

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

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DANIEL BAER and ROSE BAER,	:	
through Stephen Baer as their Agent with	:	
power of Attorney, for themselves and all	:	No. 2018-13760
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
SHANNONDELL, INC. and	:	
DELL MANAGEMENT SERVICES, INC.	:	
Defendants	:	

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ORDER

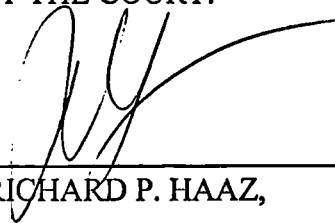
AND NOW, this 18<sup>th</sup> day of October, 2024, upon consideration of Plaintiffs’ Motion for Summary Judgment (Seq. 174), Defendants’ Answer to Plaintiffs’ Motion for Summary Judgment (Seq. 182), Plaintiffs’ Reply Brief in Support of Motion For Summary Judgment (Seq. 183), Defendants’ Motion for Summary Judgment (Seq. 187), and Plaintiffs’ Answer to Defendants’ Motion for Summary Judgment (Seq. 188), it is hereby **ORDERED** and **DECREED** as follows:

1. Defendants’ Motion for Summary Judgment is **DENIED**.
2. Plaintiffs’ Motion for Summary Judgment regarding Sub-Class One and their breach of contract claim in COUNT III is **GRANTED**.<sup>1</sup>
3. Plaintiff’s Motion for Summary Judgment regarding Sub-Class One and their claim for violation of the CCPRDA in COUNT II is **GRANTED** in part as follows:


<sup>1</sup> Defendants may prove an offset to individual damage claims due to a resident’s negligence.

- A. Plaintiffs' Motion for Summary Judgment regarding the Defendants' failure to disclose all fees to residents when executing the Resident Care Agreement is **GRANTED** (40 Pa.C.S. § 3207(a)(7));
  - B. Plaintiffs' Motion for Summary Judgment regarding the Defendants' failure to file an amended Resident Care Agreement with the Pennsylvania Insurance Department after material changes were made to the terms of the vacancy fee is **GRANTED** (40 Pa.C.S. § 3207(d));
  - C. Plaintiffs' Motion for Summary Judgment is **DENIED** regarding their allegations that Defendants failed to provide the requisite financial statements to residents when executing the Resident Care Agreement. 40 Pa.C.S. § 3207 (a)(9).
- 4. Plaintiff's Motion for Summary Judgment regarding Sub-Class One, and their claim for violation of the UTPCPL in COUNT I is **DENIED**.
  - 5. Plaintiff's Motion for Summary Judgment regarding Sub-Class Two is **DENIED**.<sup>2</sup>

BY THE COURT:

  
\_\_\_\_\_  
RICHARD P. HAAZ, J.

Order e-filed on 10/18/24  
Copies sent via Prothonotary  
Emailed to: Court Administration – Civil Division

  
\_\_\_\_\_  
Judicial Secretary

<sup>2</sup> The issue of fraudulent concealment must be decided by a finder of fact.

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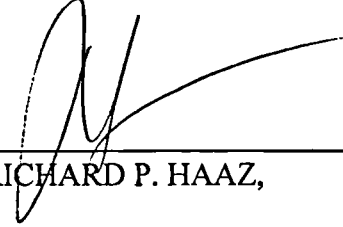
**ORDER**

AND NOW, this 18 day of October, 2024, upon consideration of Plaintiffs’ Memorandum Correcting Calculation in Plaintiffs’ Motion for Summary Judgment (Seq. 194), Defendants’ Memorandum of Law in Response to Plaintiffs’ Supplemental Memorandum In Support of Summary Judgment (Seq. 200), and Plaintiffs’ Reply Memorandum Regarding Loss Incurred by Residents Who Opted for a Straight Five Percent Vacancy Fee (Seq. 202), it is hereby **ORDERED** and **DECREED** that Plaintiffs’ Motion is **GRANTED IN PART** as follows:


1. Plaintiffs’ Motion is **GRANTED** so that those residents who accepted Defendants’ offer to modify the Resident Care Agreement from a variable vacancy fee to a flat 5% vacancy fee are hereby included as members of Sub-Class One.

2. Plaintiffs' Motion is **DENIED** regarding damages, which need to be proven on an individual basis.<sup>1</sup>

BY THE COURT:

  
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RICHARD P. HAAZ, J.

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Judicial Secretary

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<sup>1</sup> “Regarding damage amounts or scope of individual relief, it has been well established that if a ‘common source of liability has been clearly identified, varying amounts of damages among the plaintiffs will not preclude class certification.’” *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 28 (Pa. 2011) (citing *Weismer by Weismer v. Beech-Nut Nutrition Corp.*, 615 A.2d 428, 431 (Pa. Super. 1992)).

