No. 132101

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

Deborah Greenswag, as Successor Trustee of the Franklin P. Friedman Living Trust, individually and on behalf of all similarly situated individuals, Plaintiff-Petitioner, vs. Lieberman Management Services, Inc., an Illinois corporation, Defendant-Respondent.	Appeal from the Appellate Court of Illinois, First Judicial District No. 1-24-0289 There heard on appeal from the Circuit Court of Cook County, Illinois, Chancery Division No. 16 CH 15920 The Honorable Caroline K. Moreland, Judge Presiding

REPLY BRIEF OF PLAINTIFF-PETITIONER DEBORAH GREENSWAG

KASIF KHOWAJA
PAUL A. CASTIGLIONE
Khowaja Law Firm, LLC
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 566-8070
kasif@khowajalaw.com
pcastig@khowajalaw.com

JAMES X. BORMES
CATHERINE P. SONS
Law Offices of James X. Bormes, P.C.
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 201-0575
jxbormes@bormeslaw.com
cpsons@bormeslaw.com

THOMAS M. RYAN
Law Office of Thomas M. Ryan, P.C.
35 E. Wacker Drive, Suite 650
Chicago, Illinois 60601
(312) 726-3400
tom@tomryanlaw.com

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CYNTHIA A. GRANT
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Attorneys for Plaintiff-Appellant

ORAL ARGUMENT REQUESTED

ARGUMENT

A plaintiff must allege an unfair and oppressive business practice in violation of the Illinois Consumer Fraud Act with specificity and particularity. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 418 (2002); *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶28. Plaintiff Deborah Greenswag ("Greenswag" or "Plaintiff") has done so here.

Greenswag alleged that defendant Lieberman Management Services, Inc. ("Defendant" or "Lieberman") charged predecessor plaintiff Franklin P. Friedman[1] and class members $470.00 for providing them with the necessary disclosure documents that Section 22.1 of the Illinois Condominium Property Act (the "Condo Act"), 765 ILCS 605/22.1(a) ("Section 22.1") requires, even though Plaintiff and others similarly situated had already paid for the preparation of such documents. (C. 365, Second Amended Class Action Complaint at Law ("SAC"), ¶63.)

Greenswag pled facts in amended count II of the SAC ("Count II") to satisfy all three factors under *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403 (2002). As a result, Greenswag stated a cause of action in Count II for an unfair and oppressive business practice under the ICFA that caused injury to

1 On or about April 4, 2020, the original plaintiff and class representative, Dr. Franklin P. Friedman, the then trustee of the Franklin P. Friedman Living Trust, passed away. (*Id.*) Greenswag, the successor trustee of the Franklin P. Friedman Living Trust, was subsequently substituted as plaintiff in this lawsuit on September 10, 2020. (C. 1002.)

Greenswag and other similarly situated members of the plaintiff class. Nonetheless, Defendant attempts to frame an issue in this appeal as follows:

> Whether Plaintiff prospective seller adequately pled a claim under the Illinois Consumer Fraud and Deceptive Practices Act based solely on allegations that Defendant property management company charged excessive fees to provide Plaintiff documents that sellers are required to disclose to prospective buyers under the Illinois Condominium Property Act.

(Defendant's Br. at 1.)[2] *See also* Defendant's Br. at 9 ("Plaintiff's entire case is based on the predicate allegation that Defendant violated Section 22.1(c) because Defendant charged too much to provide Plaintiff disclosure documents.")

Defendant's framing of the issue is incorrect and incomplete because Greenswag has done far more than allege the charge of excessive fees: she has also alleged facts to show that: (1) Defendant's charges for Section 22.1 documents offended public policy set forth in Section 22.1, (2) Defendant's conduct was immoral, unethical, oppressive, and unscrupulous; and (3) Defendant's conduct caused substantial injury to consumers. *See Robinson*, 201 Ill.2d at 417-418. In so doing, Greenswag has satisfied all three *Robinson* factors.

As a result, the correctly framed issue here is:

> Whether the circuit and appellate courts failed to properly apply the three factors from this Court's decision in *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403 (2002) when they decided, as a

2 Citations to Defendant's appellee's brief will be to "Defendant Br. at ___."

> matter of law, that Plaintiff's allegations in Count II did not state a claim under the ICFA for damages and other relief based on injuries from an unfair and oppressive business practice predicated in part on a violation of Section 22.1.

(Greenswag Opening Br. at 4.)

In *Robinson*, this Court recognized that "charging an unconscionably high price generally is insufficient to establish a claim for unfairness." *Robinson*, 201 Ill.2d at 418, *citing Saunders v. Michigan Avenue National Bank,* 278 Ill. App.3d 307, 313 (1st Dist. 1996) and *Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244, n. 5 (1972). In addition, the "defendant's conduct must violate public policy, be so oppressive as to leave the consumer with little alternative except to submit to it, and injure the consumer." *Id.*

In other words, to state a claim for an unfair business practice in violation of the ICFA, the plaintiff must plead facts to satisfy some or all of the three factors that *Robinson* adopted from *Sperry*.[3] That is the issue in this appeal and that is exactly what Plaintiff has done here. While *Robinson* does not require that all three factors be satisfied, Greenswag has pled all three.

