brief that were not previously raised in the opening brief or in the circuit court’s fairness hearing. This Court denied the Motion to Strike.

This Court has distilled Appellant’s five issues presented to the following two questions:

1. Whether Appellee-Hale was an adequate representative for a properly defined class given that Appellee-Mariner Finance had not collected more than the principal amount of Appellee-Hale’s loan?
2. Whether the settlement approved by the circuit court was fair, reasonable, and adequate under the circumstances and in light of the information presented to the court?

For the reasons set forth below, the first issue is not properly before this Court and, in any event, was properly decided by the circuit court. The second issue is also resolved in favor of Appellees as we find that the settlement was fair, reasonable, and adequate. As such, the circuit court was fully informed, had the authority to approve this class action settlement, and did not abuse its discretion in so doing.

BACKGROUND

The Procedural History: From the Complaint through Final Approval

The complex procedural history of this case is paramount in concluding that the circuit court had sufficient information to approve the settlement and that the settlement was the product of an adversarial process thus resulting in a fair settlement for class members. The parties engaged in extensive litigation prior to developing the settlement agreement in which Appellee-Mariner Finance created a common fund of \$1,500,000.00 for members of the class.

In October of 2016, Appellee-Claudine Hale obtained a loan from Mariner Finance, LLC and the two parties entered into a promissory note. The promissory note for this loan was governed by CLEC.¹ The principal amount of the loan was \$4,020.68 with interest accruing in the amount of \$1,799.07. Appellant, Gerald Burton, also entered into a promissory note with Appellee-Mariner Finance for a principal amount of \$10,130.00 with total scheduled interest of \$4,575.32. In both Appellant and Appellee-Hale’s cases, Appellee-Mariner Finance allegedly charged refinance and insurance charges, retaining a

¹ In *Patton v. Wells Fargo Financial Maryland, Inc.*, 437 Md. 83 (2014), the Court of Appeals set forth a detailed background of the CLEC statute. Under CLEC, a credit grantor, such as Appellee-Mariner Finance, can elect for a loan to a consumer borrower to be governed by the CLEC statute. CLEC provides protection to borrowers in loan transactions involving closed end credit. *Id.* at 89. One of the protections offered to borrowers under CLEC is the “limit[] on the rate of interest, as well as other fees, that may be charged by a lender – referred to as a “credit grantor” in the statute.” *Id.*; *see also* Md. Code, Com. Law Art., §§ 12–1003, 12–1005.

portion of the insurance charges. In Appellee-Hale’s Complaint, she alleged that Appellee-Mariner Finance’s practice of charging consumers insurance charges and then retaining any part of those charges is impermissible. *See* Md. Code, Com. Law Art., § 12–1005(d)(I)(ii).

On January 4, 2018, Appellee-Hale, the named plaintiff, filed the original complaint against Appellee-Mariner Finance, LLC alleging that Mariner Finance charged her and a class of Maryland citizens refinance and insurances charges not permitted under CLEC. Appellee-Hale alleged that Appellee-Mariner Finance charged a total of \$14,494,149.00 in illegal charges for all 29,675 potential class members. In Appellee-Hale’s Amended Class Action Complaint, filed on February 23, 2018, Appellee-Hale asserted that Appellee-Mariner Finance refinanced her loan, and the loans to all class members, and included a fee for the refinancing. This fee was not accounted for in the simple interest rate causing Appellee-Mariner Finance to charge members of the class a simple interest rate in an amount greater than what was agreed to in the promissory notes and greater than what is permitted under CLEC.

Under CLEC, the simple interest rate cannot exceed 24 percent per year. Md. Code, Com. Law Art., § 12–1003(a). Appellee-Hale also alleged in the Complaint that Appellee-Mariner Finance retained some or all of these charges in violation of CLEC. Md. Code, Com. Law Art., § 12–1005(d)(I)(ii). As a result of these violations, Appellee-Hale alleged that the class members were entitled to recover damages under § 12–1018(a)(2), (b) of the Commercial Law Article of the Maryland Code.

Appellee-Hale, as the class representative and named plaintiff, filed a motion for class certification on March 1, 2018. This motion was accompanied by numerous exhibits and a memorandum of law supporting class certification. On April 6, 2018, Appellee-Mariner Finance filed an opposition to the motion for class certification. Appellee-Hale then filed a reply to the opposition motion. Both sides argued the merits of class certification in terms of the factual basis and legal authority for certifying the class. *See* Md. Rule 2–231 (governing class actions).

