

AVMI, L.L.C., ET AL

NO. 24-CA-595

VERSUS

FIFTH CIRCUIT

METAIRIE TOWERS CONDOMINIUM
ASSOCIATION, INC., ET AL

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 839-979, DIVISION "H"
HONORABLE DONALD L. FORET, JUDGE PRESIDING

June 18, 2025

TIMOTHY S. MARCEL
JUDGE

Panel composed of Judges Marc E. Johnson,
Scott U. Schlegel, and Timothy S. Marcel

AFFIRMED

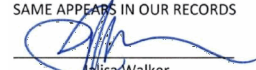
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FIFTH CIRCUIT COURT OF APPEAL
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Deputy, Clerk of Court

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MARCEL, J.

In this class action suit brought by condominium owners for alleged mismanagement of insurance proceeds following damages to buildings caused by Hurricane Ida and a subsequent water event, defendants Metairie Towers Condominium Association, Inc., Metairie Towers Board of Directors, through its individual member, Ron Carter¹, and GNO Property Management, L.L.C., appeal a July 31, 2024 judgment of the district court granting plaintiffs' motion for class certification. Co-defendant Strategic Claim Consultants, LLC appeals the same judgment. For the following reasons, we affirm the district court's judgment certifying the class action and remand the case for further proceedings.

FACTS AND PROCEDURAL HISTORY

Background

This case arises from damage to Metairie Towers initially caused by Hurricane Ida on August 29, 2021. Built in the 1970s, Metairie Towers is a seven-story building located in Jefferson Parish, Louisiana, containing 211 residential units.² Aside from the individual one and two bedroom condominium units, within the three-wing building are common areas. During Hurricane Ida, the roof membrane detached and flapped over the front of the building. Additionally, several windows were broken and a water pipe located on the building's roof was broken. Water intrusion into the building damaged interior walls and ceilings in common areas and 181 residential units.

¹ In their original class action petition, plaintiffs sued Metairie Towers Board of Directors, through its individual members, Ron Carter, Betty Miles, Ellyn Meier, Carolyn Diaz, Jennifer Fagan, Mary Kay Zahn and Anne Babst. All of these individual members were named as parties in the notice of suspensive appeal filed after the trial court entered its judgment granting plaintiffs' motion to certify the class. However, the appellate brief filed with this Court lists Ron Carter as the only member of the Board pursuing this appeal.

² Metairie Towers originally contained 219 residential units. Approximately eight units had been combined with other units, reducing the total number of units to 211 at the time of Hurricane Ida. While most residents were the owners of their condominium units, approximately 50 units were occupied by tenant residents.

The storm also interrupted electric utility service to the building and the broken rooftop water pipe required shutting off water utilities at the main line. Without water or electricity, all residents who remained in their units after Hurricane Ida were directed to move out.

Under the Metairie Towers Condominium Documents, the charter which establishes the rights and responsibilities of the individual condominium unit owners, operational oversight and governance of the property is vested in the Metairie Towers Condominium Association, Inc. (“MTCA”). The charter grants each unit one vote in the Association. These documents further provide for the creation of a seven-member board of directors (the “Board”) responsible for managing all normal operations of the MTCA.

On August 29, 2021, the Board, on MTCA’s behalf, procured from Assured Partners a policy (or policies) of property and casualty insurance. The Declaration of Condominium contained in the Condominium Documents authorized the Board to procure insurance coverage for the common elements of Metairie Towers; insuring improvements made to the residential units by individual owners “against loss or damage caused by fire, vandalism, malicious mischief, and such other hazards” is not within the Board’s authority. According to the Declaration of Condominium, if fewer than 148 Metairie Towers condominium units were to be damaged, MTCA is to reconstruct or repair the building in substantial compliance with the original plans.³ Individual unit insurance coverage for improvements, or betterments, of the individual condominium units was the responsibility of the unit owner per the Condominium Documents.

³ Substantial compliance with original plans is referred to as the “as-built” or “white box” condition. The Declaration of Condominium also provides for a course of action if more than 148 condominium units are damaged.

After the storm passed, MTCA entered into a property management agreement with GNO Property Management, LLC (“GNO”). The Board also retained Advanced Property Restoration Services (“APRS”) to perform work for stabilizing the building on August 30, 2021. This encompassed installing a temporary roof onto the building as well as removing moisture from inside Metairie Towers. Following referral by APRS, and vetting by its legal counsel and GNO, the Board engaged Strategic Claims Consultants, LLC (“Strategic”) on or about September 2, 2021 to perform public adjusting services for MTCA. Strategic’s work as a public adjuster encompassed identification and documentation of damage, together with formulation of repair cost estimates, to submit to MTCA property and casualty insurers for indemnification.

The scope of services performed by GNO included management of MTCA regular operating funds. In addition, for a period of time after Hurricane Ida, GNO also managed insurance indemnity funds remitted to MTCA arising from its Hurricane Ida claims. This role encompassed receiving funds into an account and disbursing payment for work performed on Metairie Towers. GNO ceased managing insurance proceeds after it erroneously remitted \$400,000.00 of MTCA insurance indemnity funds to a “cyber pirate.”

Afterwards, sometime around October of 2021, the Board appointed Strategic to manage insurance indemnification funds received for Hurricane Ida claims from MTCA’s insurers. Those funds were deposited into a bank account held by Strategic, from which Strategic paid invoices approved by the Board. Initially, funds from the insurance companies were directly deposited into Strategic’s account. However, after the Board retained legal representation for MTCA’s first-party insurance claims for Hurricane Ida damage, indemnity payments were remitted directly to MTCA’s attorney, Bart Kelly, who then

transmitted funds to Strategic for management on behalf of MTCA. Strategic continued to manage MTCA's insurance indemnity funds until August 29, 2023.