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3 *Robinson* did not hold that all three factors needed to be satisfied. In fact, this Court expressly adopted the approach of the Connecticut Supreme Court in *Cheshire Mortgage Service, Inc. v. Montes*, 223 Conn. 80, 106 (1992), which held that "All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Cheshire*, 223 Conn. at 106. *See Robinson*, 201 Ill.2d at 418 ("We believe *Cheshire* expresses the correct standard and hereby adopt it as our own").

I. The Appellate Court Erroneously Affirmed The Circuit Court's January 26, 2024 Order.

(Reply to Defendant's Brief at 36-38.)

In considering whether Plaintiff properly alleged an ICFA claim for damages and other relief for injuries resulting from an unfair business practice predicated in part on a Section 22.1 violation, the appellate court erroneously applied the test for whether an implied private right of action under a statute exists. *See Greenswag v. Lieberman Management Servs., Inc.*, 2025 IL App (1st) 240289-U, ¶28, *citing Midwest Medical Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶42, *citing Marshall v. County of Cook*, 2016 IL App (1st) 142864, ¶12. This was the wrong test to apply.

While the appellate court should have analyzed and applied the three *Robinson* factors, it bypassed these factors and focused on case law pertaining to implied private rights of action based on a statute. The appellate court then erroneously concluded that because Section 22.1 did not create an implied private cause of action, Plaintiff could not bring an ICFA action for an unfair business practice predicated on a Section 22.1 violation. *Greenswag, Inc.*, 2025 IL App (1st) 240289-U at ¶¶28-30.

Defendant makes no real attempt to defend the rationale underlying the appellate court's order. Defendant Br. at 36-38. Instead, Defendant notes that "this Court reviews a lower court's *judgment*, not its rationale, and may affirm that judgment on any basis that the record supports, regardless of the basis cited by a lower court." (Defendant's Br. at 37, emphasis in the original). While

Defendant's statement of the law is correct, the fact that it has offered no argument in support of the appellate court's legal analysis is telling. In declining to argue in support of the appellate court's legal rationale, Defendant has tacitly conceded that this rationale is legally untenable.

Defendant also argues that while Justice Carter noted in the oral argument in *Channon*[4] that "the existence of an express remedy under the ICFA obviated the need to imply a private right of action under Section 22.1," this Court "did not hold in *Channon* that there was no need to imply a private right of action for sellers because they already had an adequate remedy under the Consumer Fraud Act." (Defendant's Br. at 37-38.) While that is literally correct – *Channon* held that no implied private right of action exists under Section 22.1 – for two reasons, Defendant misses the larger point.

First, the fact that no implied, private cause of action under Section 22.1 exists makes it incumbent for courts to recognize the causes of action that the Legislature has expressly created, such as the ICFA claim that Greenswag brought here in Count II.

Second, *Channon* expressly recognized that Section 22.1(c) "establishes a ceiling for the fee sellers may be charged to obtain that information. *Channon*, 2022 IL 128040 at ¶19. That fee must be "reasonable" and limited to the "`direct out-of-pocket cost of providing such information and copying.'" *Id.* Defendant engaged in an unfair business practice when it charged fees to

4 *Channon v. Westward Management, Inc.*, 2022 IL 128040.

Plaintiff and others in a captive market that substantially exceeded the reasonable direct out-of-pocket cost of providing such information and copying.

Because Defendant charged this excessive fee for documents that Illinois law required Plaintiff to obtain and because no alternative means of procurement existed, Defendant violated public policy, engaged in conduct that was so oppressive as to leave the consumer with little alternative except to submit to it and injured the consumer. As a result, Greenswag has stated a ICFA claim for an unfair business practice predicated on a violation of Section 22.1. The fact that Defendant had already been paid to maintain these documents renders Defendant's conduct even more egregious.

II. The Circuit Court Erroneously Dismissed Count II.
(Reply to Defendant's Brief at 9-35.)

As Defendant has abandoned any defense of the appellate court order, it confines its argument to a defense of the circuit court order. *See*, *e.g.*, Defendant's Br. at 11-13, 26-36. Defendant's reliance on the circuit court order is misplaced as that order is also legally erroneous.

A. Plaintiff Properly Stated An ICFA Claim In Count II.

i. The First *Robinson* Factor.
(Reply to Defendant's Br. at 11-20.)

Defendant's charges were unfair because they were contrary to Illinois public policy as set forth in Section 22.1. In contending that the charges did not contravene Illinois public policy and were fair, *see* Defendant's Br. at 11-

20, Defendant posits that Greenswag did not allege facts to satisfy the first *Robinson* factor. Defendant is mistaken.

Under the first *Robinson* factor, a plaintiff must show that an unfair and deceptive business practice offends public policy. *Robinson*, 201 Ill.2d at 417. Plaintiff has done so.