On March 9, 2018, Appellee-Mariner Finance filed a motion to compel arbitration and stay the litigation. Appellee-Mariner Finance argued that, as a threshold matter, it could compel not only Appellee-Hale, but every other class member, to individually arbitrate claims against Mariner Finance, LLC pursuant to the agreements signed by the class members when engaging Mariner Finance, LLC for loans. Appellee-Hale filed an opposition to the motion to arbitrate.

The circuit court scheduled a hearing on Appellee-Hale’s motion to certify the class and Appellee-Mariner Finance’s motion to compel arbitration. Just before the hearing on May 21, 2018 was to commence, Appellee-Hale and Appellee-Mariner Finance produced a binding and detailed term sheet for settlement. The circuit court granted preliminary approval of the common fund settlement worth \$1,500,000.00 on August 3, 2018 following a hearing. Further, Appellee-Mariner Finance paid in excess of \$50,000.00 in settlement administration costs, separate and distinct from the common

fund that was to be distributed to class members. The order entering preliminary approval also provided for the administration of notice to class members.

One of the criteria of class membership is Maryland citizenship, which requires a certain measure of self-identification. At the time of the final fairness hearing on December 17, 2018, the settlement administrator had estimated that there were approximately 7,000 Maryland claims and the settlement administrator had received around 4,000 claims.² The more valid claims are filed, the less the recovery amount for each individual class member. If all of the approximately 7,000 individuals filed valid claims, each class member would receive approximately \$128.00 from the common fund. The settlement administrator provided notice to all prospective class members in accordance with Maryland Rule 2–231.

Following the grant of preliminary approval of the settlement, Appellant filed his objection on October 3, 2018. Then, on November 16, 2018, Appellee-Hale and Appellee-Mariner Finance filed a Joint Motion for Final Settlement Approval. The circuit court held a fairness hearing on December 17, 2018. At the conclusion of the hearing, the circuit court approved the settlement, certifying the class under Maryland Rule 2–231(b)(3).

² Four individuals chose to opt-out of the settlement.

STANDARD OF REVIEW

It is undisputed that review of a trial court’s determination to approve a class action settlement is afforded “a strong presumption in favor of finding the settlement fair.” *Shenker v. Polage*, 226 Md. App. 670, 684 (2016) (quoting *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014)). Appellant and both Appellees agree that the determination of whether a class settlement is fair should be reviewed under an abuse of discretion standard.

Appellant, however, argues that when analyzing whether a court can determine the fairness of a class action settlement in the absence of a determination of the value of the claims asserted or a determination concerning the best possible outcome for the class members, this Court should review the issues *de novo*, giving no deference to the trial court. Because the circuit court did not assign a value to the claims asserted in Appellee-Hale’s Complaint, Appellant contends the court was not fully informed and therefore approved the settlement in violation of established law. We find this contention to be without merit. Appellant is essentially arguing that the trial court did not make adequate factual findings before approving the settlement. Maryland law does not require trial courts to place a value determination on the claims raised in a class action complaint in order to approve a settlement. This issue is reviewed under an abuse of discretion standard. *See Shenker*, 226 Md. App. at 683–84.

Further, Appellant and Appellee-Mariner Finance assert that when examining whether a court has the authority to approve a class action settlement where the class

members have not been identified and the size of the class is unknown the proper standard of review is *de novo*. Appellee-Hale does not specifically dispute this but notes that the broader question of the fairness of a class action settlement is to be reviewed under an abuse of discretion standard. Maryland Rule 2–231(j) requires that in a judgment for a class action, the court must determine and designate “whom the court finds to be members of the class.” The issue presented by Appellant does not require this Court to inquire into whether the circuit court utilized the correct legal standard as all parties agree that the law governing class definition is Maryland Rule 2–231(j). Therefore, the heart of this issue is whether the circuit court found that the class was properly defined under the established law of Maryland. This issue will be reviewed under an abuse of discretion standard.

DISCUSSION

The core of Appellant’s appeal in the instant case is that the class action settlement was unfair to the class and the circuit court did not have authority to issue final approval of the settlement. Under Maryland Rule 2–231(h), a class action must be approved by the court. Maryland rules do not articulate a specific standard for approving class action settlements. It is well-settled that when a Maryland rule is similar to a federal rule, courts are permitted to examine federal case law analyzing the corresponding federal rule for direction in interpreting the Maryland rule. *See Bond v. Slavin*, 157 Md. App. 340, 358 n.30 (2004). Federal Rule of Civil Procedure 23(e) is analogous to the Maryland Rule governing class actions. Federal Rule of Civil Procedure 23(e)(2) governs approval of

