2026 IL 132101

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

(Docket No. 132101)

DEBORAH GREENSWAG, as Successor Trustee of the Franklin P. Friedman Living Trust, Individually and on Behalf of All Similarly Situated Individuals, Appellant, v. LIEBERMAN MANAGEMENT SERVICES, INC., Appellee.

Opinion filed September 24, 2026.

CHIEF JUSTICE NEVILLE delivered the judgment of the court, with opinion.

Justices Overstreet, Holder White, Cunningham, Rochford, and O'Brien concurred in the judgment and opinion.

Justice Tailor took no part in the decision.

OPINION

¶ 1 In 2016, when the events at issue here took place, the Condominium Property Act required condominium sellers to provide a set of documents to prospective condominium buyers. See 765 ILCS 605/22.1(a) (West 2016). The Condominium

Property Act also required the principal officer of the unit owner's association or a designated officer to furnish the disclosure documents. *Id.* § 22.1(b). The Condominium Property Act allowed the association to charge the seller a "reasonable fee covering the direct out-of-pocket cost of providing such information." *Id.* § 22.1(c).[1]

¶ 2 Plaintiff,[2] Franklin Friedman, was a condominium seller. Defendant, Lieberman Management Services, Inc. (Lieberman), was the management company for Friedman's condominium association. When Friedman sought to sell his condominium, Lieberman charged him $470[3] to prepare and deliver the disclosure documents. Friedman filed suit against Lieberman based on this transaction.

¶ 3 Relevant here, in count II of Friedman's second amended complaint, Friedman alleged that Lieberman engaged in an unfair business practice under the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2016)) when the association's agent, Lieberman, charged an excessive and unreasonable fee to provide the statutorily required disclosure documents. Lieberman moved to dismiss count II under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2022)). The circuit court of Cook County granted the motion to dismiss. The appellate court affirmed.

¶ 4 For the following reasons, we affirm the judgments of the appellate and circuit courts.

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[1]As will be discussed more fully below, subsections (b) and (c) of section 22.1 were amended effective January 1, 2023. Pub. Act 102-976, § 5 (eff. Jan. 1, 2023) (amending 765 ILCS 605/22.1(b), (c)).

[2]The original plaintiff was Franklin P. Friedman, as trustee of the Franklin P. Friedman Living Trust, on behalf of himself and all others similarly situated. After Friedman's death, Deborah Greenswag was the successor trustee of the Franklin P. Friedman Living Trust. The circuit court granted Greenswag's motion to be substituted as plaintiff.

[3]The $470 charge consisted of (1) payment for various documents, (2) a $75 rush fee, and (3) other fees paid to an entity other than Lieberman. The parties dispute on appeal whether $470 represents the total amount Friedman was required to pay to comply with the statute. However, based on the procedural posture of the case, we accept the $470 as the amount Lieberman charged Friedman for the disclosure documents.

¶ 5 I. BACKGROUND

¶ 6 Franklin P. Friedman owned a condominium unit that was part of the Mission Hills Condominium Association (Mission Hills). Lieberman contracted with Mission Hills to act as the agent for the association. As part of its duties, Lieberman was required to facilitate the processing of documents related to the purchase and resale of Mission Hills condominium units.

¶ 7 In 2016, Friedman planned to sell his condominium unit. A prospective purchaser requested that Friedman provide him with the disclosure documents required by the Condominium Property Act. On September 27, 2016, Friedman requested the disclosure documents from Lieberman. Lieberman delivered the documents on October 3, 2016. Lieberman charged Friedman $470 to provide the requested documents. Friedman closed on the sale of his condominium unit on October 7, 2016.

¶ 8 A. The Circuit Court Proceedings

¶ 9 Friedman filed this lawsuit against Lieberman based on the transaction involving the disclosure documents. We start with Friedman's second amended complaint because it is the operative complaint for purposes of this appeal. Friedman filed a four-count complaint against Lieberman with the general allegation that Lieberman violated the Condominium Property Act by charging an "unreasonable" fee to provide the statutorily required documents. Count I alleged a direct violation of section 22.1(c) of the Condominium Property Act. Count II alleged a violation of the Consumer Fraud Act premised on a violation of section 22.1(c) of the Condominium Property Act. Count III alleged a claim of restitution and unjust enrichment. Count IV alleged a Consumer Fraud Act claim premised on a violation of section 9.2 of the Condominium Property Act.