It is well established in Illinois that "[p]ublic policy is found in a state's constitution and statutes, and where those are silent, in the decisions of the judiciary." *Best v. Taylor Machine Works*, 179 Ill.2d 367, 456 (1997), *citing Petrillo v. Syntex Laboratories, Inc.*, 148 Ill.App.3d 581, 587 (1st Dist. 1986). In this regard, "a finding of public policy can often be inferred from these sources." *Petrillo*, 148 Ill.App.3d at 587, *citing Pittsburg, Cincinnati, Chicago & St. Louis R.R. Co. v. Kinney*, 95 Ohio St. 64, 115 N.E. 505 (Ohio 1916). Sections 22.1(a) and 22.1(c) set forth the two public policies at issue here:

- under Section 22.1(a) of the Condo Act, the condominium owner shall obtain from the Board of Managers and shall disclose to the prospective purchaser "specific information about the legal structure and rules of the condominium association as well as information about its financial status." *Channon,* 2022 IL 128040 at ¶19.

- under Section 22.1(c) of the Condo Act, the fee charged for the Section 22.1 disclosure documents should be limited to reasonable fees covering the direct out-of-pocket costs. *Id.* (establishing a ceiling for the fee that sellers may be charged to obtain that information and stating that the fee must be "reasonable" and reflect the "direct out-of-pocket cost of providing such information and copying.")

The plain language of Sections 22.1(a) and 22.1(c) and *Channon* set forth the public policy of Illinois with respect to what documents a condominium owner

must provide to a prospective seller and a reasonable limit on the amount sellers must pay for such documents.

Plaintiff alleged that Defendant's charge of $220.00 for some, but not all, of the information listed in 765 ILCS 605/22.1, C. 359, SAC, ¶45, and $250.00 for a paid assessment form, C. 360, SAC, ¶46, offends the public policy in Section 22.1(a) and Section 22.1(c) because Plaintiff and members of the class "had already paid for the preparation and maintenance of the same governing documents and records through the Association Fees." (C. 356, SAC, ¶28.) As an initial matter, Defendant argues that Plaintiff paid $95.00 for documents in addition to the Section 22.1 documents and $75.00 for a rush fee and that without the extra documents and the rush fee,[5] Plaintiff could have paid a fee of $275.00. (Defendant's Br. at 21; C. 512-513.) In this sense, Defendant quibbles with the facts alleged in the SAC. A 2-615 motion to dismiss is not the proper vehicle through which to dispute such allegations. *See Friedman v. White*, 2015 IL App (2d) 140942, ¶10.

More to the point, however, Defendant disregards Plaintiff's allegation that the payment of $470.00 was a double payment. (C. 356, SAC, ¶28.)

5 The circuit court decided this "rush fee issue" at the pleadings stage, C, 1272, but it should not have done so. Even if it had been properly considered, the record is devoid of evidence that Defendant earned the $75 expedited fee by providing the Section 22.1 disclosure documents within 72 hours. The circuit court incorrectly made that assumption. The allegations in the SAC show that Plaintiff requested the documents on September 27, 2016, and did not receive the documents until at least six days later, on October 3, 2016. (C. 359.)

Plaintiff and members of the Class had already paid these fees through their association fees, *id.*, and, the charge for the fees should have been limited to the cost of e-mailing PDF copies of the documents to Plaintiff and the class members. Consequently, neither $470.00 nor Defendant's calculation of $275.00 is a reasonable fee limited to Defendant's direct out-of-pocket costs. And while the charge of either amount offends the public policy in Section 22.1(c) because it is not a reasonable approximation of direct out-of-pocket costs, such a charge also offends the public policy in Section 22.1(a) because Plaintiff and the class comprised a captive market that was legally and contractually obligated to purchase these documents from Defendant.

Defendant also argues that its fee was not against public policy because Plaintiff and the class members were condominium sellers or prospective sellers and that "this Court already specifically found in *Channon* that there is no such public policy or legislative intent to protect sellers such as Plaintiff in section 22.1(c); the legislative intent – the public policy of Illinois – was to protect buyers and any benefit to sellers was merely incidental." *See* Defendant's Br. at 11-12, *citing Channon*, 2022 IL 128040 at ¶¶ 26–27. Defendant's reliance on *Channon* is misplaced as it has overread the decision.

In *Channon*, this Court considered a narrow question: did an implied private action exist for violations of Section 22.1? To answer that question, this Court applied the four-part test from *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004) to determine whether Section 22.1 creates an implied private right of

action for condominium sellers. Applying the first *Metzger* factor, this Court "conclude[d] that section 22.1(a)'s mandated disclosures establish a clear legislative intent to impose a duty on unit sellers for the sole benefit of potential buyers." *Channon*, 2022 IL 128050 at ¶24. Because this Court concluded that the plaintiffs were not members of the class Section 22.1 was intended to benefit, this Court held that Section 22.1 did not create an implied private right of action. *Id.* at ¶34.

Defendant states that it follows from this holding that "there is no public policy of protecting condo sellers by that statute." (Defendant Br. at 14.) That is an ominous statement because the corollary is that condominium sellers have zero defense to a price gouging property manager. Importantly, this statement is error and the source of this error is straightforward: Defendant conflated the issue of whether certain persons are members of the class the statute was intended to benefit with the with various aspects of public policy embedded in the language of any statute. This conflation lead Defendant down the wrong track.

