No. 128040

IN THE SUPREME COURT OF ILLINOIS

HARRY CHANNON AND DAWN CHANNON, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Appellant.

Rule 308 Appeal from the Illinois Appellate Court, First Judicial District, No. 1-21-0176. There heard from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 19 CH 4869. Honorable Anna M. Loftus, Judge Presiding.

REPLY BRIEF OF DEFENDANT-APPELLANT WESTWARD MANAGEMENT, INC.

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ORAL ARGUMENT REQUESTED

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REPLY ARGUMENT

I. The Channons are not members of the class that §22.1 was enacted to primarily benefit.

The primary-incidental benefit analysis used to determine class membership is not Westward's invention (Pl.11, 44, 45). *Metzger* and *Fisher* employed it. *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004); *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 463 (1993). And though the Channons argue that *Metzger* is not the "universal test," (Pl.44-45), the appellate court has applied it before and after the decision here. *Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 2017 IL App (1st) 160756, ¶59; *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶19-22; *1541 N. Bosworth Condo. Ass'n v. Hannah Architects, Inc.*, 2021 IL App (1st) 200594, ¶52 (purpose of ordinance was to ease permit process rather than providing safety). The analysis governs the first element of the four-factor test.

The Channons note that a statute can have more than one purpose (Pl. 14-15, 40). That is irrelevant. The question here is whether the legislature intended to provide a private right of action even though it did not expressly do so. As an initial matter, answering the question requires a search for the Act's primary purpose.

The Channons cite to rules of statutory construction, but the rules take a back seat to the Act's plain language (Pl.12-13); *Collins v.*

Bd. of Tr. of Fireman's Ann. & Ben. Fund, 155 Ill. 2d 103, 111 (1995). As originally enacted, the Act was virtually silent about sales of condominium units. Ill. Rev. Stat. 1963, ch. 30, §301 *et seq*. Its only provision on sales concerned the bulk sale of an entire condominium property. *Id.* at §315. Until §22.1 was enacted in 1980, the Act did not deal with resale transactions. So, it is impossible to conclude from the original Act that the legislature intended to benefit unit sellers. The Channons cite no provision showing otherwise.

Plainly read, §22.1's primary purpose was to benefit potential purchasers. Subsection (a) imposes an obligation on unit sellers. Subsection (b) imposes another obligation—a time limit—on sellers. Subsection (c) imposes still another seller obligation: disclosure of security interests recorded against a unit—information a potential purchaser will need to know.

The last paragraph of subsection (c) primarily benefits an association: a fee "*may be charged* by the association or its Board of Managers to the unit seller for providing such information" (emphasis supplied). Section 22.1's limit on the charge does not diminish that the legislature imposed a duty on sellers to pay it. In the circuit court's words, §22.1 only offers a "shred of protection" to sellers (A.39). The appellate court did not disagree (A.16-17). At most, a "shred" is an

incidental benefit insufficient under *Metzger* to support class membership.

Section 22.1 does not mention property managers or agents of an association or board. Nothing in §22.1 or in the Act mandates the retention of a property manager or agent to deal with disclosure issues. The Channons claim only Westward could provide them with §22.1 documents (Pl.4.). If true, that was the Association's doing. The Channons admit: "at the direction of Kenmore Club," they sought documents from Westward (*Id.*). There is no evidence the legislature created an action against a property manager when an association will not perform its statutory duty.

The Channons rely on the appellate court's rationale that §22.1 also benefits unit sellers:

> Section 22.1 thus protects unit owners who want to sell their condominium units by ensuring that they have a statutory mechanism to obtain this information from an association to provide in connection with a sale. It protects unit owners who could otherwise be locked into the purchase of a condominium unit, unable to sell it. The statute thus facilitates sales, just as it protects purchasers (A.17, ¶21).

The rationale is unsound. It is like saying that tax laws benefit taxpayers by providing a mechanism to avoid jail for nonpayment. Here, sellers must provide §22.1 information out of a statutory

obligation that did not previously exist. Section 22.1 did not confer a benefit turning sellers into protected class members.

