

**CURTIS J. TIMM and
CAMAC FUND LP**

Plaintiffs,

v.

**IMPAC MORTGAGE HOLDINGS,
INC.**

Defendant.

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**IN THE
CIRCUIT COURT
FOR
BALTIMORE CITY
Case No. 24-C-11-008391**

**CAMAC FUND LP’S REPLY IN SUPPORT OF ITS MOTION TO CERTIFY
CLASS, APPOINT CLASS REPRESENTATIVE AND LEAD COUNSEL,
PRELIMINARILY DETERMINE RIGHT TO RECEIVE DIVIDENDS, AND SET FINAL
JUDGMENT HEARING**

In response to Camac’s Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing (“Camac Motion”) (Docket #164/0), Plaintiff, Curtis J. Timm (“Timm”), filed his Response to Camac Fund LP’s Motion to Certify Class and for Other Relief (“Timm Response”) (Docket #164/2). The Timm Response is replete with inaccuracies, irrelevancies, and misunderstandings of the Camac Motion, and Camac will address the most glaring.¹ However, in two filings concerning class certification Timm has yet to explain how he can be appointed Lead Counsel when he is not eligible to practice law in any jurisdiction and, most importantly, in Maryland. His failure to acknowledge or address this is indicative of why that request and his request to be appointed Class Representative must also be denied.

¹ The fact that Camac chooses to refute some, but not all, of Timm's statements should not be interpreted a tacit admission of those that are not refuted.

I. THE CLASS DEFINITION

Timm first argues that Camac has a conflict that prevents it from representing the class. Timm's argument ignores the limited issues that remain in the case and the reason for the class definition that Camac has proposed.

Impac should have paid three quarters of dividends to Series B stockholders as a result of its repurchase of stock in October 2009. While all parties agree that the proper recipients of those dividends are those who will own the stock when Impac declares the dividends, which will likely occur in the near future, others may have a different view. For example, stockholders who owned Series B in October 2009 at the time of the repurchase may believe that they are entitled to the dividends. Those who owned Series B in December 2017, when this Court determined that the purported amendments were invalid; or those who held in July 2018, when this Court entered its final judgment and determined that three quarters were owed due to the repurchase, also may wish to assert a claim to the dividends. Camac seeks to certify a class of all holders, from October 2009 to the present, which will include all who may have a claim and allow all the opportunity to present their arguments. Camac, like Timm, is of the belief that current shareholders are entitled to the dividends, but Camac has no conflict with the other members of the class in wanting the issue to be fairly decided.²

Camac bought its Series B shares beginning in 2012. If this Court rules that the proper recipients are the owners when the dividends are declared, then all of Camac's shares, and all of Timm's shares, will receive dividends. If this Court rules that the proper recipients were the owners in October 2009, then Camac would receive no dividends and Timm would receive

² Camac explained in the Camac Motion why his differing interest from other class members is not a conflict. Camac Motion Mem. pp. 20-21.

dividends on some, but not all, of his shares, since a substantial portion were purchased in the course of the litigation. If the Court's decision is that the owners at other times are the proper recipients, then Camac and Timm may both receive dividends on some, but not all, of their respective shares.

Including the stockholders from 2009 to present in the definition of the class, and giving them notice and an opportunity to be heard, could result in Camac not receiving dividends on some or all of its shares. Nevertheless, it is willing to take that risk and undertake the obligation to give notice to the class, for the benefit of the entire class of Series B stockholders who may wish to assert a claim for the dividends at issue.³ Timm apparently is not willing to take that risk and instead seeks to limit the class to current owners, presumably to avoid the possibility that he will not receive dividends on some of his shares. If a conflict exists, it is between Timm and the other potential claimants to the dividends, because Timm's proposed class definition would ensure that he will receive dividends on all of his shares and deprive others of the right to be heard and assert a claim of their own.⁴

II. THE RELIEF SOUGHT

Camac is committed, as it has done throughout this litigation, to vigorously argue for the full relief that the Series B class is entitled to. Unfortunately, Timm's approach throughout the

³ Camac has proposed to Impac that, if the Court orders the Notice Program submitted by Camac, then Impac and the class would split the notice costs. Impac has consented.

⁴ Timm touts his historical ownership of the stock as a reason he should be the class representative. However, unlike the class definition proposed by Camac, Timm's definition of the class has nothing to do with historical ownership—Timm's class is for current owners of the preferred stock only. Indeed, by its terms, anyone who was a historical owner, but who sold their shares, is not even a member of the class. Thus, Timm's own vision of the case demonstrates that the historical ownership of shares has nothing to do with the issues and the appointment of the class representative. And both Timm and Camac have the same ownership status—both currently own the stock, and both purchased stock after the suit was initiated, although Timm purchased some of his stock before suit. However, Camac's portion of that ownership is orders of magnitude greater than Timm's. And Camac seeks to represent a class of all potential claimants of the dividends, not just current holders.

case appears to be that vigorous class representation requires arguing, repeatedly, for relief to which he is not entitled under Maryland law.⁵ Contrary to Timm's apparent belief, attempting to argue claims that were never part of the case, or that were conclusively decided, is not good advocacy.

Camac has advanced every argument available to maximize the relief recoverable by the class and has been successful in doing so. Its suitability for Class Representative is not dependent on pressing claims for relief that are not available to the Class.