Indeed, the fact that Section 22.1 does not provide an implied private right of action, *see id.* at ¶34, does not mean that the plain language of Section 22.1 does not set forth public policy on the fee limitation for Section 22.1 documents. It does. *See Best*, 179 Ill.2d at 456; *Petrillo*, 148 Ill.App.3d at 587. It is axiomatic in Illinois that courts must enforce clear, unambiguous statutes as written. *See Manago v. County of Cook*, 2017 IL 121078, ¶10. And courts

should construe statutes so that no word or phrase is rendered superfluous or meaningless. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1997). Most statutes do not imply private rights of action and yet those statutes express the public policy of the State. *See Village of Maywood v. Health, Inc.*, 104 Ill.App.3d 948, 955 (1st Dist. 1982) *citing* 2A A. Sutherland, Statutory Construction § 56.02 (4th Ed. 1973) (stating that "[c]onstitutionally valid legislation that is enacted in response to current demands serves as an extremely valuable evidentiary source of public policy"). Here, the fee limitation for Section 22.1 documents in Section 22.1(c) is clear and unambiguous and is the public policy of Illinois.

In sum, Greenswag pled facts to show that Defendant engaged in an unfair and oppressive business practice that offends the public policy of Illinois. Those allegations satisfy the first *Robinson* factor. *Robinson*, 201 Ill.2d at 417

ii. The Second *Robinson* Factor.
(Reply to Defendant's Br. at 20-24.)

Under the second *Robinson* factor, a plaintiff must show that defendant's unfair and deceptive business practice is immoral, unethical, oppressive, or unscrupulous. *Robinson*, 201 Ill.2d at 417-418. A practice is oppressive if plaintiffs "had no reasonable alternative." *See People ex rel. Fahner v. Hedrich*, 108 Ill. App. 3d 83, 90 (2d Dist. 1982). Plaintiff satisfies the second *Robinson* factor because she has alleged that under Section 22.1(a), she had no reasonable alternative but to obtain the Section 22.1 documents

from Defendant for an exorbitant fee that far exceeded the reasonable direct out-of-pocket costs of providing such information and copying.

Plaintiff has alleged that Defendant charged $470.00 for the Section 22.1 documents, even though Plaintiff and other class members "had already paid for the preparation and maintenance of the same governing documents and records through the Association Fees." (C. 356, SAC, ¶28.) Section 22.1(c) limits Defendant's fee to "a reasonable fee covering the direct out-of-pocket costs of providing such information and copying." 765 ILCS 605/22.1. The steep disparity between the $470.00 charge and Defendant's actual out-of-pocket costs is problematic. The fact that [Plaintiff] and each Class member ha[d] no reasonable alternative but to pay Defendant's excessive and unreasonable fee to obtain the necessary [Section] 22.1 disclosure documents," C. 374-375, surely makes this charge immoral, unethical, oppressive and unscrupulous.

Defendant, however, argues that its conduct was not "immoral, unethical, oppressive, or unscrupulous" because Plaintiff or a "real estate attorney could have done the work to compile the disclosure documents listed in Section 22.1 on their own." (Defendant's Br. at 20-21.) This is speculative and Defendant does not explain how "Plaintiff could have obtained the documents elsewhere." (*Id.* at 21.) Moreover, and as previously discussed, a 2-615 motion to dismiss is not the proper vehicle through which to dispute Plaintiff's allegations of fact. *Friedman*, 2015 IL App (2d) 140942 at ¶10. And that is precisely what this argument does.

What's more, this argument runs counter to the plain language of Section 22.1(a) itself. The language of Section 22.1(a) is clear: the only source from whom condominium sellers may obtain the Section 22.1 documents is the HOA or its agent, in this case Defendant. These documents, and the information contained therein, are within the exclusive control of HOAs and the agent property managers such as Defendant. *See* C. 356, SAC, ¶26 (alleging that "[t]he Association's governing documents and records were not prepared for Friedman or the Class upon their request for the documents and records. These governing documents and records had already been prepared by Lieberman in the regular course of its duties as the Association's property manager, and for which Lieberman had exclusive management and control (*i.e.*, budgets, minutes, declarations, financial reports, rules and regulations)"); C. 364, SAC, ¶62 (same); C. 389, SAC, ¶164 (same); and C. 390, SAC, ¶172 (same). If Defendant wants to dispute Plaintiff's allegations regarding Defendant's exclusive control of Section 22.1 documents or the sale of such documents to Plaintiff and other members constituting a captive market, then Defendant should file an answer to Count II and put the parties at issue. What Defendant cannot do is seek involuntary dismissal under Section 2-615 based on a dispute it has with Plaintiff's well pled facts.

In addition, Defendant cites three federal cases, *Horist v. Sudler & Co.*, 941 F.3d 274 (7th Cir. 2019), *Ahrendt v. Condocerts.com, Inc.*, No. 17-8418, 2018 WL 2193140 (N.D. Ill. May 14, 2018) and *Murphy v. Foster Premier, Inc.*,

No. 17-8114, 2018 WL 3428084 (N.D. Ill. July 16, 2018) in support of its argument that Defendant's sale of Rule 22.1 documents to Plaintiff and members of the class did not violate the ICFA. (Defendant's Br. at 22-23, 25.) As an initial matter, decisions of federal jurisdictions are not binding on this Court on matters of Illinois law. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill.2d 257, 266 (2001). Moreover, on July 5, 2018, the United States District Court for the Northern District Court of Illinois vacated the *Ahrendt* opinion upon which Lieberman relies. (SA-1). After the Seventh Circuit's decision in *Horist*, the district court granted Ahrendt's notice to voluntarily dismiss the case without prejudice. (SA-2-SA-4). Thus, *Ahrendt* is a vacated decision that offers no support to Defendant here.