class action settlements and requires a court to hold a hearing and make a finding that the class action settlement is “fair, reasonable, and adequate.” The finding of fairness, reasonability, and adequacy is based on whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. Pro. 23(e)(2). Federal courts applying Federal Rule 23 analyze class action settlements through a two-step process. First, courts look to the procedural fairness of the settlement process. A settlement is procedurally fair where there is an arm’s length bargaining and an absence of collusion. *Shenker*, 226 Md. App. at 687; *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975). The established “fairness factors” include, “the extent of discovery that has taken place, the stage of the proceedings, the want of collusion in the settlement, and the experience of counsel who may have represented the plaintiffs in the negotiation.” *Shenker*, 226 Md. App. at 687 (quoting *Flinn*, 528 F.2d at 1173). Second, courts will examine the substantive fairness, reasonability, and adequacy of the proposed settlement. *Shenker*, 226 Md. App. at 683–84.

I. The adequacy of the class representative issue is not properly before the Court, and in any event, Appellee-Hale is a proper representative for the class defined as Maryland residents.

Before delving into the fairness of the class action settlement, we dispose of Appellant’s claim regarding the adequacy of the class representative and the assertion that the potential class members were not appropriately designated. At the final fairness hearing on December 17, 2018 in the circuit court, Appellant was given the opportunity to argue against approval of the class action settlement. Appellant raised a number of issues that are reflected in his opening brief. However, Appellant waited until his reply brief to argue that Appellee-Hale was not an adequate representative for the class because she had not paid the full amount of her principal loan, which Appellant argues is a prerequisite to recovery. Appellant did, however, raise the issue of adequacy of the class representative at the fairness hearing. At the hearing, Appellant argued,

In this case, Ms. Hale paid less than the principal amount of the loan and Mr. Burton paid more than the principal amount of the loan, but nonetheless, they’re part of the same group. . . . [I]f those cases applied here, then Ms. Hale wouldn’t even have a claim. She wouldn’t even be able to represent the class. Now, I believe that she can, but if we’re weighing those cases as a detriment to this case, then Ms. Hale is not even the right claimant to bring the case, so those cases can’t apply.

The cases to which Appellant refers are a case from the Circuit Court for Anne Arundel County, Maryland and various other cases argued by Appellant’s counsel in federal courts.

It is clear that Appellant conceded at the fairness hearing that Appellee-Hale *could* represent the class, thereby affirmatively waiving his right to present a contrary viewpoint in argument to this Court. Further, Appellant is barred from asserting the opposite view in

his reply brief and during oral argument. *See Eagan v. Calhoun*, 347 Md. 72, 87–88 (1997) (explaining that “[g]enerally speaking, a party will not be permitted to maintain inconsistent positions or to take a position in regard to a matter which is directly contrary to, or inconsistent with, one previously assumed by him, at least where he had, or was chargeable with, full knowledge of the facts, and another will be prejudiced by his action.” 28 Am. Jur. 2d *Estoppel & Waiver* § 68 (2019)). In *Lohss v. State*, 272 Md. 113 (1974), the Court of Appeals held that appeal rights “may be lost by waiver or estoppel when there is acquiescence or recognition in the validity of the decision from which the appeal is taken or by otherwise taking a position inconsistent with the right of appeal. . . .” *Lohss*, 272 Md. at 118–19. The Court further explained that when a party has the ability to object at the trial court level and fails to do so, it “is regarded as a waiver estopping him from obtaining a review of the point or question on appeal.” *Id.* at 119. This doctrine is rooted in fairness because it would be entirely unequitable if parties were permitted to concede crucial issues at the trial court level only to turn around on appeal and assert a contrary argument. *See Gordon v. Posner*, 142 Md. App. 339, 423–428 (2002). Further, the arguments raised in a reply brief must be limited to issues raised in an appellee’s brief. *Fed. Land Bank of Balt., Inc. v. Esham*, 43 Md. App. 446, 459 (1979).

Even if this issue were properly before us, the circuit court expressly found that “all of the prerequisites were, in fact, met” as to the adequacy of the class representative, noting that “the common questions predominated far and above the individual issues that may have come up in this case” and that a class action would have been “the superior way

of handling” this case. In addition to finding that the class representative was adequate to represent the class, the trial court found that the class was appropriately restricted to Maryland residents. In the circuit court’s final order approving the class action settlement and certifying the settlement class, the circuit court set forth the definition of the settlement class as:

All Maryland citizens who entered into a promissory note through June 29, 2019 with Mariner Finance which elects to be governed by Maryland’s Credit Grantor Closed End Credit Provisions, Md. Code Ann., Com. Law §§12-1001 et seq. (“CLEC”): (1) which includes a “refinance charge”; and/or (2) where Mariner Finance sold an insurance product and received compensation in connection therewith.