Nor is there evidence supporting the rationale that the legislature intended §22.1 to "facilitate sales" (A.17, ¶21). Plainly read, the Act is neutral about sales. It neither encourages nor discourages them. A seller's complying with §22.1 may cause a potential purchaser to walk away from a deal. Depending on the circumstances, it can happen many times over. But the legislature was unconcerned. Its primary objective is to provide potential buyers with sufficient information to make good decisions.

Nothing in §22.1 indicates that it was designed to equally protect buyers and sellers. If that were the legislature's intent, it could have split the cost of §22.1 information between buyers and sellers. Instead, the legislature imposed no obligation on potential purchasers, evidence that it intended §22.1 to primarily, if not solely, benefit them.

The Channons argue that "excessive fees stand directly in the way of a seller's ability to fulfill the very duty of disclosure" (Pl.25). That argument does not fit here—nor likely elsewhere. The Channons paid the fee on their VISA card to speed processing (A.129). They sold their unit for $197,000, perhaps at a profit (their complaint is silent) (A.109). They did not question Westward's fee until over 15 months

after closing (A.64, ¶57; A.136-37). Nor did they explain how a $245 fee was more onerous than paying title insurance charges, Illinois and applicable Chicago transfer taxes, and attorney's fees—expenses normally borne by sellers.

The Channons refer to the Act's legislative history (Pl.16-17), but they do not discuss it. They offer nothing showing a concern about the cost of §22.1 documents on sellers. They mention in passing a House proceeding in 1983—three years after §22.1's enactment—but do not provide details (Pl. 17). Comments by individuals carry "little weight" in determining legislative intent. *People v. R. L.*, 158 Ill. 2d 432, 442 (1994). The appellate court agrees (A.14, ¶20).

The Channons misread *Metzger*. They argue that a statute can have more than one "primary" purpose (Pl.18). In Metzger, this Court used the word "primary." 209 Ill. 2d at 38 ("primary class," "primarily designed," "enacted primarily to benefit"). Words must be interpreted as ordinarily understood. *Samour, Inc. v. Bd. Of Elect. Comm'rs*, 224 Ill. 2d 530, 540 (2007). "Primary" means "of first rank, importance, or value: PRINCIPAL." meriam-webster.com/dictionary/primary (last visited July 12, 2022). The appellate court agreed that §22.1 was primarily designed to benefit purchasers (A.16, ¶21). The circuit court was more direct: §22.1 offers a "shred of protection" to sellers (A.39).

The Channons argue that "the only time a court has found that a plaintiff is an 'incidental beneficiary' or receives 'incidental benefits' is when it has already determined that the plaintiff is ***not within*** the class of individuals which the Act as a whole was enacted to protect" (Pl.18; emphasis in original). But in *Metzger*, the Personnel Code "provided a comprehensive statutory scheme for redress of Metzger's type of injury." 209 Ill. 2d at 42. Despite it, the Court held that the legislature did not intend to create for state employees a private right of action. In *Fisher*, the statute prohibited retaliation against employees reporting problems with nursing care. 188 Ill. 2d at 462. So, employees were within the statute's protection. But the legislature did not create a private right of action because the Act's "central purpose" was to protect residents. *Id.* at 463. The Channons have the test backward. Whether a person is a class member does not determine whether a benefit is primary or incidental. Rather, whether a benefit is primary or incidental determines class membership.

The Channons contend that as owners, they are class members covered by the Act as a whole (Pl.18-20). As such, they conclude that the legislature gave them a right of action against Westward under §22.1 (Pl.20-21). But §22.1 deals with a specific issue: unit sales. Not all owners are sellers. The certified question is limited to considering the

alleged rights of a "condominium unit seller" against a property manager under §22.1 (A.35). In examining the Act as a whole, the focus must be on what the legislature intended for a seller, not for an owner in general.

The Channons argue that "today's buyer becomes tomorrow's seller" (Pl. 20, *quoting* appellate and trial courts). If true, it is irrelevant. The question here is about legislative intent. If the legislature did not intend a right of action for today's seller, "tomorrow's seller" fares no better.