III. THE RESPECTIVE STAKES OF THE PLAINTIFFS.

Camac's Motion notes that it is, by far, the largest owner of Series B shares litigating the case and that this fact should be considered in selecting Class Representative and, as it was by Judge Carrion in *In re Constellation*, in selecting Lead Counsel. Camac Motion Mem., p. 20 (164/0); *In re Constellation Energy Group, Incorporated Shareholder Litigation*, Case No. 24-C-11-003015 (Balt. City Cir. Ct. June 1, 2011) (Memorandum Opinion and Order). Timm responds that this factor "was not dispositive of [Judge Carrion's] decision" and that she considered several factors in selecting lead counsel. In addition to the size of the stake of the attorneys' client, Judge Carrion considered the finding "that all counsel available to serve as interim lead counsel herein are both distinguished and well-qualified." *Id.* at 6. That factor does not help Timm for the reasons discussed in detail in Camac Fund LP's Opposition to Plaintiff Curtis Timm's Motion for Class Certification and Other Relief ("Camac Opposition").

⁵ See e.g., Timm's claim for punitive damages in his original complaint, his argument for punitive damages to the Court of Special Appeals in a non-existent tort claim, and his present assertion of a right to prejudgment interest.

IV. THE RESPECTIVE INVOLVEMENT OF THE PLAINTIFFS.

Next, Timm takes issue with Camac's description of his involvement since his termination of his second counsel. The record is clear that he did not "research[], wr[ite] and file[d] memoranda in support of the cross motions for summary judgment" as he claims. Exhibit 5 to the Camac Opposition reflects the work done by the attorneys for the respective parties and by Timm in his *pro se* capacity, and the success of that work. Little of Timm's work *pro se* involved the issues that benefitted the Series B stockholders. And, for the reasons stated in the Camac Opposition, the quality of those papers does not support his application for a leadership position.

Timm's description of the settlement efforts that he made versus those of Camac is simply incorrect.⁶ In particular, Timm claims that in 2015 Camac and its attorney "asked Timm to be the primary negotiator with Impac to try and resolve the class claims with the exception of those claims held by Camac" and states that this indicated to him that Camac "was solely working in [its] own business interests and not the interests of the proposed class." This is untrue.

While Camac and Timm had worked together to try and reach a settlement of the case, it became clear that they had very different approaches to settlement. On April 27, 2015, Camac's counsel advised Timm that, if he sent a particular demand letter that Timm drafted to Impac, Timm should not "make any reference to sending it on behalf of Camac." Ex. 1 (redacted). Camac's counsel also advised Timm that "it is our view that the letter is not being sent on behalf

⁶ Timm's characterizations and unsupported "beliefs" (in actuality, personal opinions) about Camac's settlement strategies are irrelevant.

of the class of Series B preferred shareholders.” So, contrary to Timm’s statement, Camac did not ask Timm to “be the primary negotiator” to “resolve the class claims.”

But the details of this history (and Timm’s beliefs) are irrelevant because there has been no settlement—neither Timm’s, Camac’s or their joint efforts were able to achieve a settlement. Therefore, the settlement efforts of the respective parties (with the exception of Timm’s presuit attempt to surreptitiously settle the case for himself) provide no guidance on who should lead the class action to conclude the entry of final judgment. The litigation did not reach its current stage by settlement; it reached it by the effective litigation efforts of the attorneys.

Camac’s other papers described the relative contributions of its lawyers and Timm acting *pro se* to the successful results of this litigation. Those papers, and the underlying record in this case, speak for themselves and demonstrate that Camac is best able to be class representative and Tydings is best able to be counsel for the class.

V. CONCLUSION

All that remains in this case is for this Court to certify the class, appoint leadership positions, determine the recipients of the three quarters of dividends, and consider an application for legal fees. For a multitude of reasons explained in the Camac Opposition, Curtis Timm cannot be appointed as either class representative or Lead Counsel. His refusal to give a voice to those class members who might make a claim for the dividends, and the nature of his *pro se* work to date, demonstrate that he should not be appointed. Camac’s work, though its attorneys, demonstrates that they are the appropriate leadership team. Camac’s Motion should be granted, and Timm’s denied.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D.S. Katz", is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2022, copies of the foregoing Camac Fund L.P.'s Reply in Support of its Motion to Certify Class, Appoint Class Representative and Lead Counsel, Preliminarily Determine Right to Receive Dividends, and Set Final Judgment Hearing were sent by electronic mail, and first-class mail, postage prepaid, to:

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EXHIBIT 1

Daniel S. Katz

From: Curtis Timm <curtistimm@verizon.net>
Sent: Tuesday, April 28, 2015 8:42 AM
To: Daniel S. Katz
Subject: Re: Impac likely actions

On 4/27/2015 3:21 PM, Daniel S. Katz wrote:

Curtis,

Tom authorized me to email you directly. I've reviewed the versions of the proposed settlement demand letter. If you send the letter to Impac, it does not have the support or consent of Camac; therefore, please be sure not to make any reference to sending it on behalf of Camac. Also, at this stage without the Court having acted on the class certification motion, it is our view that the letter is not being sent on behalf of the class of Series B Preferred shareholders.

Dan

[REDACTED]

[REDACTED]