Horist affirmed the dismissal of an ICFA claim that a condominium owner brought against a property-management firm and its third-party vendor for excessive fees charged for Section 22.1 documents. *Horist*, 941 F.3d at 280-281. Despite a superficial similarity to the instant case, *Horist* offers no aid to Defendant here for three reasons.

First, the Seventh Circuit, much like the appellate court below, conflated the plaintiff's ICFA claim with a private right of action under Section 22.1. *Compare Greenswag v. Lieberman Management Servs., Inc.*, 2025 IL App (1st) 240289-U, ¶29 (concluding that "Greenswag's consumer fraud claim is viable only if she can demonstrate that section 22.1(c) contains an implied private right of action for condominium sellers") with *Horist*, 941 F.3d at 280

(the ICFA claim "appears to rest almost entirely on the alleged violation of section 22.1"). The appellate court decision below incorrectly deemed an ICFA claim predicated on a Section 22.1 violation as a duplicate of a private cause of action under Section 22.1. *Greenswag*, 2025 IL App (1st) 240289-U at ¶30. *Horist* seems to make that same error.

Second, *Horist*, and again like the appellate court below, gives only a passing reference to *Robinson* and neither discusses nor analyzes the three *Robinson* factors. Indeed, *Horist* states that "charging an unconscionably high price generally is insufficient to establish a claim for unfairness," *Horist*, 941 F.3d at 281, *citing Robinson*, 201 Ill.2d at 418, and for that reason, affirmed the dismissal of the plaintiff's ICFA claim. Plaintiff agrees with that proposition. Greenswag, however, has not merely alleged an unconscionably high price for Section 22.1 documents. She has also alleged facts to satisfy all three *Robinson* factors. At a minimum, *Horist* is distinguishable[6] as the Seventh Circuit found that the plaintiff only alleged an unconscionably high

6 Even if *Ahrendt* had not been vacated, it is nonetheless distinguishable as it also construed the plaintiff's ICFA claim as "a complaint that Defendant charged him too much money." *Ahrendt*, No. 17-8418, slip op. at 7. In a similar vein, *Murphy* does not aid Defendant here as the district court dismissed the plaintiffs' ICFA claims on the grounds that the plaintiffs "have not adequately alleged that defendants' practices were sufficiently unfair to support a consumer-fraud-act claim." *Murphy*, No. 17-8114, slip op. at 10. In marked contrast, Greenswag has extensively pled sufficient facts to establish that Defendant's sale of Section 22.1 documents to Plaintiff and other class members in a captive market was unfair. *See* C. 353-356, SAC, ¶¶12-27.

price and, in the instant case, Greenswag has alleged facts going far beyond that.

Third, *Horist* construed the plaintiffs' ICFA claim as an attempt to impose liability upon a property-management firm and its third-party vendor "because they acted on behalf of the condominium associations to breach the associations' duties under section 22.1," (*Horist*, 941 F.3d at 281), and that agency law did not support such a theory. *Id.* In this regard, *Horist* found that under the plaintiff's ICFA claim, the acts of the principal homeowners' association were improperly imputed to its agents, a property-management firm and its third-party vendor. *Horist* calls this "the reverse of vicarious liability." *Id.*

Horist misapplied long established principles of Illinois agency law. In this regard, an ICFA claim against a property manager like Defendant engaging in unfair business practices in violation of Section 22.1 is not, as *Horist* contends, a case of holding the principal[7] liable for acts of an agent but rather a case of holding an agent liable for a duty that the principal owes where the agent "takes some active part in violating some duty the principal owes to a third person." *Landau v. Landau*, 409 Ill. 556, 564 (1951). *Landau* is good law. And the facts that Greenswag has alleged fall squarely within the *Landau* rule: to whatever extent the duty to not charge unreasonable fees remains on

7 In this case, Defendant Lieberman is the property management agent for its principal, the Mission Hills Condominium Association (the "HOA"). C. 352, SAC, ¶11.

the HOA's shoulders, Defendant was the one charging the fees and based on the allegations in the SAC, Defendant was the *only* party who assembled and provided the Section 22.1 documents. *See* C. 353-356, SAC, ¶¶12-27.

Horist did not correctly cite Illinois agency law and is not controlling in terms of its interpretation of the ICFA. Unlike *Horist* and the appellate decision below, this Court should read the ICFA and its provisions liberally. *See Robinson*, 201 Ill.2d at 416-417 (Illinois "courts liberally construe the Consumer Fraud Act to effectuate its purposes"). Defendant's proposed reading of the ICFA would go in exactly the opposite direction. See Defendant's Br. at 23 (citing *Horist* for the proposition that "any statutory duty rests with the association itself, not the property management company") Under Defendant's approach, an HOA can hire a property manager who, in turn, can engage in unfair business practices with regard to the charging of excessive fees to condominium sellers for Section 22.1 documents in violation of the HOA's statutory duties and those owners would have no redress or a viable remedy because it was the HOA's agent – and not the HOA itself – who engaged in misconduct for the benefit of the HOA. Such an approach is not only contrary to *Landau* but would sanction a sophisticated version of "hide the ball," where the law prohibits HOAs or its Board of Managers from charging an excessive fee for Section 22.1 documents but does not stop an agent acting on behalf of HOAs from engaging in an unfair business practice to charge the same exact excessive fee. Defendant's approach would, therefore, allow HOAs, their agents

and anyone managing property subject to the Condo Act to sidestep the law with impunity.