The Channons cite only one case on whether a seller has a right of action against a property manager under §22.1. [Pl.48, *citing* *Friedman v. Lieberman Mgmt. Srvs.*, 2019 IL App (1st) 180059-U (Walker, J., *dissenting*)]. They violate Rule 23(e), barring citation to unpublished pre-January 1, 2021 orders. This Court should ignore the Channons' arguments based on the *Friedman* dissent.

The Channons note that Westward's federal cases carry no precedential value (Pl.23, n.6). This Court is not bound by any federal or state decision on an issue of Illinois law. *People v. Julie M.*, 2021 IL 125768, ¶75. But properly cited decisions might be persuasive. Three Illinois appellate court decisions state that §22.1 is designed to protect purchasers. *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71, 77 (1st Dist.

1993) (implying private right of action against seller); *Mikulecky v. Bart*, 355 Ill. App. 3d 1006, 1012 (1st Dist. 2004) ("The legislative mandate to sellers is clear in this case: disclosure of information in furtherance of the public policy of Illinois"); *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865 (recognizing private right of action against seller).

As for federal cases, the Channons misread *Horist* (Pl.23-24). The Seventh Circuit did not read §22.1 in isolation. It stated that Illinois courts read statutes "as a whole" and that it read §22.1 "in this holistic way." 941 F.3d 274 at 280. Besides, the Channons themselves have only cited to §22.1 for their position, not to any other statutory provision. On its face, §22.1 does not help them.

The Channons note that *Ahrendt v. Condocerts.com, Inc.*, 2018 WL 2193140 (N.D. Ill.), was vacated (Pl.23, n.6). But not because of its reasoning. The district court stayed *Ahrendt* pending a decision in *Horist* (SA-1). After *Horist*, the *Ahrendt* plaintiff (represented by two of the Channons' firms), voluntarily dismissed the case (SA-2-3).

The Channons argue that the appellate court rejected *Murphy v. Foster Premier, Inc.*, 2018 WL 3428084 (N.D. Ill.) (Pl.25). But the appellate court failed to properly apply *Metzger*'s primary-incidental

test in considering whether the Channons were class members under §22.1. *Murphy* remains persuasive.

The Channons note that Judge Moreland's decision in *Friedman v. Leiberman Mgmt. Srvs., Inc.* is on appeal to the First District (Pl.26, n.7). They failed to disclose that in April 2022, the First District stayed the appeal pending resolution here (Reply App. 3, *sub nom*. *Greenswag v. Lieberman Mgmt. Srvs., Inc.*, No. 1-21-0614).

Nothing supports the Channons' conclusion that the legislature intended unit sellers to be class members under §22.1.

II. Section 22.1 is not designed to protect sellers through a private right of action against property managers.

The Channons repeat the themes of their earlier arguments (Pl.27-29). But they miss the breadth of the certified question (A.35). It does not just ask whether the legislature intended to create a private right of action for a seller. It also asks whether the legislature intended to create an action under §22.1 *against a property manager*. Viewing the Act as a whole, there is no evidence of it. The original Act did not mention unit sales. It did not impose on property managers a duty to provide documents to unit sellers. Through §22.1, it imposed that duty on an association, without mentioning a property manager. The Act does not even require the retention of a property manager. Absent

evidence of legislative intent, sellers do not have a private right of action against property managers.

III. Implying a right of action against a property manager is inconsistent with the Act's underlying purpose.

The Channons repeat their earlier errors, which leads to their erroneous conclusion (Pl.29-30). Implying a right of action requires more than finding that a statute has multiple purposes. A court must uncover a statute's primary purpose. The purpose of §22.1 is not to ensure that "the seller has a legal mechanism" to fulfill the obligation §22.1 itself imposed on sellers (Pl.29). Nor does §22.1 "set[] the parameter of the parties' expectations and obligations *to one another*" (Pl.29; emphasis supplied). A potential purchaser receiving §22.1 documents has no obligation to buy a unit. And §22.1 does not set "parameters." "[D]irect out-of-pocket" will mean different things to different people, especially when fees cover both providing and copying documents.