On September 28, 2021, a second water event causing damage to Metairie Towers occurred ("Second Water Event"). Because of damage to water transmission lines caused by Hurricane Ida, water utility service was shut off at the main line to the building. The HVAC system for common areas of the building needed water service to function. Two firms representing the property and casualty insurer, turned on water service to the building to re-start the HVAC system. According to an assessment done by Strategic, the resulting water leaks from the distribution pipes in the building damaged 127 residential units, including 30 units that were unaffected by Hurricane Ida.

Mitigation and remediation work on the building continued following the Second Water Event. The permanent roof replacement was completed in or around January 2022. In the course of stabilizing and remediating the building damage, it was determined that the dry wall material throughout Metairie Towers contained asbestos. Removal of damaged drywall required compliance with asbestos removal guidelines. Unit owners were directed to remove all items from their units by December 31, 2021. Work was performed to remove sheetrock wall and ceiling material, together with damaged flooring, from each condominium unit.

Ultimately, the entire building was gutted to its structural framework. In the class certification hearing, Brandon Lewis, testified that his company, Strategic, estimated the cost to repair damages to Metairie Towers caused by Hurricane Ida was \$39,000,000.00. Its estimate for repairing damage from the Second Water Event was \$14,000,000.

In December 2022, MTCA entered into a settlement of its first-party insurance claims against its insurers arising from damage caused by Hurricane Ida

and the September 28, 2021 water event. First-party insurance claims for damages arising from the Second Water Event were settled for \$10,000,000. According to Ronald Carter's testimony in the class certification hearing, MTCA received \$7,699,222 in indemnity benefits for Hurricane Ida damages between October 12, 2021 and March 8, 2022. Afterwards, in the December 2022 settlement, MTCA received an additional \$25,861,840.52 for its remaining Hurricane Ida damage claims.

By April 2023, the entire building had been gutted to its structural framework. All wall, ceiling, and damaged flooring materials had been stripped from every condominium unit and the common areas. After payment of remediation, mitigation, stabilization, and demolition costs, together with costs for replacing the roof, consulting fees, and legal fees, approximately \$13,000,000.00 from first-party insurance claims remained. However, estimates obtained by the Board for completing repairs, including restoring each condominium unit to an as-built condition, exceeded that sum.

The Board notified unit owners in April 2023 that, contrary to prior assertions, the funds remaining after settlement of first-party claims with MTCA insurers would be insufficient to restore their residential units to as-built condition. Unit owners were advised by the Board that a special assessment would be required to complete the restoration work. As an alternative, the Board presented condominium owners with the option to place Metairie Towers on the market for sale. Encompassed in the alternative option was disbursement of the remaining first party insurance claim funds to the owners on a pro-rata basis pending the sale of Metairie Towers.

MTCA membership opted to sell. The remaining insurance funds were distributed to owners; the amount each owner received was based on the number of

bedrooms in their unit. Metairie Towers was listed for sale, and the building was subsequently sold.

Procedural History

This action was initiated on the filing of a class action petition for damages on April 21, 2023. Identified as plaintiffs in this petition are AVMI, L.L.C.⁴ and Anne Cannon, and those “similarly situated” as owners of condominium units at Metairie Towers from August 29, 2021 to present who are not members of the Board. It recites that the litigation arises out of the “mishandling of the property, procurement of insurance, insurance claims, insurance proceeds, remediation, and restoration of Metairie Towers” flowing from damage caused by Hurricane Ida. Named defendants in the original petition include: MTCA, its insurers Burlington Insurance Company (“Burlington”), Greenwich Insurance Company (“Greenwich”), Federal Insurance Company (“Federal”), and Interstate Fire & Casualty Insurance Company (“Interstate”); the individual members of the MTCA Board of Directors; as well as GNO and Strategic.

The petition contains fourteen enumerated allegations of negligence committed by MTCA and/or the Board members, directly or through Strategic and/or GNO. The petition also recites plaintiffs’ causes of action for breach of fiduciary duty, detrimental reliance, and negligence *per se*. Damages claimed in the petition include loss of use, diminution of value, condominium fees, personal property damage, moving and storage expenses, and mental anguish.

Finally, the plaintiffs’ petition requests class certification of their action under La. C.C.P. 591. Identified as class members are persons and entities, except those named as defendants, who owned condominium units at Metairie Towers on

⁴ In their second supplemental and amending petition, plaintiffs substituted Michael O’Dwyer and Avra O’Dwyer as plaintiffs in place of AVMI, L.L.C.

and after August 28, 2021. The petition also avers that questions of law and fact are common to the class, and the named plaintiffs are adequate representatives of the class. Plaintiffs assert that prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to the individual class members, create incompatible standards of conduct for the defendants, and could be dispositive of the interests of class members who are not parties to the adjudication, or substantially impair or impede their interests.

The original petition has been amended and supplemented in four subsequent filings. Amending and supplemental petition filings have added as defendants Colony Insurance Company as an insurer of MTCA, Scottsdale Insurance Company as an insurer of MTCA and GNO, Evanston Insurance Company as an insurer of GNO, and Old Republic Insurance Company, Ace Property and Casualty Insurance Company, Harco National Insurance Company, and International Fidelity Insurance Company as insurers of Strategic.