In short, Defendant invites this Court to read Section 22.1 in a manner that would defeat the policies underlying Section 22.1 and to read the ICFA in a manner that would likewise defeat its remedial purposes. It is an invitation this Court should decline.

iii. The Third *Robinson* Factor.
(Reply to Defendant's Br. at 20-26.)

Under the third and last *Robinson* factor, a plaintiff must show that defendant's unfair and deceptive business practice caused substantial injury to consumers. *Robinson*, 201 Ill.2d at 418. Plaintiff satisfies this element as well.

Plaintiff paid $470.00 for the Section 22.1 documents, even though she "had already paid for the preparation and maintenance of the same governing documents and records through the Association Fees." (C. 356, SAC, ¶28.) This was a double payment. If, in fact, Defendant had complied with Section 22.1(c), the fee charged would have limited to the labor cost of e-mailing the Section 22.1 documents to Plaintiff. The fee of $470.00 that Defendant charged went well beyond reasonable, direct out-of-pocket costs and, thereby, caused injury to Plaintiff and members of the class.

Defendant does not contest that Plaintiff paid $470.00 for the Section 22.1 documents but rather argues that Plaintiff expanded her own costs because Plaintiff's decedent "requested and obtained documents from

Defendant that were not required under section 22.1" and because Plaintiff's decedent requested a rush fee. (Defendant's Br. at 5-7, 10, 19 and 25.) Defendant further argues that without the extra documents and the rush, Plaintiff could have paid a fee of $275.00. (Defendant's Br. at 21; C. 512-513.)

Defendant's argument misses the mark, as it contests the *amount* of Plaintiff's damages and not that Plaintiff sustained injury in the first place. A 2-615 motion to dismiss is not the proper vehicle through which to dispute Plaintiff's allegations of fact, (*Friedman*, 2015 IL App (2d) 140942 at ¶10), but even if Defendant were correct on the amount of damages – a point that Plaintiff disputes because Plaintiff's decedent had already paid through his HOA fees for all the documents for which Defendant charged $470.00 and all Defendant had to do was e-mail those documents to her – this only goes to the amount of damages and not to whether Plaintiff sustained injury in the first place.

Before the trier of fact can assess damages, it will have to decide whether Defendant charged Plaintiff and class members a "reasonable fee" for "the direct out-of-pocket cost" of providing Section 22.1 disclosure documents. That, too, is a question of fact for the jury, (*Seyl v. Gross*, 2020 IL App (2d) 190371, ¶45), and not one to be decided on a Section 2-615 motion to dismiss.

But with respect to the third *Robinson* factor, Plaintiff has alleged that Defendant's unfair and deceptive business practice caused substantial injury

to Plaintiff's decedent. The allegations in Count II satisfy all three *Robinson* factors. Plaintiff properly alleged an ICFA claim in Count II.

III. The Circuit Court Misinterpreted Section 22.1.
(Reply to Defendant's Br. at 26-36.)

A. The Circuit Court Improperly Concluded That Section 22.1(c) Was Ambiguous.
(Reply to Defendant's Br. at 26-33.)

With respect to the version of Section 22.1 prior to the 2023 legislative amendment, *Channon* saw no ambiguity in Section 22.1(c) but rather a clear and unambiguous directive that HOAs and their agents could only charge sellers a "reasonable fee covering the direct out-of-pocket costs of providing such information and copying" for Section 22.1 documents.

Nonetheless, Defendant argues that the circuit court correctly found that the legislative amendments to Section 22.1 passed in 2022 and effective January 1, 2023 did address an ambiguity, as it "clarifies the term `reasonable fee' by adding a monetary amount on what associations may charge for providing the requested disclosure documents." (Defendant's Br. at 29.) This argument misses the mark, as it misconceives what the word "ambiguity" means. This Court has stated that a "statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways." *Krohe v. City of Bloomington*, 204 Ill.2d 392, 395-396 (2003).

Prior to the legislative amendment passed in 2022, Section 22.1(c) established that HOAs could charge sellers a fee for the Section 22.1 documents but that "fee must be `reasonable' and reflect the `direct out-of-

pocket cost of providing such information and copying.'" *Channon*, 2022 IL 128040 at ¶19. The language of Section 22.1(c) is not ambiguous because it is capable of only one meaning: HOAs and their agents can charge condominium sellers for the preparation of Section 22.1 documents but the fee must be "reasonable" and must "reflect direct out-of-pocket costs" for providing and copying such documents. To suggest that such statutory language is "ambiguous" is a legal fantasy.

After the legislative amendment passed, Section 22.1(c) stated, in relevant part:

> A reasonable fee, not to exceed $375, covering the direct out-of-pocket cost of providing such information [Section 22.1 documents] and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.