The circuit court addressed Appellant’s arguments relating to class definition at the fairness hearing explaining that the class was limited to Maryland residents and one of the only ways to identify as a class member is to self-identify as a Maryland resident, which requires a certain measure of affirmative action. The circuit court did not abuse its discretion by permitting potential class members to self-identify as Maryland residents in order to recover.

II. The circuit court did not abuse its discretion by approving the class action settlement.

The task of an appellate court in evaluating approval of a class action settlement “is to determine whether the circuit court was well-informed to determine the fairness and adequacy of the settlement, and that [the circuit court] reached a well-reasoned decision.” *Shenker*, 226 Md. App. at 685. The case at hand is governed by the *Shenker* case and as such we will follow a parallel analytical path. However, our task is much

easier than the Court’s in *Shenker* because the circuit court in the case before us “under[took] a full-blown, step-by-step Rule 23-style analysis, as the federal courts typically do.” *Id.* at 685.

A. The settlement approved by the circuit court was fair, reasonable, and adequate under the circumstances and in light of the information presented to the court.

We find that the circuit court did reach a well-reasoned decision in approving the settlement as fair and adequate. Not only did the trial court render a detailed oral opinion on the record at the close of the final fairness hearing, but the court also entered a written order setting forth the standard of approving a class action settlement and the facts considered by the court.

First, the circuit court found that the prerequisites to a class action, numerosity, commonality, typicality, and the adequacy of the class representative, were met. The court examined each of these prerequisites in turn setting forth detailed explanations of each.

Second, the court explained that the fairness hearing was not “a rubber-stamp process” and the court’s position was akin to that of a fiduciary “in overseeing the settlement” and “safeguarding the interests of absent class members. . .” In finding that the settlement was fair, reasonable, and adequate, the circuit court noted the extensive briefings, arguments, and investigation into the class action claims, including class certification, the motion to compel arbitration, and class definition. The court found an

absence of collusion based on the “fairness factors.” *See Shenker*, 226 Md. App. at 687 (quoting *Flinn*, 528 F.2d at 1173).

Third, the court analyzed the adequacy of the proposed settlement by weighing the likelihood of Appellee-Hale and the class’s recovery on the merits against the amount of recovery proposed in the settlement. As the Court in *Shenker* reiterated, in weighing the likelihood of recovery on the merits against a proposed settlement,

“the court should consider: ‘(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.’”

Shenker, 226 Md. App. at 688 (quoting *In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D. Md. 1983) (*In re Montgomery Cty. Real Estate Antitrust Litig.*, 83 F.R.D. 305, 316 (D. Md. 1979))).

The circuit court found that the class members had a strong case on the merits, but also acknowledged the significant hurdles that the class would have faced had the case been decided on the merits. The court elaborated on the hurdles noting that Appellee-Hale had not paid the full amount of principal of her loan, the barrier to class certification that may have arisen, Appellee-Mariner Finance’s motion to compel arbitration, and the anticipated duration and expense of litigating this claim.

B. The circuit court had sufficient information to render a determination on the fairness, reasonability, and adequacy of the settlement.

The gravamen of Appellant’s arguments center on the assumption that the circuit court could not have properly evaluated the class action settlement because Appellees failed to provide the court with sufficient information. Appellant argues that the only information provided to the court was the number of individuals affected by Appellee-Mariner Finance’s purported CLEC violations and the value of the common fund for the settlement. This assertion is false as evidenced by the robust oral opinion given by the court at the close of the fairness hearing. Further, the court had before it Appellant’s arguments regarding his calculations for recovery under his interpretation of CLEC. The circuit court gave credence to the class action based on an analysis of the “fairness factors” and the depth of information provided to the court through lengthy motions and extensive arguments regarding all aspects of the class action settlement process.

Appellant argues that the circuit court failed to evaluate the value of the claims asserted in the amended complaint and therefore made no determination of the best possible outcome of the case if it had resulted in a judgment rather than a settlement. We find this claim to be meritless. Maryland law does not require a trial court to place an exact valuation on the claims asserted in a class action complaint in order to determine whether a settlement is fair. *See generally Shenker*, 226 Md. App. 670. Additionally, the circuit court addressed this argument at the fairness hearing stating that Appellant’s request for a value determination of the class members’ claims “goes hand-in-hand with [Appellant]’s request for discovery in this matter.” The court continued, noting that just

because it is merely *possible* to have a better outcome as a result of litigation or a better settlement does not bar the approval of the instant settlement. As a final point, the court informed the parties that it had “a lot of information” at its disposal in approving the class action settlement.