The hearing on plaintiffs' motion for class certification was conducted by the trial court over three consecutive days beginning on July 24, 2024. The trial court received into evidence numerous documentary exhibits and heard testimony from fourteen witnesses. In addition to plaintiffs Avra O'Dwyer and Anne Cannon, called as witnesses were Metairie Towers condominium owners Michael Taylor, Rebecca Heffler, Mary DeBlanc, and Ashton O'Dwyer. Other witnesses included Ronald Carter, president of the Board, Brandon Lewis, owner of Strategic, Robert Phillips, owner of GNO, James Barkate, owner of Southern Abstracts, Phillip Grandchamp, senior claims adjuster for Strategic, and Maxwell Gruenig, insurance broker for MTCA. Thomas Judson, who was accepted by the

trial court as an expert witness for purposes of fiduciary duties of volunteer boards and HOA property management, also testified.

At the conclusion of the hearing, the trial court rendered judgment granting class certification, finding that plaintiffs sufficiently proved the elements of numerosity, commonality, typicality, adequacy, definability, and predominance and superiority as required under La. C.C.P. art. 591. Identified as putative class members in the trial court's written judgment are:

1. All condominium owners, at Metairie Towers Condominium Complex located at 401 Metairie Road, Metairie, Louisiana 70005, that owned units continuously from August 29, 2021 through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein; **and**
2. All condominium owners, at Metairie Towers Condominium Complex located at 401 Metairie Road, Metairie, Louisiana 70005, that acquired ownership of units after August 29, 2021, and retained ownership through April 21, 2023. Excluded from the class are unit owners who were members of the board of directors during the period defined herein.

Anne Cannon was accepted as class representative. The written judgment was signed on July 31, 2024. These timely appeals by defendants follow.

Assignments of Error on Appeal

On appeal, appellants MTCA, Ronald Carter, and GNO (collectively the "MTCA appellants") assign two errors to the trial court's judgment.

1. The trial court erred in granting judgment in favor of Plaintiffs and Putative Class Members because the elements of numerosity, commonality, typicality and adequacy of representation, and definability required by La. C.C.P. art. 591(A) were not met.
2. The trial court erred in granting judgment in favor of Plaintiffs and Putative Class Members because Requirements of La. C.C.P. art. 591(B)(3) were not met.

In its brief, appellant Strategic likewise raises four assignments of error:

1. The District Court erroneously concluded that Plaintiff met her high burden to establish the requirements of C.C.P. art. 591(A)(2) regarding commonality, because there was no common cause presented in contravention of *Price v. Martin*.
2. The District Court erroneously concluded that Plaintiff met her high burden of proof to establish the requirement of C.C.P. art. 591(A)(2) regarding commonality, 591(B)(3) regarding predominance, and C.C.P. art. 591(C), because there (sic) liability for detrimental reliance and breach of fiduciary duty cannot be determined from the same set of facts and requires individual proof.
3. The District Court's class definition does not comply with the requirement of C.C.P. art. 591(A)(5), because it does not relate the class to any specific conduct of the Defendants so as to determine conclusiveness of any judgment.
4. The District Court improperly concluded that Plaintiff had met her high burden to establish the other elements of a class action described in C.C.P. Article 591(A) and (B).

Finding redundancy in the assignments of error raised in the two appellant briefs, and that both appellants raise the sufficiency of evidence presented in support of the elements contained in La. C.C.P. arts. 591(A) and 591(B)(3), we will address these assignments of error *en globo* below beginning with the applicable standard of review and Louisiana law on class actions.

DISCUSSION

Class Actions

A “class action” is a nontraditional litigation procedure that permits a representative with typical claims to sue or defend on behalf of, and stand in judgment for, a class of similarly situated persons when the question is one of common interest to persons so numerous as to make it impracticable to bring them all before the court. *Dupree v. Lafayette Ins. Co.*, 2009-2602, p. 6 (La. 11/30/10), 51 So.3d 673, 679. It is an alternative procedural device to the general rule for litigation to be conducted by and on behalf of individually named parties. *Sullivan v. Malta Park*, 19-86, p. 7 (La. App. 4 Cir. 5/22/19), 363 So.3d 462, 467. Its

purpose and intent is to adjudicate and obtain *res judicata* effect on all common issues applicable to persons who bring the action, as well as to all others similarly situated. *Baker v. PHC-Minden, L.P.*, 14-2243, p. 10 (La. 5/5/15), 167 So.3d 528, 537 (citing *Brooks v. Union Pacific R. Co.*, 08-2035, p. 10 (La. 5/22/09), 13 So.3d 546, 554).

In reviewing a judgment on class certification, the district court's factual findings are subject to the manifest error standard of review, while the court's ultimate decision regarding whether to certify the class is reviewed under the abuse of discretion standard. *Bagot v. James Holdings, LLC*, 17-121, p. 3 (La. App. 5 Cir. 12/20/17), 235 So.3d 1330, 1333, *writ denied*, 18-124 (La. 3/9/18), 238 So.3d 451; *Price v. Martin*, 11-853 (La. 12/6/11), 79 So.3d 960, 967. Whether the district court applied the correct legal standard in determining whether to certify the class is reviewed *de novo*. *Bagot*, 235 So.3d at 1333-34.