765 ILCS 605/22.1 (in effect after January 1, 2023). Post-amendment, the Legislature once again stated that HOAs can charge condominium sellers for the preparation of Section 22.1 documents but the fee must be "reasonable" and must "reflect direct out-of-pocket costs" for providing and copying such documents. The amendment did not alter the concept of "reasonable fee covering the direct out-of-pocket cost of providing Section 22.1 documents" one iota. All the Legislature did was add language that capped what HOAs could charge sellers for Section 22.1 documents at $375.00. The addition of a ceiling for the fee did not resolve any ambiguity in the statutory language of Section 22.1 but merely reflected the State public policy that HOAs or their agents

should not, under any circumstances, charge condominium sellers more than $375 for Section 22.1 documents.

Defendant, however, argues that the Legislature added the outer limit of the $375 charge to somehow define what "reasonable" means as used in Section 22.1. (Defendant's Br. at 32.) Defendant offers no legal support for this novel argument. A much better approach is one rooted in Illinois law: give "reasonable fee" its natural meaning. "If a word or phrase within a statute is undefined, it is appropriate to employ a dictionary to ascertain the meaning of the undefined word or phrase." *White v. Ret. Board of the Policemen's Annuity & Benefit Fund of Chicago*, 2014 IL App (1st) 132315, ¶40. Merriam-Webster defines "reasonable" as "being in accordance with reason" and "not extreme or excessive." Merriam-Webster defines "fee" as "a fixed charge" and "a sum paid or charged for a service."

In other words, a "reasonable fee" is one "in accordance with reason" and "not extreme or excessive." It is not simply the ceiling that the Legislature affixed to what fees HOAs could charge condominium sellers for Section 22.1 documents. And if a lawsuit under the ICFA, like this one, is filed against an HOA's agent for engaging in an unfair and deceptive business practice for charging condominium sellers unreasonable fees untethered to direct-out-pocket costs for Section 22.1 documents, then the question of what fee is reasonable is a question of fact for the trier of fact.

B. The Circuit Court Improperly Applied the 2022 Legislative Amendment to the Condo Act Retroactively.

(Reply to Defendant's Br. at 30-33.)

The circuit court not only misapplied the legislative amendments to Section 22.1 passed in 2022 and effective January 1, 2023 but, without any legal basis, did so retroactively. (C 1275.) One reason this was erroneous is the Statute on Statutes, 5 ILCS 70/4.

Defendant, however, argues that while "section 4 of the Statute on Statutes relates to *substantive* changes in the law," Defendant's Br. at 33 (emphasis in the original), "section 4 allows retroactive application of *procedural* changes to statutes." (Defendant's Br. at 34, emphasis in the original.) This distinction offers no aid to Defendant because the Section 22.1 establishes substantive rights of condominium buyers and sellers with regard to the provision of Section 22.1 materials.

Section 22.1(a) sets forth the Section 22.1 materials that a condominium seller must provide to prospective buyers. And Section 22.1(c) ensures that HOAs and their agents can only charge "a reasonable fee covering the direct out-of-pocket costs of providing such information and copying" with respect to Section 22.1 materials. These are substantive rights for both condominium buyers and sellers under Section 22.1. And, thus, the Statute on Statutes applies to legislative amendments modifying these rights.

Under Section 4 of the Statute on Statutes, an Illinois statute can be applied retroactively *only* when the Legislature expressly says so. *Caveney v. Bower*, 207 Ill. 2d 82, 94 (2003). The Legislature did not express any intention

to apply the 2022 amendment retroactively, so the amendment adding a $375 cap for the fees that an HOA or its agent can charge sellers for Section 22.1 materials has no application here. In this regard, the circuit court erroneously found that the 2022 legislative amendment retroactively amended Section 22.1. This Court should find that this legislative amendment was only intended to apply prospectively.

CONCLUSION

For all of the above stated reasons, Plaintiff Deborah Greenswag respectfully requests that this Honorable Court reverse the judgment of the appellate court, reverse the judgment of the Circuit Court of Cook County dismissing Count II and remand the case to the circuit court for further proceedings.

Respectfully submitted,

Deborah Greenswag, as Successor Trustee of the Franklin P. Friedman Living Trust

By: *s/Paul A. Castiglione*
One of her attorneys

Kasif Khowaja
Paul A. Castiglione
Khowaja Law Firm, LLC
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 566-8070
kasif@khowajalaw.com
pcastig@khowajalaw.com

James X. Bormes
Catherine P. Sons
Law Office of James X. Bormes, P.C.
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 201-0575
jxbormes@bormeslaw.com
cpsons@bormeslaw.com

Thomas M. Ryan
Law Office of Thomas M. Ryan, P.C.

35 E. Wacker Drive, Suite 650
Chicago, Illinois 60601
(312) 726-3400
tom@tomryanlaw.com

CERTIFICATION OF COMPLIANCE

I, Paul A. Castiglione, certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 5,996 words.