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SHANNONDELL, INC. and	:	
DELL MANAGEMENT SERVICES, INC.	:	
Defendants	:	

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**MEMORANDUM AND ORDER**

This class action was commenced on May 23, 2018. Class certification was granted on December 29, 2021. The class was divided into two subclasses on October 10, 2023.

Throughout the course of litigation Plaintiffs have alleged that their claim under the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§201-1 - 201-9.2, does not entail numerous individual issues because there existed a confidential relationship between Defendants and the class members which gave rise to a fiduciary duty. *See* Third Amended Complaint, ¶ 50; Plaintiffs’ Memorandum in Opposition to Defendants’ Motion To Decertify Subclasses One and Two, pp. 10-12. The Court noted its skepticism of this argument in its Memorandum of October 10, 2023, noting that “[n]o Pennsylvania case has held that a facility such as Shannondell maintains a confidential and/or fiduciary relationship with its residents or beneficiaries.” ¶ 8, p. 6, fn. 7 (citing *Yenchi v. Ameriprise Financial, Inc.*, 161 A.2d 811 (Pa. 2017)). However, the court deferred making a determination on the issue to allow the facts of the case to fully develop.

Discovery has been completed. Upon consideration of Defendants’ Motion to Decertify and the Plaintiffs’ Response thereto, the Court now determines that a confidential relationship

did not exist between Shannondell and its residents or their beneficiaries pursuant to current appellate authority. *See Yenchi v. Ameriprise Fin., Inc.*, 161 A.3d 811 (Pa. 2017). Therefore, as the UTPCPL claim would entail numerous individual issues related to reliance and injury, the Court hereby REVOKES the certification of Sub Class One and Sub Class Two as to COUNT I only. *See* Pa. R. Civ. Pro. 1710(c)(1).<sup>1</sup>

**ORDER**

AND NOW, this 18 day of October, 2024, upon consideration Defendants' Motion to Decertify Sub-Class One and Sub-Class Two (Seq. 196) and Plaintiffs' Opposition to Defendants' Motion to Decertify Sub-Class One and Sub-Class Two (Seq. 201), it is hereby **ORDERED** and **DECREED** that:

1. The Motion is **GRANTED IN PART** as to Plaintiffs' UTPCPL claim (COUNT I) only.
  - a. Class certification for the UTPCPL claim (COUNT I) of Plaintiffs' Third Amended Complaint is hereby **REVOKED**.
  - b. In accordance with Pennsylvania Rule of Civil Procedure 1713(a)(2), the Parties shall submit proposals for the notification of the class members which informs the members that: (1) class certification as to COUNT I of the Plaintiffs' Third Amended Complaint has been revoked; (2) that the class members must pursue claims under the UTPCPL on an individual basis; and

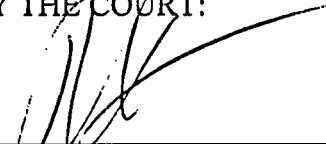
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<sup>1</sup> *See Debbs v. Chrysler Corp.*, 810 A.2d 137, 157 (Pa. Super. 2002); *Klemow v. Time Inc.*, 352 A.2d 12, 16 fn.17 (Pa. 1976); *Weinberg v. Sun Co., Inc.*, 777 A.2d 442, 446 (Pa. 2001); *Basile v. H & R Block, Inc.*, 729 A.2d 574, 585 (Pa. Super. Ct. 1999), *vacated on other grounds*, 761 A.2d 1115 (Pa. 2000).

(3) the statute of limitations has been tolled by the class action but will now resume running.<sup>2</sup>

2. The Defendants' Motion is **DENIED** as to Plaintiff's breach of contract claim (COUNT III) and CCPRDA claim (COUNT II).

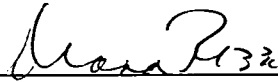
BY THE COURT:



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RICHARD P. HAAZ, J.

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Judicial Secretary

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<sup>2</sup> The statute of limitations for individual claims under the UTPCPL has been tolled during the pendency of this class action as “the original action provided the defendant[s] with adequate notice of the substantive nature of their claims and the number and generic identities of the potential plaintiffs who might assert them.” *See Kraft v. Allstate Ins. Co.* 511 A.2d 1356, 1363 (Pa. Super. 1986).

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CIVIL ACTION – LAW

DANIEL BAER and ROSE BAER,  
through Stephen Baer as their Agent with  
power of Attorney, for themselves and all  
others similarly situated,

No. 2018-13760

Plaintiffs,

v.

SHANNONDELL, INC. and  
DELL RETIREMENT SERVICES, INC.