Under the manifest error standard, the trial court's factual findings can be reversed only if the appellate court finds, based on the entire record, no reasonable factual basis for the factual finding and the fact finder is clearly wrong. *Ardent Servs., LLC v. G & V Investments, LLC*, 23-253, p. 7 (La. App. 5 Cir. 2/28/24), 382 So.3d 1080, 1088, *writ denied*, 24-402 (La. 5/29/24), 385 So.3d 701. When there are two permissible views of the evidence, the findings of the trier of fact cannot be manifestly erroneous or clearly wrong. *Mann v. Louisiana-1 Gaming*, 21-83, p. 3 (La. App. 5 Cir. 12/15/21), 334 So.3d 894, 898.

The only issue to be considered by the trial court when ruling on class certification, and by an appellate court on review, is whether the case at bar is one in which the procedural device is appropriate. *Baker*, 167 So.3d at 537. In determining the propriety of such action, the court is not concerned with whether plaintiffs have stated a cause of action or the likelihood they will ultimately prevail

on the merits, but whether the statutory requirements have been met. *Id.* The requirements for certification of the class are set forth in La. C.C.P. art. 591, which states, in part:

A. One or more members of a class may sue or be sued 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 or defenses of the representative parties are typical of the claims or defenses of the class.
- (4) The representative parties will fairly and adequately protect the interests of the class.
- (5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case. This prerequisite shall not be satisfied if it is necessary for the court to inquire into the merits of each potential class member's cause of action to determine whether an individual falls within the defined class.

In addition to the five elements articulated in La. C.C.P. art. 591(A), often referred to as the requirements of numerosity, commonality, typicality, adequacy of representation, and definability, a plaintiff seeking to certify the class must also satisfy requirements set forth in La. C.C.P. art. 591(B), which states in pertinent part:

B. An action may be maintained as a class action only if all of the prerequisites of Paragraph A of this Article are satisfied, and in addition:

...

- (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 these findings include:

- (a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;
- (b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
- (c) The desirability or undesirability of concentrating the litigation in the particular forum;
- (d) The difficulties likely to be encountered in the management of a class action;
- (e) The practical ability of individual class members to pursue their claims without class certification;
- (f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation...

The party seeking class certification has the burden of proving by a preponderance of that evidence that the requirements of La. C.C.P. art. 591 have been met. *Doe v. Southern Gyms, LLC*, 12-1566, p. 9 (La. 3/19/13), 112 So.3d 822, 830. Whether a class action meets the requirements imposed by law requires a rigorous analysis. *Dupree*, 51 So.3d at 679. In conducting this analysis, the trial court must evaluate, quantify, and weigh the relevant factors to determine to what extent the class action would in each instance promote or detract from the goals of effectuating substantive law, judicial efficiency, and individual fairness. *Brooks*, 13 So.3d at 554. In doing so, the court must actively inquire into every aspect of the case and should not hesitate to require a showing beyond the pleadings. *Price*, 79 So.3d at 967.

In recognition of the essentially factual basis of the certification inquiry and of the district court's inherent power to manage and control pending litigation, the district court has great discretion in its judgment regarding class certification. *Brooks, supra*. Any errors to be made in deciding class action issues, should, as a general rule, be in favor of and not against the maintenance of a class action. *Price*, 79 So.3d at 967. This is because class certification is always subject to

modification or decertification if later developments so require. *Id.* Nevertheless, that general rule cannot and should not be used as a substitute for the rigorous analysis required to determine whether the prerequisites of Louisiana's class action provisions have in fact been satisfied. *Id.* With this in mind, our analysis proceeds with an examination of each of the requisite factors under La. C.C.P. art. 591.

Numerosity

The first element which must be established for class certification is demonstrating that class membership is so numerous that joinder of all members is impractical. La. C.C.P. art. 591(A)(1). This element is referred to as numerosity.

Numerosity is not determined solely by the number of class members alone. *Doe*, 112 So.3d at 830-31. It is also based upon considerations of judicial economy in avoiding a multiplicity of lawsuits, financial resources of class members, and the size of the individual claim. *Baker*, 167 So.3d at 542 (citing *Davis v. American Home Products Corp.*, 02–0942, p. 19 (La. App. 4 Cir. 3/26/03), 844 So.2d 242, 257, writ denied, 03–1180 (La. 6/27/03), 847 So.2d 1279. Ultimately, to meet this requirement, the plaintiff must show joinder is impractical, but, at the same time, there is a definable group of aggrieved persons. *Id.*

Appellants contend that joinder is the superior procedural vehicle to class action in this case. The MTCA appellants argue that plaintiffs failed to present evidence which demonstrated that joinder of the putative class members' actions is not practical. They point to testimony of putative class members who disclosed that they are parties to separate individual actions arising from the same or similar operative facts against the same defendants in this case. Strategic argues that the trial court's finding that the class is so numerous that joinder is impractical is unsupported by the record. It points to other lawsuits filed and consolidated that also relate to the damages sustained by Metairie Towers and its residents and

owners as a result of Hurricane Ida. Additionally, Strategic contends the existence of other individually filed lawsuits is contrary to the finding that unit owners lack financial resources to file their own lawsuits.

In response, appellees argue that the trial court's decision finding the numerosity element is satisfied is supported by the evidence presented at the class certification hearing. Appellees point to the testimony of title abstractor James Barkate and of Board president Ronald Carter as demonstrating the putative class members are identifiable. Supporting the argument of financial hardship of putative class members to prosecute individual claims, appellees refer to the testimony of putative class member Mary DeBlanc, who spoke of the hardship circumstances experienced by three displaced former residents of Metairie Towers. Additionally, appellees reference testimony from Avra O'Dwyer and Ashton O'Dwyer concerning the age and limited resources of putative class members.