The Channons conclude:

> [I]f condo owners are stripped of their protections under section 22.1, they are left without an adequate remedy to enforce the statute, thereby not only eliminating one of its purposes, but the effectiveness of the Condo Act as whole (Pl.30).

The Channons had two protections they did not assert: a claim against the Association and board for breach of fiduciary duty, and claim under §19 of the Act. They even have a third: a consumer fraud action, one they are currently asserting. Contrary to the Channons' arguments, they are adequate to effectuate the Act.

IV. Implying a right of action against a property manager is not needed to provide an adequate remedy for violations of the Act.

The Channons lose sight of what the adequate-remedy factor is intended to do. Its purpose is to focus a court's attention on necessity, *i.e.*, what is needed to effectuate a statute. A court must not imply a private right of action against a property manager unless there is a "clear need" for it. *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999). A statute otherwise must be "so deficient" that implying a private right of action is needed to effectuate its purpose. *Metzger*, 209 Ill. 2d at 42. *Metzger* rejected an argument that "inappropriately focuses on the claimed right to compensation for [Metzger's] injuries rather than on whether adequate remedies are provided to make compliance with the Personnel Code likely." *Id.* at 41.

A First District decision rendered after the decision here agrees:

> [T]he most recent decisions of our supreme court on this question have made it clear that the focus should be on whether an implied right of action is necessary to enforce the provisions

> of the statute, *not* on whether a particular plaintiff could recover from a particular defendant."
>
> *1541 N. Bosworth Condo Ass'n v. Hannah Architects, Inc.*, 2021 IL App (1st) 200594, ¶56 (emphasis in original).

Under the fourth factor, if the Channons had an available remedy that would effectuate the Act, there would be no need to imply a right of action against Westward.

The Channons had several remedies, one they ignore. Section 18.4 of the Act imposes on an association's board a fiduciary duty to act in the best interests of unit sellers:

> In the performance of their duties, the officers and members of the board, whether appointed by the developer or elected by the unit owners, shall exercise the care required of a fiduciary of the unit owners.
>
> (765 ILCS 605/18.4).

A fiduciary owes a "fundamental duty to maintain complete unselfishness and inflexible loyalty" to those it owes the duty. *Glasser v. Essaness Theatres Corp.*, 414 Ill. 180, 203 (1953). At very least, a fiduciary must exercise the skill and diligence reasonable people apply to their own affairs. *In re Karavidas*, 2013 IL 115767, ¶42. Here, the board owed a fiduciary duty to unit owners—as supported by the Channons' own citation. *Kai v. Bd. of Dirs. of Spring Hill Bldg. 1*

Condo. Ass'n, 2020 IL App (2d) 190642, ¶25; (Pl.17, 27). It included a fiduciary duty to provide all §22.1 documents without exception. The Channons just needed to ask. And the board owed a fiduciary duty to provide them at a "reasonable fee." §22.1.

The Channons argue they delegated to Westward the duty to provide documents (Pl.38-39). That did not relieve the Association's board of its fiduciary duty:

> [W]e note the well-established principle that a trustee *cannot simply delegate his own duty to provide information to his beneficiary or force the beneficiary to find other avenues for information he is rightfully owed*. "The law does not contemplate that a beneficiary of a trust must set in motion the processes of a court *** in order to obtain what he is entitled to." *Johnson v. Sarver*, 350 Ill. App. 565, 579, 113 N.E.2d 578, 584 (1953). As the long-establish high duties of a trustee were explained by the court in *In re The Trusteeship Under the Last Will and Testament of Hartzell*, 43 Ill. App. 2d 118, 193 N.E.2d 697 (1963):
>
> > "Although purely ministerial powers or duties may be delegated by a trustee, *generally a trustee may not delegate powers and duties involving an exercise of judgment and discretion*. A trustee must use care and diligence in the discharge of his powers and duties. He is held to a high standard of conduct must exercise the utmost or highest good faith in the administration of

> the trust." *Hartzell*, 43 Ill. App. 2d at 134, 192 N.E.2d at 706.
>
> Adherence to fundamental principles dictates that "[a] trustee is held to a high standard of conduct and must exercise the utmost or highest good faith in the administration of the trust," and that "[a]cting with good faith in administering the trust means that the trustee must act honestly and with undivided loyalty to the trust, not merely with the standard of the workaday world but with the most sensitive degree of honor." *Laubner v. JP Morgan Chase Bank, N.A.*, 386 Ill. App. 3d 457, 463-64, 898 N.E.2d 744, 751, 325 Ill. Dec. 697 (2008).
>
> *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1012-13 (1st Dist. 2010) (emphasis supplied).

