

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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HERMAN J. ANDERSON and MARIE A.  
ANDERSON,

UNPUBLISHED  
April 30, 2002

Plaintiffs-Appellees,

v

No. 228358  
Wayne Circuit Court  
LC No. 98-841301-CH

INDIAN VILLAGE MANOR ASSOCIATES,  
LLC, INDIAN VILLAGE MANOR  
CONDOMINIUM ASSOCIATION, FARBMAN  
DEVELOPMENT GROUP, INC., FARBMAN  
MANAGEMENT GROUP,

Defendants-Appellants,

and

ART CENTRE APARTMENTS COMPANY,  
SIDNEY L. COHN, E. BRYCE ALPERN and  
HARRIET ALPERN as trustees of the E. BRYCE  
ALPERN Living Trust, ROBERT I. ALPERN and  
MARJORIE ALPERN as trustees of the ROBERT  
I. ALPERN Living Trust, DWIGHT ALPERN,  
NANCY ALPERN, ABBEY ALPERN, HARLAN  
D. ALPERN, WAYNE ALPERN, CAROLYN  
ALPERN, CAROLYN ALPERN VITRIOL, CITY  
OF DETROIT, and FIRST CHICAGO NBD,

Defendants.

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HERMAN J. ANDERSON and MARIE A.  
ANDERSON,

Plaintiffs-Appellees,

v

No. 228360  
Wayne Circuit Court  
LC No. 98-841301-CH

ART CENTRE APARTMENTS COMPANY,  
SIDNEY L. COHN, E. BRYCE ALPERN and

HARRIET ALPERN as trustees of the E. BRYCE ALPERN Living Trust, ROBERT I. ALPERN and MARJORIE ALPERN as trustees of the ROBERT I. ALPERN Living Trust, DWIGHT ALPERN, NANCY ALPERN, ABBEY ALPERN, HARLAN D. ALPERN, WAYNE ALPERN, CAROLYN ALPERN, CAROLYN ALPERN VITRIOL,

Defendants-Appellants,

and

INDIAN VILLAGE MANOR ASSOCIATES, LLC, INDIAN VILLAGE MANOR CONDOMINIUM ASSOCIATION, FARBMAN DEVELOPMENT GROUP, INC., FARBMAN MANAGEMENT GROUP, and CITY OF DETROIT,

Defendants.

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Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

In this consolidated action, the Art Centre defendants<sup>1</sup> and the IVMA defendants<sup>2</sup> appeal by leave granted an order certifying plaintiffs' action as a class action. We reverse and remand.

Detroit Ordinance 400-H, § 16, gives tenants in residential apartment buildings having more than four units the right of first refusal to jointly purchase their building if the owner offers it for sale to a condominium developer. In January 1998, the Art Centre defendants sold Indian Village Manor (IVM), an historical luxury apartment building in Detroit, to defendant Indian Village Manor Associates, LLC (IVMA), without first offering it to the IVM tenants. IVMA converted IVM into a condominium called Indian Village Manor Condominium Association (IVMCA). Plaintiffs, Herman and Marie Anderson, who were IVM tenants, brought a class action suit to enforce their rights and the rights of other IVM tenants under the ordinance. The trial court certified the action as a class action, and these appeals followed.

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<sup>1</sup> Art Centre Apartments Company, Sidney L. Cohn, E. Bryce Alpern and Harriet Alpern in their representative capacity as trustees of the E. Bryce Alpern Living Trust, Robert I. Alpern and Marjorie Alpern in their representative capacity as trustees of the Robert I. Alpern Living Trust, Dwight Alpern, Nancy Alpern, Abbey Alpern, Harlan D. Alpern, Wayne Alpern, Carolyn Alpern, and Carolyn Alpern Vitriol.

<sup>2</sup> Indian Village Manor Associates, LLC, Indian Village Manor Condominium Association, Farbman Development Group, Inc., and Farbman Management Group.

This Court reviews a trial court's ruling on class certification under the clearly erroneous standard. *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999). Generally speaking, factual findings are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made. *Id.* On the record before us, we are unable to determine whether clear error occurred because neither the court's conclusory statement on the record at the end of the hearing granting plaintiffs' motion to certify the class nor its written order of the same date certifying the class adequately address the requirements of MCR 3.501(A)(1).

The provisions of MCR 3.501(A)(1) with regard to class certification as they apply to this case are extensive and require careful attention. The applicable provisions of the rule are as follows:

(A) Nature of Class Action.

(1) One or more members of a class may sue or be sued as representative parties on behalf of all members in a class action only if:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) the representative parties will fairly and adequately assert and protect the interests of the class; and

(e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. [MCR 3.501(A).]

(2) In determining whether the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice, the court shall consider among other matters the following factors:

(a) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class that would confront the party opposing the class with incompatible standards of conduct; or

(ii) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(b) whether final equitable or declaratory relief might be appropriate with respect to the class;

(c) whether the action will be manageable as a class action;

(d) whether in view of the complexity of the issues or the expense of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(e) whether it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action; and

(f) whether members of the class have a significant interest in controlling the prosecutor or defense of separate actions.

After a brief hearing on plaintiff's motion to certify the class and without taking any testimony or evidence, the trial judge simply announced "The Court is satisfied that the Plaintiff's motion for class certification should be granted without prejudice." No analysis of any of the court rule requirements was provided.

The order which was entered to effectuate this ruling was likewise terse and addressed the court rule requirements in cursory fashion, again, with no analysis of any of the required factors under the court rule. For instance, the order addresses the numerosity requirement of section (1)(a) by simply reciting the number of potential plaintiffs without explaining why joinder of all of them would be impractical. As to section (1)(b), the order arguably can be read to conclude that there are common questions of fact or law, but contains no discussion or explanation that these common questions predominate over questions affecting only individual members.

The order concludes that maintenance of a class action is superior to other methods of adjudication, but completely neglects to address the factors of MCR 3.501(A)(2) which provides that "the court shall consider among other matters" the enumerated factors.

On this scant record we cannot determine the basis for the court's decision to certify the class and therefore cannot review it for error on appeal. Reversed and remanded for proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ Janet T. Neff

/s/ Henry William Saad