In its written reasons for judgment, the trial court found the impracticability of joinder in this case proven by "decisive evidence." The trial court cited the testimony of Mr. Barkate, as supporting the creation of a definable group of potential claims. Also cited is evidence of the financial circumstances of putative class members Michael Taylor, Rachel Heffler, Mary DeBlanc, and Ashton O'Dwyer, as limiting their ability to prosecute individual claims. The trial court concluded that, based on the number of lawsuits of potential class members, class certification prevents overburdening the judicial system.

Considering there are over two hundred potential unit owner plaintiffs, we agree that class certification would provide a more judicially efficient and practical alternative to joinder. On review of the entire record, we find no manifest error in the trial court's factual finding that the evidence presented satisfies the numerosity requirement of La. C.C.P. art. 591(A)(1).

Commonality

The second element which must be established for class certification is commonality. La. C.C.P. art. 591(A)(2). Commonality requires common questions of law or fact, and a common character among the rights of the representatives and absent class members. *White v. Gen. Motors Corp.*, 97-1028 (La. App. 1 Cir. 6/29/98), 718 So.2d 480, 488-89. The party seeking class certification must show that there are questions of law or fact common to the class. La. C.C.P. art. 591(A)(2).

On appeal, appellants contend that the trial court's finding that the evidence met commonality requirements was erroneous. While the MTCA appellants aver that the trial court abused its discretion, Strategic contends the trial court legally erred by not applying the correct legal standard, thus requiring our *de novo* review. Our analysis will begin by addressing the appropriate standard of appellate review.

Determining whether the trial court applied the correct legal standard in certifying a class action is reviewed *de novo* while its factual findings are reviewed for manifest error. *Bagot, supra*. Satisfaction of the commonality element requires the existence of a common nucleus of operative facts as to the totality of the issues. *Price*, 79 So.3d at 969.

In its assignment of error, Strategic contends "there is no common cause presented in this case of negligence/mass tort as required by *Price v. Martin*, so there is no commonality or predominance. Strategic avers that the trial court legally erred by failing to apply the "common cause" standard in its determination that the plaintiffs satisfied the commonality requirement. Applied by courts in mass tort class action litigation, the common cause requirement entails demonstrating that each member of class can prove individual causation based on the same set of operative facts that would be used by any other class member to

prove causation. *Harvey v. Bd. of Commissioners for Orleans Levee Dist., Par. of Orleans*, 17-271 (La. App. 5 Cir. 12/27/17), 236 So.3d 763, 771-72, writ denied, 2018-0148 (La. 3/23/18), 238 So.3d 980.

Appellant Strategic argues that plaintiffs are unable to demonstrate a common set of operative facts to establish causation. Supporting this argument, Strategic posits that Hurricane Ida and the Second Water event caused varying degrees of damage to each condominium unit. Additionally, Strategic points out different entities have been named defendants, and plaintiffs are unable to connect their alleged damages to the conduct of each defendant. Finally, Strategic avers that the multiple theories of recovery advanced by plaintiffs' thwarts satisfaction of the common cause requirement.

After review of the record in this case, we find the trial court applied the correct legal standard to the commonality requirement of La. C.C.P. art. 591(A)(2) to this case. Strategic's focus on damage to individual units directly caused by Hurricane Ida and the Second Water Event is not relevant to this analysis. Rather, the central issue presented in plaintiffs' claims is whether the failure to restore every condominium unit to its as-built condition was caused by a breach of the duties owed by MTCA, its Board members, and those with whom MTCA contracted, to all condominium owners. The truth or falsity of that central issue is determinative of the validity of the claims of all condominium owners.

Turning now to the MTCA appellants' assignment of error that the trial court's finding of commonality was manifestly erroneous, appellants present three arguments in support of their contention. First, they argue that the trial court's determination of class members as persons who owned condominiums on August 29, 2021, and those who acquired condominiums after that date is contrary to the definition of commonality. Second, they argue that the causes of action contained

in the petition present questions of fact and law not common to all defendants.

Finally, the MTCA appellants argue that the claims asserted involve different types of damages not uniformly suffered by the class, and accordingly, will require adjudication on a case by case basis.

In response, appellees assert that the primary claim of negligent mismanagement by the defendants is rooted in common operative facts for all putative class members. Appellees point out that the testimonial evidence provided by the class representative and other putative class members identified that MTCA's alleged failure to procure sufficient insurance coverage affected all unit owners, defendants' alleged mismanagement of insurance proceeds causing permanent loss of the units affected all putative class members equally, and the gutting of all units in Metairie Towers without funds to rebuild caused damage to each putative class member.

The trial court found the class members' claims depend on a common contention from a common nucleus of operative facts to establish commonality. It observed that the putative class claims for permanent loss of use from alleged mismanagement and loss of insurance proceeds associated with all Metairie Towers condominium units predominate over the question of individual damages. Resolution of those claims, the trial court found, will apply to all class members.

On review of the record, we find no manifest error in the trial court's factual determination that there are common questions of law or fact among the class members sufficient to satisfy the commonality requirement. The operative facts of plaintiffs' claims arise from the destruction of all condominium units within Metairie Towers following Hurricane Ida because of the alleged mismanagement of insurance proceeds to restore the units to as-built condition. Plaintiffs allege their losses or damages derive from the gutting of their individual condominium

units. The named defendants were the decision makers and actors in events alleged to have caused their loss or damage.

The commonality requirement imposes the burden on plaintiffs to prove the existence of common questions of law *or* fact to the class. La. C.C.P. art.