A trustee is a fiduciary. *Fin. Freedom Aquis., LLC v. Std. Bank & Tr. Co.*, 2015 IL 117950, ¶15. As are the Association and board.

Because setting a reasonable fee is a matter of judgment and discretion, the Association's board always retained that duty. It needed to monitor Westward's activities, know Westward's fee schedule, and if believed to be unreasonably high, to lower it. If Westward collected more fees than reasonable, the Association's board needed to refund excesses. Fiduciary duty demanded no less.

The Channons' claim that fees were excessive supports an action against the Association and board for breach of fiduciary duty. The action enjoys a "centuries-long history in the common law." *Kai* at ¶19. Nothing in the Act displaces it. *Id.* This remedy is particularly

appropriate given the nature of §22.1 disclosures. Section 22.1 requires more than providing routine documents. It requires disclosing information that might be exclusively in an association's possession. This includes the disclosure of: present and anticipated capital expenditures; reserve funds, including earmarked funds; an association's financial condition; pending suits and judgments; insurance coverage provided by an association; and a good faith statement that a prior owner's improvements and alternations comply with condominium instructions. The Act does not require a property manager to retain or know this information. An association is responsible for it, and as a fiduciary, is responsible for providing it. Failing to do so at a reasonable price supports a remedy for breach.

The legislature is presumed to know the law. *Palm v. Holocker*, 2018 IL 123152, ¶31. That includes the law governing fiduciaries. Given the available remedy against associations and boards, the legislature had no need to create a right of action against property managers. The threat of an action against associations and boards provided "an efficient method of enforcing" the reasonable-fee provision. *Abbasi*, 187 Ill. 2d at 395.

The Channons also had a remedy under §19 of the Act. They claim that the remedy is incomplete because it does not include a

statement of unpaid assessments required under § 22.1(a)(2) (Pl.36). But that document is available pursuant to by-law. Under Section 18(i), condominium by-laws must provide:

> (i) That upon 10 days notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.
>
> 765 ILCS 605/18(i).

By-laws not containing this provision "shall be deemed to incorporate [it] by operation of law." §18.

The Channons argue that §19 is irrelevant because they did not sue under §19 (Pl.36). But a court searching for legislative intent does not look for what a party did to seek relief. It searches for what the legislature provided as remedies. Moreover, like the appellate court, the Channons misconstrued the analysis under §19 (Pl.37; A.24, ¶35). Whether Westward had liability under §19 as a managing agent is irrelevant (*Id.*). The point of §19 here is that the Channons had a remedy against the Association.

The Channons also have a remedy under the consumer fraud statute. They join the appellate court in criticizing Westward for taking an allegedly inconsistent position that the Channons failed to state a

cause of action (Pl.33; A.20, ¶26). But the circuit court ruled that the Channons stated one; Westward merely moved forward (A.43). The issue was not briefed in the appellate court because the court excluded it from consideration on appeal (A.28).

The Channons seem to argue against their own consumer fraud claim (Pl.33-35). The issue here is whether the consumer fraud statute provides the Channons an adequate remedy. The Channons must think so; they brought the claim and even seek punitive damages and attorney's fees under it (A.79-80). But they now talk about different standards of proof and "qualitatively different" interests (Pl.34). Those are irrelevant to whether they can recover under the statute. If the Channons do not believe they have a valid consumer fraud claim, they should say so.