Defendants



2018-13760-0215 11/18/2024 9:44 AM # 14659236  
Rcpt#Z4853634 Fee:\$0.00 Order - Other  
Main (Public)  
MontCo Prothonotary

**ORDER**

AND NOW, this 15 day of November, 2024, upon consideration of Plaintiffs’  
Memorandum Regarding Remaining Issues and Time for Trial (Seq. 210), Defendants’  
Memorandum of Law Addressing Issues for Clarification, Reconsideration, Supplementation of  
the Court’s Opinions and Orders and for Trial (Seq. 211), and to clarify the orders of October 18,  
2024, (Seq. 205-208), it is hereby **ORDERED** and **DECREED** as follows:

1. The order dated October 18, 2024, (Seq. 205) is **CLARIFIED** and **AMENDED** as  
follows:

- a. Plaintiffs’ breach of contract claim is **GRANTED** as it pertains to its claim  
that Defendants breached the Resident Care Agreement by improperly  
deducting the “Shannondell Appliance Depreciation Fee,” the cost of  
installing new counters and cabinets, and the cost of cleaning the air ducts and  
vents from the entrance fee refund.<sup>1</sup>

<sup>1</sup> These items were the Defendants’ property and it was the Defendants’ responsibility to repair, maintain, and  
replace them. See, e.g., Plaintiffs’ Motion for Summary Judgment (Seq. 174), Exhibit D “Resident Care  
Agreement,” Sections II.B, III.D, and VII (3). Therefore, the deduction of these fees from the Plaintiffs’ Entrance  
Fee Refund was impermissible.



- b. The damages for the Breach of Contract claim are limited to the cost of deductions charged by Defendants for the appliance depreciation fee, installation of new countertops and cabinets, and the cost of cleaning the air ducts and vents.<sup>2</sup>
2. The order dated October 18, 2024, (Seq. 205) is **CLARIFIED** and **AMENDED** as follows pertaining to violations of the CCPRDA:
  - a. Plaintiffs' Motion for Summary Judgment is GRANTED based on a violation of 40 Pa.C.S. § 3217(a)(2) and 3207(a)(7).<sup>3</sup> Accordingly, Plaintiffs are not required to prove reliance on this claim.
  - b. The Pennsylvania Insurance Department's December 31, 2010, "Report of Examination" does not preclude this court's determination of civil liability under 40 Pa.C.S. §§ 3217(a)(2) or 3207(a)(7).<sup>4</sup>
  - c. Paragraph 55 of the Third Amended Complaint is sufficient to state a cause of action based on 40 Pa.C.S. §3207(d).<sup>5</sup>

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<sup>2</sup> Defendants are entitled to an offset for any particular class member's negligence as itemized in Exhibit D to Plaintiffs' Memorandum Regarding Issues Remaining and Time for Trial (Seq. 210).

<sup>3</sup> Neither of these sections require reliance, unlike 40 Pa.C.S. § 3217(a)(3).

<sup>4</sup> The report only states that the Defendants' facility had a refund policy (the vacancy fee provision) that complied with applicable laws *as written*. It does not state that the Defendants *were properly implementing or adhering to* the refund policy (vacancy fee provision). This court has determined that despite having a refund policy (vacancy fee provision) that complies with the law as it is written, the practice of the Defendants violated the vacancy fee provision by improperly deducting fees that were not specified in the agreement. Therefore, the court's determination of civil liability for violation of 40 Pa.C.S. §§ 3217(a)(2) and 3207(a)(7) is not in conflict with the Pennsylvania Insurance Department's December 31, 2010 Report.

<sup>5</sup> *KEM Resources, LP v. Deer Park Lumber, Inc.*, 310 A.3d 142, 151 (Pa. 2024) ("Pennsylvania courts have long held that a Plaintiff need not specifically plead a statute for a cause of action to have invoked the statute. As this Court stated a century ago 'as a rule universally recognized, [ ] courts will take judicial notice of its public statutes. Such laws need not be pleaded or proved; it is not necessary to allege a violation of the statute, but, of course, the statement must set forth sufficient facts to bring the case within the statutes.'" (quoting *Goldberg v. Friedrich*, 124 A. 186, 186 (Pa. 1924) (brackets in the original)).