591(A)(2). (Emphasis supplied.) A determination of whether the Board members, or the entities MTCA hired to stabilize, remediate, and repair the building, and to manage insurance proceeds recovered by MTCA, breached a duty which led to all condominium units remaining uninhabitable after Hurricane Ida will be applicable to all unit owners. Accordingly, we conclude the assigned errors to the trial court's determination that the commonality requirement is met are without merit.

Typicality

The third element the proponent of class certification must satisfy is showing the claims or defenses of the representative parties are typical of the claims or defenses of the class. La. C.C.P. art. 591(A)(3). A plaintiff's claim is typical if it arises out of the same event, practice, or course of conduct giving rise to the claims of the other class members and those claims arise out of the same legal theory.

Baker, 167 So.3d at 543. The inquiry is whether the claims and defenses among potential class members would be duplicative and discovery redundant. *Duhon v. Harbor Homeowners' Ass'n, Inc.*, 15-852, p. 11 (La. App. 4 Cir. 6/30/16), 197 So.3d 322, 329, *writ denied*, 16-1448 (La. 11/15/16), 209 So.3d 779.

In their respective briefs, both the MTCA appellants and Strategic contend that the trial court's finding that the typicality element was met was manifestly erroneous because the claims of Anne Cannon, the appointed class representative, are not typical of those of a cross-section of all class members. The MTCA appellants argue that Ms. Cannon has not suffered an actual injury, does not possess sufficient first-hand knowledge of the claims at issue, and has not acted as

if she has a significant stake in the litigation. Appellant Strategic points to Ms. Cannon's testimony that she was an infrequent visitor to Metairie Towers and to her status as a lessor-owner of her unit. This, Strategic argues, differentiates Ms. Cannon's claims from 75% of all other owners who resided in their units.

Appellees respond in their brief that the trial court's findings that the class representative's claims are typical of all putative class member unit owners is supported by the evidence presented at the class certification hearing. Appellees contend that Ms. Cannon's unit was damaged identically and equally by the defendants alleged course of conduct resulting in the gutting of her condominium unit. According to appellees, the status of some unit owners as residents versus lessors, some units having one bedroom while others having two, and that some units were damaged by Hurricane Ida and some in the Second Water Event does not make their claims atypical.

The trial court found that typicality was clearly established by the testimony from the proposed class representatives and the putative class members. Their testimony clearly and consistently demonstrated that the claims arise out of claims and proceeds for Hurricane Ida damage and the damage from the Second Water Event. The trial court also noted that the evidence of alleged practices and conduct for managing the recovered insurance indemnity proceeds led to the permanent loss of use of condominium units by the entire putative class.

On review, we do not find the trial court was manifestly erroneous in finding plaintiffs satisfied their burden of proving typicality. Anne Cannon, the class representative, was the owner of a condominium unit in Metairie Towers on August 29, 2021. In the days following Hurricane Ida, all unit occupants of Metairie Towers were evicted due to the loss of electric and water service because of storm damage to the building. At the end of 2021, all units had been cleared of

appliances, fixtures, and the other effects of residency. Owners could neither personally nor vicariously occupy their unit. Putative class members Avra O'Dwyer, Michael Taylor, Rebecca Heffler, Mary DeBlanc, and Ashton O'Dwyer, each testified to the same experience. Upon completion of the Board-directed remediation and repair work on Metairie Towers, Anne Cannon's condominium unit remained uninhabitable. Likewise, all other units in Metairie Towers remained uninhabitable for residency when remediation and repairs were completed. Accordingly, we conclude that this assignment of error lacks merit.

Adequacy of Representation

Fair and adequate protection of the interests of the class by the class representative is the fourth element the proponent of class certification must show. La. C.C.P. art. 591(A)(4). In *Baker*, 167 So.3d at 543-44, the Louisiana Supreme Court identified four factors that may be relevant to the inquiry as:

- (1) The representative must be able to demonstrate that he or she suffered an actual-vis-à-vis hypothetical-injury;
- (2) The representative should possess first-hand knowledge or experience of the conduct at issue in the litigation;
- (3) The representative's stake in the litigation, that is, the substantiality of his or her interest in winning the lawsuit, should be significant enough, relative to that of other class members, to ensure that representative's conscientious participation in the litigation; and
- (4) The representative should not have interests seriously antagonistic to or in direct conflict with those of other class members, whether because the representative is subject to unique defenses or additional claims against him or her, or where the representative is seeking special or additional relief.

The trial court appointed Anne Cannon as a class representative on finding that she shared the same interests as the proposed class. Citing the transfer of ownership of her unit to a limited liability company prior to the hearing, the trial court declined to appoint Avra O'Dwyer as a class representative. As to Anne Cannon's testimony, the court found that she suffered permanent loss of use of her

condominium unit due to the alleged negligence of the primary defendants, she had no conflicts as to her claims and defenses in this case, and that she understood and accepted her duties to adequately represent the other class members. The court further appointed George B. Recile, Kevin O. Larmann, Eric J. O’Bell, and Shannon Frese as class counsel, specifically citing the commitment to advocate for putative class members in the three-day certification hearing as well as Mr. Recile’s experience in the practice of civil class action litigation.

The MTCA appellants contend that because Anne Cannon was an absentee owner, she has not suffered actual injury, and she does not have sufficient personal knowledge of the claims at issue. Additionally, both the MTCA appellants and Strategic argue that Ms. Cannon has serious, incurable conflicts of interest based on her individual claims against the same defendants arising from the same or similar operative facts in other lawsuits.