The Channons argue about whether violating the Act automatically constitutes an unfair business practice under the consumer fraud statute (Pl.34). They note that the legislature did not include the Act as a basis for an unlawful practice under 815 ILCS 505/2Z (*Id.*). But as the circuit court stated, the Channons "brought their [consumer fraud] claim on the unfairness prong only" (A.41).

Ultimately, the Channons do not deny that under the consumer fraud statute, they may sue to recover allegedly excessive fees. It

makes the remedy adequate, so weakens their argument regarding necessity.

The Channons seeks to circumvent their three remedies through agency law. They argue that suing the Association as principal was unnecessary to recover from Westward as agent (Pl.38). They want to proceed against Westward alone. But as the circuit and appellate courts admit, the legislature did not create an express private right of action against a property manager. So, the Channons must show that a right of action against Westward as agent is "clearly needed" to effectuate the Act.

Their arguments show why a right of action against property managers is unnecessary: a seller unhappy with an agent may always sue the principal. The legislature knows that liability ultimately falls on a principal for its agent's conduct. *Sperl v. Henry*, 2018 IL 123132, ¶26. The fiduciary duty imposed on associations necessarily includes a duty to control charges under §22.1. The Channons do not deny that the Association owed that duty and that it is liable for Westward's allegedly excessive charges. So, whether the Association was actively at fault or only vicariously liable is irrelevant. The Association (and board) have liability, and so the Channons have an available remedy.

The legislature had no need to create a cause of action against a property manager to effectuate the Act.

The Channons' citation of *Landau v. Landau*, 409 Ill. 556 (1951), does not help them (Pl.49). *Landau* did not involve a private right of action. This Court merely stated that if an agent assists a principal in violating the principal's duty, an agent may also be found liable. Implicit in that ruling is a principal's liability for violating its own duty. Here, the legislature imposed a limit on what an association may charge, which necessarily requires an association to control its agent's charges. If an association fails in its duty, the threat of suit against it effectuates the purpose of the Act.

The Channons argue that "[i]t is ***Westward's*** conduct—and not the association's—that needs to be deterred" (Pl.39; emphasis in original). But the issue is whether a remedy effectuating the Act exists, not whether Westward did something wrong needing to be deterred. The proper focus is on the adequacy of the law, not on a defendant. Besides, by its board's ignoring the fiduciary duty to monitor Westward's charges, the Association's practices need deterrence.

In the end, the Channons offer arguments not even remotely related to legislative intent. They state: "Westward price gouges people" [Pl.47, *see also* 48 ("new price gouging victims")]. In the circuit

court, they accused Westward of a "shake down" (A.56, ¶20)—conduct generally associated with crime. Effective January 1, 2023, under P.A. 102-976, fees up to $375.00 (Westward charged $245) will not violate §22.1, let alone constitute price gouging or a shakedown (Reply App.4-5). In subsequent years, the fee may be adjusted based on a consumer price-index measure (*Id*. at 5). The legislature apparently does not share the Channons' view of excessiveness.

The Channons argue that bringing a small claim in court is an inadequate remedy because of its expense and potentially nominal recovery. But the Channons confuse adequacy under the law with economic valuation. A driver's decision to refrain from suing for minor car damage does not mean that a negligence remedy is inadequate. It might mean that the driver does not consider the potential recovery worth the effort and expense needed to achieve it. Another driver might feel differently. Here, the legislature provided adequate remedies. The Channons' desire to maximize their gains through a class action is not a substitute for establishing legislative intent.

The Channons argue that their goal is not only about recovering money but "about specifically penalizing ***Westward*** for their alleged statutory violation under the Condo Act" (Pl.47; emphasis in original). The Act does not authorize punitive damages or attorney's fees for

violating §22.1, and certainly not from a property manager. Besides, the Channons' request for punitive damages under their consumer fraud claim shows that they have an adequate remedy.

Implying a right of action under the Act against property managers is unnecessary.

CONCLUSION

The Channons cannot meet the four-factor test. Westward Management, Inc. urges this Court to: (1) answer the certified question in the negative, (2) remand this case to the circuit court with directions to dismiss count I of plaintiffs' complaint with prejudice, and (3) grant such further relief as this Court deems just.