/s/ Paul A. Castiglione
One of Plaintiff's Attorneys

CERTIFICATE OF SERVICE

I, Kasif Khowaja, an attorney, hereby certifies that on April 9, 2026, a true and correct copy of the Plaintiff-Appellant's Reply Brief was served via Odyssey eFileIL, an approved electronic filing service provider, pursuant to Illinois Supreme Court Rule 11(c), upon the following counsel of record:

Arthur J. McColgan
Scott T. Stirling
Kassandra Altantulkhuur
Walker Wilcox Matousek LLP
One North Franklin Street, Suite 3200
Chicago, Illinois 60606
Telephone: (312) 244-6700
Firm I.D. No. 41812
amccolgan@walkerwilcox.com
sstirling@walkerwilcox.com
kalt@walkerwilcox.com

Counsel for Defendant-Appellee Lieberman Management Services, Inc.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Kasif Khowaja
One of Plaintiff's Attorneys

No. 132101

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

Deborah Greenswag, as Successor Trustee of the Franklin P. Friedman Living Trust, individually and on behalf of all similarly situated individuals, Plaintiff-Petitioner, vs. Lieberman Management Services, Inc., an Illinois corporation, Defendant-Respondent.	Appeal from the Appellate Court of Illinois, First Judicial District No. 1-24-0289 There heard on appeal from the Circuit Court of Cook County, Illinois, Chancery Division No. 16 CH 15920 The Honorable Caroline K. Moreland, Judge Presiding

SUPPLEMENTAL APPENDIX OF PLAINTIFF-APPELLANT DEBORAH GREENSWAG

KASIF KHOWAJA
PAUL A. CASTIGLIONE
Khowaja Law Firm, LLC
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 356-3200
kasif@khowajalaw.com
pcastig@khowajalaw.com

JAMES X. BORMES
CATHERINE P. SONS
Law Office of James X. Bormes, P.C.
8 South Michigan Av., 26th Floor
Chicago, Illinois 60603
(312) 201-0575
jxbormes@bormeslaw.com
cpsons@bormeslaw.com

THOMAS M. RYAN
Law Office of Thomas M. Ryan, P.C.
35 E. Wacker Drive, Suite 650
Chicago, Illinois 60601
(312) 726-3400
tom@tomryanlaw.com

Attorneys for Plaintiff-Appellant

TABLE OF CONTENTS TO SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.2.2
Eastern Division

Robert Ahrendt

Plaintiff,

v.

Case No.: 1:17−cv−08418
Honorable John Robert Blakey

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, July 5, 2018:

MINUTE entry before the Honorable John Robert Blakey: This Court grants Plaintiff's motion for reconsideration [51] and vacates its prior order dismissing Plaintiff's complaint [47]. The 7/12/18 notice of motion date is stricken and the parties need not appear. This case is set for a status hearing on 11/6/18 at 9:45 a.m. in Courtroom 1203. The case is stayed through and including 11/6/18, pending a decision from either the Seventh Circuit or the Illinois Appellate Court on whether the Illinois Condominium Property Act creates a private right of action for condominium sellers. Plaintiff shall contact this Court promptly before that date if either court issues its decision. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION

ROBERT AHRENDT, individually and on behalf of all other persons similarly situated,	
Plaintiff,	
v.	Case No. 1:17-cv-8418 Honorable John Robert Blakey
OMAFIN, INC. formerly known as CONDOCERTS.COM, INC., a Mutual of Omaha Bank Company,	
Defendant.	

PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COMPLAINT WITHOUT PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(1)(i)

Plaintiff, Robert Ahrendt, individually and on behalf of other persons similarly situated, through his undersigned counsel, hereby voluntarily dismisses without prejudice the complaint against Omafin, Inc., pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), where a class has not yet been certified, and where Omafin, Inc. has not yet filed an answer or a motion for summary judgment in this action.

Respectfully submitted this 13th day of November 2019.

/s/ Donald J. Pechous
One of the Attorneys for Plaintiff

James X. Bormes
Catherine P. Sons
Law Office of James X. Bormes, P.C.
8 South Michigan Ave. Suite 2600
Chicago, IL 60603
(312) 201-0575- T
(312) 332-0600- F
jxbormes@bormeslaw.com
cpsons@bormeslaw.com
(Lead Counsel)

Karnig S. Kerkonian
Elizabeth M. Al-Dajani
Kerkonian Dajani LLC
1555 Sherman Avenue, Suite 344
Evanston, IL 60201
(312) 416-6180- T
(312) 604-7815- F
kkerkonian@kerkoniandajani.com
ealdajani@kerkoniandajani.com

Donald J. Pechous
Kasif Khowaja
The Khowaja Law Firm, LLC
8 South Michigan Ave. Suite 2600
Chicago, IL 60603
(312) 356-3200- T
(312) 386-5800- F
dpechous@khowajalaw.com
kasif@khowajalaw.com

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.3.2
Eastern Division

Robert Ahrendt

Plaintiff,

v.

Case No.: 1:17−cv−08418
Honorable John Robert Blakey

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, April 16, 2020:

MINUTE entry before the Honorable John Robert Blakey: For the reasons explained in the accompanying order, this Court grants Plaintiff's request to voluntarily dismiss this case without prejudice [62] under Fed. R. Civ. P. 41(a)(2). This case is hereby dismissed without prejudice. Civil case terminated. Mailed notice(gel,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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