Appellees contend that the trial court’s determination that the representative parties will fairly and adequately protect the interests of the class was not clearly wrong or manifestly erroneous. In support of her appointment as class representative, appellees argue that Ms. Cannon’s testimony about the damages she suffered as a result of the alleged negligence, mismanagement, and breach of fiduciary duty by the principal defendants are the same damages sustained by all putative class members.

In response to appellants’ contention that the class representative and class counsel have a conflict of interest with many putative class members, appellees aver the alleged conflict is a red herring. While appellees concede that the principal defendants in Second Water Event litigation are the some of the same parties to this case, the causes of action arising from the Second Water Event are completely different. Appellees point out that the allegations in that lawsuit are

not negligence, mismanagement, or breach of fiduciary duties in the alleged mismanagement of insurance proceeds, but the sudden re-pressurization of water lines led to flooding of the building and some of its units. Damages claimed in the Second Water Event are limited to the specific units damaged by that water intrusion for which the value of improvements, or betterments, made to those units are sought. Conversely, damages claimed in the instant case arise from the complete gutting of Metairie Towers which rendered all condominium units uninhabitable for residential use.

The trial court found Ms. Cannon's testimony proved that she suffered the same damage as the putative class members. Specifically, the trial court described the alleged damage as the permanent loss of her condominium unit due to the alleged negligence of the primary defendants. The trial court further found Ms. Cannon understood the duties of a class representative, is committed to discharging those duties, and that her participation in other litigation involving Metairie Towers does not pose a conflict in this case.

On review, we find no manifest error in the trial court's findings of fair and adequate protection of the interests of the class by the class representative, and conclude this assignment of error is without merit.

Definability

The fifth element the proponent of class action certification must show is the class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment rendered in the case. La. C.C.P. art. 591(A)(5); *Baker* 167 So.3d at 544. The purpose of a class definition is to ensure that the class is not amorphous, indeterminate, or vague, so that any potential class members can readily determine if he or she

is a member of the class. *Clement v. Occidental Chemical Corp.*, 97-246, p. 9 (La. App. 5 Cir. 9/17/97), 699 So.2d 1110, 1114, *writ denied*, 97-2884 (La. 1/30/98), 709 So.2d 718.

On appeal, the MTCA appellants argue that the class definition approved by the trial court is overly broad because it potentially includes multiple consecutive owners of the same unit during the defined time period. It also argues that the definition is too restrictive because it excludes members of the Board from the class. Appellant Strategic contends the class definition does not adequately identify the operative facts and claims at issue in this matter so as to inform putative class members whether they should join the class or opt out to assert individual claims.

Appellees contend that the trial court's finding that the definability criteria was met is not manifestly erroneous or clearly wrong. In response to appellants' arguments that the class definition is overbroad and inadequate, appellees point out that the two subclasses defined by the trial court ensures there will be only one claimant or claimant group per condominium unit. Appellees posit that the class definitions provide for the transfer of litigation rights when a unit was sold between August 29, 2021 and April 21, 2023. As to the argument that the definitions do not direct the putative class to any specific conduct by a defendant or operative facts, appellees argues these are not requirements of definability. Finally, appellees aver it would be axiomatic for board members who are individually named defendants to be included within the definition of class members.

The trial court concluded that no impediments exist for ascertaining the identity of class members. In its analysis of the definability criteria, the trial court found the testimony of Mr. Barkate and Mr. Carter established the

availability of information about members of the board of directors and identities of unit owners on any given date.

On review, we find no manifest error in the trial court's finding that the plaintiffs' presented evidence that satisfied the definability criteria, and conclude this assignment of error is without merit.

Predominance and Superiority

In addition to satisfaction of the five criteria set forth in La. C.C.P. art. 591(A), the trial court must also consider whether the factors of predominance and superiority set forth in La. C.C.P. art. 591(B)(3) are met. The predominance requirement entails identifying the substantive issues that will control the outcome, assessing which issues will predominate, and then determining whether the issues are common to the class, a process that ultimately “prevents the class from degenerating into a series of individual trials. *Brooks*, 13 So.3d at 560. If more than one cause is involved, each of these causes must be common to all members. *Id.* at 561. Additionally, the proponent of class certification must demonstrate that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Duhon*, 197 So.3d at 330.

The MTCA appellants contend that the multiple theories underpinning plaintiffs' claims against different defendants will require application of different legal standards for proof of breach and causation, which are not capable of class wide resolution. The MTCA appellants further argue that plaintiffs failed to present a common method for determining damages on a class wide basis.

Appellant Strategic contends that the trial court erred in concluding a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Strategic avers that the trial court's determination was based solely on the “common character of right” factor, which was erroneous because

there is no common cause in this case. Strategic posits that the case cited by the trial court, *Duhon*, is distinguishable from this case because of the number of defendants in this case. Additionally, pointing to the attempted intervention by Ashton O'Dwyer, Strategic argues class certification will likely be unfair to class members who have stronger claims than the named representatives.

Strategic also argues that the individual claims will predominate over the issues common to the class. It points to the detrimental reliance claims, and contends that each individual claimant will be required to present evidence of the three elements of that cause of action. Additionally, Strategic points to the breach of fiduciary duty claims, and contends that each class member will be required to establish the existence of a fiduciary duty with Strategic.