Appellant also contends that because the actual settlement amount is so low compared to the damages demanded in the complaint, the settlement cannot be fair to class members. Appellant asserts that the alleged illegal charges and fees charged by Appellee-Mariner Finance total \$14,494,149.00, a number Appellant ascertained through informal conversations with Appellees. Appellant argues that the circuit court could not properly use this number because it was only provided to the court through hearsay statements by Appellant. Appellant cites no law that would preclude the court from relying on this amount as provided by Appellant. Further, Appellees do not contest that the purported illegal charges totaled \$14,494,149.00.

In her amended complaint, Appellee-Hale demanded the statutory maximum of damages under CLEC, “3 times the amount of interest, fees, and charges collected in excess of that authorized...” Md. Code, Com. Law § 12–1018(b). Appellant argues that the amount claimed in the amended complaint is thus \$43,482,447.00 and a settlement recovery of only \$1,500,000.00 is patently unfair to class members.³ In his argument at

³ Appellant asserts that class members were also entitled to an additional \$106,538,367.26 which represents Appellant’s estimation of the non-principal amounts on each class members’ loan.

the fairness hearing, Appellant articulated these arguments, providing this background to the court. The circuit court was in possession of this information when determining that the class action settlement was fair, reasonable, and adequate. Further, prior to the final fairness hearing, the settlement administrator submitted an affidavit averring that as of November 14, 2018, 4,158 potential class members affirmatively identified themselves as Maryland citizens and that the alleged charges for just these class members totaled \$2,097,676.30. The circuit court was not required to weigh different valuations of charges and fees or to go on an elaborate fact-finding mission in order to approve the settlement as fair.

It is evident that the circuit court had more than sufficient information to approve the settlement because the court engaged in a thorough examination of the fairness and adequacy factors as set forth in Federal Rule 23 and applied by federal courts. *See e.g., Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015); *Flinn*, 528 F.2d 1169 (4th Cir. 1975); *In re Montgomery Cty. Real Estate Antitrust Litig.*, 83 F.R.D. 305 (D. Md. 1979). This Court has upheld approvals of class action settlements where less information was provided and where the lower court engaged in only minimal analysis of the fairness factors. *See generally Shenker*, 226 Md. App. 670.

Further, and perhaps more importantly, a circuit court is not required to assign an exact valuation to class action claims because while “a trial court may not give a settlement boilerplate approval, it need not ‘turn the settlement hearing into a trial or a rehearsal of the trial, nor need it reach any dispositive conclusions on the admittedly

unsettled legal issues in the case.” *Shenker*, 226 Md. App. at 684 (citing *Flinn*, 528 F.2d at 1172–73). Indeed, requiring circuit courts to resolve each and every disputed claim through the settlement process would negate the very purpose of a settlement and force the parties to fully litigate claims as if going to final judgment.

Similar to argument propounded by the appellant in *Shenker*, Appellant here asserts that the settlement was unfair because the recovery from the settlement is much less than the claims released as part of the settlement. The Court in *Shenker* considered such an argument and rejected it. 226 Md. App. at 686. We, therefore, reject Appellant’s claims here.

The circuit court appropriately considered Appellee-Mariner Finance’s motion to compel arbitration as a factor weighing against the class members’ recovery. The crux of Appellant’s argument regarding arbitration is that arbitration is regularly held out by courts to be an adequate alternative to litigating a case on the merits in court, therefore, by considering arbitration as a barrier to recovery the court essentially ruled that arbitration is an unfair and inadequate forum for dispute resolution. The circuit court did no such thing. Rather, in evaluating individual arbitration as an obstacle to the class action settlement, the circuit court accounted for the expense of pursuing individual claims through arbitration. We therefore conclude that the circuit court appropriately considered arbitration on an individual basis as a substantial procedural hurdle to recovery for class members.

CONCLUSION

In terms of the adequacy of the class representative, this Court finds that the issue is not properly before us, and even if the issue were properly presented, the issue is meritless. Moreover, the circuit court did not err in approving the class action settlement as fair, reasonable, and adequate. The court's analysis articulated a step-by-step analysis as set forth in the seminal case of *Shenker*. 226 Md. App. 670. The circuit court addressed both the procedural and substantive fairness of the settlement taking into account the appropriate factors weighing against the class. As such, the circuit court did not abuse its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**