Respectfully submitted,

/s/ Paul V. Esposito
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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 4501 words.

Dated: July 14, 2022

/s/ Paul V. Esposito
Paul V. Esposito

REPLY APPENDIX

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No. 1-21-0614
IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

DEBORAH GREENSWAG, AS SUCCESSOR TRUSTEE OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, individually and on behalf of all others similarly situated,	)	Appeal from the Circuit Court of Cook County, Illinois
Plaintiff-Appellant,	)	Circuit Court No. 2016 CH 15920
v.	)	Judge Caroline Kate Moreland
LIEBERMAN MANAGEMENT SERVICES, INC., an Illinois corporation,	)	
Defendant-Appellee.	)	

ORDER

This Matter appearing before the Court on Defendant-Appellee's Unopposed Motion to Stay Briefing Pending Supreme Court Decision of *Channon* Appeal,

It is Ordered that the Motion is Allowed. Defendant-Appellee shall file a status report no later than 30 days after the Supreme Court either rules or otherwise disposes of the appeal in Channon v. Westward Management, Inc., No. 128040.

/s/ Michael B. Hyman
PRESIDING JUSTICE

ORDER ENTERED
APR 07 2022
APPELLATE COURT FIRST DISTRICT

/s/ Aurelia Pucinski
JUSTICE

/s/ Mary Ellen Coghlan
JUSTICE

Public Act 102-0976

HB5246 Enrolled LRB102 22788 LNS 31937 b

AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Condominium Property Act is amended by changing Section 22.1 as follows:

(765 ILCS 605/22.1) (from Ch. 30, par. 322.1)

Sec. 22.1. (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of the Declaration, by-laws, other condominium instruments, and any rules and regulations.

(2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of this Act or the condominium instruments.

(3) A statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding 2 ~~two~~ fiscal years.

(4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Managers.

(5) A copy of the statement of financial condition of the unit owner's association for the last fiscal year for which such statement is available.

(6) A statement of the status of any pending suits or judgments in which the unit owner's association is a party.

(7) A statement setting forth what insurance coverage is provided for all unit owners by the unit owner's association.

(8) A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, by the prior unit owner are in good faith believed to be in compliance with the condominium instruments.

(9) The identity and mailing address of the principal officer of the unit owner's association or of the other officer or agent as is specifically designated to receive notices.

(b) The principal officer of the unit owner's association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within 10 business ~~30~~ days of the request.

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can

receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that unit owner shall be liable to the association for all costs, expenses, and reasonable attorney's ~~attorneys~~ fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

A reasonable fee, not to exceed $375, covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information. Beginning one year after the effective date of this amendatory Act of the 102nd General Assembly, the $375 fee shall be increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12-month calendar year. "Consumer price index-u" means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers, United States city average, all items, 1982-84 = 100. An association may charge an additional $100 for rush service completed within 72 hours.

(Source: P.A. 87-692.)

Effective Date: 1/1/2023

No. 128040

IN THE SUPREME COURT OF ILLINOIS

HARRY CHANNON AND DAWN CHANNON, Individually and on behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Appellant.

Rule 308 Appeal from the Illinois Appellate Court,
First Judicial District, No. 1-21-0176. There heard from
the Circuit Court of Cook County, Illinois, County Department,
Chancery Division, No. 19 CH 4869.
Honorable Anna M. Loftus, Judge Presiding

NOTICE OF FILING AND CERTIFICATE OF SERVICE

TO: ALL COUNSEL OF RECORD
(See Attached Service List)

PLEASE TAKE NOTICE that on the 14th day of July, 2022, we electronically filed with the Clerk of the Illinois Supreme Court, Reply Brief of Defendant-Appellant Westward Management, Inc.

/s/ Paul V. Esposito

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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that on July 14, 2022, he electronically filed the foregoing Reply Brief of Defendant-Appellant Westward Management, Inc. with the Clerk of the Illinois Supreme Court, using the www.fileandserveillinois.com system, which sent notification of such filing to the parties who are registered participants with the System.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Thomas McCabe

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