Appellees argue that the trial court did not abuse its discretion in concluding that the predominance and superiority requirements were satisfied. Appellees posit that their claims originate from the same source – the alleged negligence and mismanagement of the property, insurance procurement, insurance claims, insurance proceeds, and remediation, repairs and restoration of Metairie Towers after Hurricane Ida and the Second Water Event. Appellees argue that the primary defendants each had access and/or control over the insurance proceeds and breached their fiduciary duty in their handling of those funds. Resolution of those issues will affect every claim.

Citing to evidence presented of the advance age and limited financial resources of many unit owners, appellees argue that a class action will avoid duplicative lawsuits, promote uniformity, and allow for the protection and enforcement of rights and claims for the benefit of absent or incapable class members.

Finally, appellees contend that the putative class plaintiffs have identical, universal, and proportionate damages in several respects, but conceded there may exist damages which some did not sustain, or did not sustain in the same degree as other members. Appellees, citing *Becnel v. United Gas Pipeline Co*, 613 So.2d 1155, 1158, (La. App. 5th Cir. 1993), argue that individual questions of quantum do not preclude a class action when predominant liability issues are common to the class.

The trial court found that the proposed classes satisfy the predominance and superiority criteria. In its analysis, the trial court found the common source of class members' claims to be the alleged negligent handling of insurance proceeds from damages sustained from Hurricane Ida on August 29, 2021, and the insurance proceeds of the Second Water Event. Additionally, the trial court found that each of the primary defendants had access and/or control over the insurance proceeds and breached their fiduciary duty in handling those funds. After finding that the rights presented are of a common character, the trial court concluded that class action is the superior procedural device to promote the fair and efficient adjudication of all putative class members.

We find no manifest error in the trial court's determination that the requirements of predominance and superiority were met. Accordingly, we find this assignment of error lacks merit.

CONCLUSION

Upon review of the record, having found no legal or manifest error in the trial court's ruling, we also find no abuse of discretion in the trial court's decision that class action is the appropriate procedural device for the asserted claims. The trial court's decision was reasonably drawn from and supported by the evidence presented at the hearing on the class certification.

When proceeds of first party insurance claims from Hurricane Ida and the Second Water Event were exhausted, Metairie Towers owners were left with units stripped to the structural elements. Plaintiffs allege the loss of their respective residential unit was due to the acts or omissions of the Board members and those delegated to perform the repair and restoration of Metairie Towers. Resolution of the question of whether defendants' acts or omissions constituted breaches of duties owed to one condominium unit owner will be the same answer for all unit owners.

DECREE

Considering the foregoing, the judgment of the trial court certifying the class action is affirmed.

AFFIRMED

AVMI, L.L.C., ET AL

NO. 24-CA-595

VERSUS

FIFTH CIRCUIT

METAIRIE TOWERS CONDOMINIUM
ASSOCIATION, INC., ET AL

COURT OF APPEAL

STATE OF LOUISIANA

SCHLEGEL, J., DISSENTS WITH REASONS

I agree with most of the majority’s opinion. But I dissent because I would remand and order the trial court, pursuant to La. C.C.P. art. 592(A)(3)(d), to amend the class definition to include language outlining the general basis or criteria for the class action as derived from the operative facts, which were established during the class certification hearing and articulated during oral arguments.

As noted by the majority, “[t]he purpose of class definition is to ensure that the class is not amorphous, indeterminate, or vague, so that any potential class members can readily determine if he or she is a member of the class,” citing *Clement v. Occidental Chemical Corp.*, 97-246 (La. App. 5 Cir. 9/17/97), 699 So.2d 1110, 1114, *writ denied*, 97-2884 (La. 1/30/98), 709 So.2d 718. This Circuit further requires that “[t]he parties seeking certification must be able to establish a definable group of aggrieved persons based on objective criteria **derived from the operative facts of the case.**” *Oubre v. Louisiana Citizens Fair Plan*, 07-66 (La. App. 5 Cir. 5/29/07), 961 So.2d 504, 513, *writ denied*, 07-1329 (La. 9/28/07), 964 So.2d 363. [emphasis added]. The parties seeking certification must be able to establish a definable group of aggrieved persons based on objective criteria derived from the operative facts of the case. *Conrad v. Lamarque Ford, Inc.*, 08-673 (La. App. 5 Cir. 5/12/09), 13 So.3d 1154, 1162, *writ denied*, 09-1819 (La. 11/6/09), 21 So.3d 310. The definition of the class should provide a sufficient basis upon which to determine the scope of the class and the propriety of permitting plaintiffs to

represent all or a part of it. *Id.*; *Clement, supra*. A class definition is the framework against which the court can apply the statutory requirements to determine if certification is appropriate. *Bourgeois v. A.P. Green Indus., Inc.*, 06-87 (La. App. 5 Cir. 7/28/06), 939 So.2d 478, 487, *writ denied*, 06-2159 (La. 12/8/06), 943 So.2d 1095.

While I might agree in some cases that identifying putative class members by defining a particular date range is sufficient, in this case, the fact that some of the unit owners are pursuing claims for damages to the improvements they added to their units, as opposed to the common elements, in a separate suit resulting from the Second Water Event creates ambiguity. And it is imperative that the class be defined precisely before proceeding as the main purpose of the class action procedure is to achieve a *res judicata* effect for all potential class members. *See id.* at 490.

Accordingly, I believe the class definition should include language outlining the basis for the class action claims. Thus, I would remand with instructions for the trial court to amend the class definition by adding language that explains the general basis or criteria for the class action as derived from the operative facts at issue.

SUSAN M. CHEHARDY
CHIEF JUDGE

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **JUNE 18, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-595

E-NOTIFIED

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