3. The order dated October 18, 2024, (Seq. 207) is **CLARIFIED** and **AMENDED** as follows as it relates to decertification:

- a. Regarding decertification of Plaintiffs' claim for violation of the UTPCPL,<sup>6</sup>
  - i. The court finds as a matter of law that no confidential relationship existed between Plaintiffs and Defendants.
  - ii. Pursuant to Pennsylvania Rule of Civil Procedure 1713(a)(2), the court directs Plaintiffs' Counsel to notify the affected class members that:
    - (1) class certification as to COUNT I of Plaintiffs' Third Amended Complaint has been revoked; (2) that the class members must pursue claims under the UTPCPL on an individual basis; and (3) the statute of limitations has been tolled by the class action but will now resume running.<sup>7</sup>
  - iii. Within 30 days of the date of this order Plaintiffs' counsel shall submit a copy of the proposed notice to chambers. Prior court authorization of the notice is required before Plaintiffs' counsel sends it to the class members. *See* Pa. R.C.P. 1713(a)(2).
  - iv. Nothing in this Order shall be construed as prohibiting the named Plaintiff from pursuing an individual claim for violation of the UTPCPL.<sup>8</sup>

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<sup>6</sup> *See* the order dated October 18, 2024 (Seq. 207).

<sup>7</sup> The statute of limitations for individual claims under the UTPCPL has been tolled during the pendency of this class action as "the original action provided the defendant[s] with adequate notice of the substantive nature of their claims and the number and generic identities of the potential plaintiffs who might assert them." *See Kraft v. Allstate Ins. Co.* 511 A.2d 1356, 1363 (Pa. Super. 1986).

<sup>8</sup> Pennsylvania Rule of Civil Procedure 1710(e) permits the continuance of the action by the named plaintiff where certification is denied; however, it does not permit individual claims of the named Plaintiff to proceed to the same

b. Regarding the Decertification of Sub-Class Two:

- i. Defendants' Motion to Decertify (Seq. 196) is **GRANTED IN PART** as to Sub-Class Two only.
  - ii. The Certification of Sub-Class Two is hereby **REVOKED**. Since there was no confidential relationship between the Plaintiffs and the Defendants. Individual issues of justifiable reliance would predominate over common issues of fact and law. Pa. R.C.P. 1708(a)(1).
  - iii. Pursuant to Pennsylvania Rule of Civil Procedure 1713(a)(2), the court directs Plaintiffs' Counsel to notify the affected class members that:  
(1) class certification for Sub-Class Two has been revoked; (2) that the class members may pursue their claims on an individual basis.
  - iv. Within 30 days of this order Plaintiffs' counsel shall submit a copy of the proposed notice to chambers. Prior court authorization of the notice is required before Plaintiffs' counsel sends it to the class members. *See* Pa. R.C.P. 1713(a)(2).
4. Regarding the issue of residents who opted to change their variable vacancy fee to a flat 5% vacancy fee, it is hereby **ORDERED** and **DECREED** that that the order of October 18, 2024, (Seq. 206) is **CLARIFIED** and **AMENDED** as follows:
- a. The communication<sup>9</sup> from Defendants to putative class members offering to modify their Resident Care Agreement to change the variable vacancy fee to a

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trial with the issues that have retained their class certification. The named Plaintiff may pursue his claim for a violation of the UTPCPL in a separate action.

<sup>9</sup> *See* Seq. 174, Exhibit R.

flat 5% vacancy fee was misleading because it did not inform the residents of the pending class action and all of the information necessary to make an informed decision.

- b. Pursuant to Pennsylvania Rule of Civil Procedure 1713 the addendums executed by putative class members modifying the vacancy fee in the Resident Care Agreement from a variable fee to a flat 5% fee are void.<sup>10</sup>
- c. The residents who modified the vacancy fee in their Resident Care Agreements from a variable vacancy fee to a flat 5% vacancy fee are now members of Sub-Class One. The damages for these members will be the difference between the amount which was deducted from the entrance fee refund under the 5% flat fee modification and the amounts which were permissible to be deducted from the entrance fee refund.
- d. The parties have 90 days from the date of this order to conduct discovery on the issue of the amount of damages sustained by the affected class members who modified the vacancy fee in their Resident Care Agreements from a variable vacancy fee to a flat 5% vacancy fee.<sup>11</sup>

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<sup>10</sup> This court “has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and parties.” *Pennsylvania Orthopaedic Soc. v. Indep. Blue Cross*, 885 A.2d 542, 547 (Pa. Super. 2005) (citing *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 100 (U.S. 1981) (affirming the trial court’s invalidation of releases that were false, misleading, and did not provide complete information).

<sup>11</sup> For example, this discovery may include documents such as invoices for the work done on the units for permissible deductions such as paint, spackle, flooring, or damage caused by a resident’s negligence. Permissible deductions do not include the appliance depreciation fee, the costs of replacing cabinets and countertops, or the cost of cleaning air ducts and vents.

5. To the extent that either party requested reconsideration or clarification that is not addressed in the above paragraphs, it is hereby **ORDERED** and **DECREED** that such requests are **DENIED**.
6. The court will issue a separate trial scheduling order.

BY THE COURT:

  
\_\_\_\_\_  
RICHARD P. HAAZ, J.

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