¶ 10 The complaint alleged that (1) Lieberman charged condominium sellers "excessive and unreasonable fees to obtain disclosure documents," (2) Lieberman's fees did not equate to its "out-of-pocket" cost for providing the disclosure documents, (3) Lieberman's services were of *de minimis* value because it had already prepared the disclosure documents in the regular course of its duties and not at the request of condominium sellers, (4) Lieberman can provide the documents immediately because they are stored in an electronic database managed and controlled by Lieberman, (5) Friedman and the class members were forced to pay twice for the documents because they had already paid for the preparation and maintenance of the disclosure documents through association fees, and (6) Friedman and the class members were "captive" condominium sellers who had no choice but to request the disclosure documents from Lieberman.

¶ 11 Lieberman moved to dismiss counts I, II, and IV of the second amended complaint under section 2-615 of the Code of Civil Procedure. The circuit court had earlier dismissed count III with prejudice, and Friedman did not appeal or otherwise challenge that dismissal order. While the motion to dismiss was pending, Friedman passed away.

¶ 12 Deborah Greenswag was the successor trustee of the Franklin P. Friedman Living Trust. The circuit court granted Greenswag's motion to be substituted as plaintiff.

¶ 13 The circuit court granted the motion to dismiss as to counts I and IV. The circuit court denied the motion to dismiss as to count II. Greenswag moved for a finding pursuant to Illinois Supreme Court Rule 304 (eff. Mar. 8, 2016) so she could immediately appeal the order dismissing counts I and IV.[4] The circuit court granted the Rule 304 motion, and Greenswag appealed.

¶ 14 During the appeal, this court granted leave to appeal in *Channon v. Westward Management, Inc.*, 2022 IL 128040, ¶ 1, a case addressing the same issue raised by Greenswag on appeal, namely

> " '[w]hether section 22.1 of the Condominium Property Act provides an implied cause of action[5] in favor of a condominium unit seller against a property manager, as agent of a condominium association or board of directors, based on allegations that the property manager charged excessive fees for the

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[4]Rule 304 allows for an appeal of a final judgment that does not dispose of an entire proceeding if the circuit court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

[5]A private "cause of action" or private "right of action" is the right of an individual, as opposed to the government, to file a lawsuit to enforce a statutory provision. See *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 459-60 (1999).

> production of information required to be disclosed to a prospective buyer under that statute.' "

Because the same issue was pending before this court, the appellate court stayed the appeal pending this court's decision in *Channon*.

¶ 15 For reasons that will be discussed in more detail below, this court answered the certified question in *Channon* in the negative. *Id.* ¶ 31. We held that "section 22.1 of the Condominium Property Act does not create an implied private right of action by a condominium unit seller against an agent of a condominium association or its board of managers for allegedly violating the fee limitations set forth in section 22.1(c)." *Id.* ¶ 34. With this court's resolution of the certified question in *Channon*, the appellate court granted an agreed motion to dismiss Greenswag's appeal.

¶ 16 On remand to the circuit court, Lieberman filed a motion to reconsider the court's earlier judgment denying its motion to dismiss count II. Lieberman relied on this court's decision in *Channon* and a legislative amendment to the Condominium Property Act. The amendment modified section 22.1(c) of the Condominium Property Act from (1) allowing condominium associations to charge a "reasonable fee covering the direct out-of-pocket cost of providing such information and copying" to (2) allowing an association to charge a "reasonable fee, not to exceed $375, covering the direct out-of-pocket cost of providing such information and copying." Pub. Act 102-976, § 5 (eff. Jan. 1, 2023) (amending 765 ILCS 605/22.1(c)). The amendment further provided that an "association may charge an additional $100 for rush service completed within 72 hours." *Id.*

¶ 17 The circuit court granted the motion to reconsider and dismissed count II of the second amended complaint with prejudice. The court reasoned that the statutory amendment clarified what a "reasonable fee" was. Because the amended Condominium Property Act allowed for a maximum fee of $475, the $470 fee charged by Lieberman could not support a Consumer Fraud Act claim predicated on a violation of the Condominium Property Act's "reasonable fee" provision. Greenswag appealed.

¶ 18 B. The Appellate Court Proceedings

¶ 19 The appellate court affirmed. 2025 IL App (1st) 240289-U, ¶ 33. The court found "that section 22.1(c) does not provide condominium sellers with either an express or implied private right of action to challenge 'fees' charged by property managers acting on behalf of condominium associations or board of managers." *Id.* ¶ 30. The court further found that the amendment to the Condominium Property Act "clarifie[d] what constitutes a 'reasonable fee' under section 22.1(c) and it place[d] a cap of $475 as the maximum fee a condominium association can charge unit sellers to obtain statutorily required disclosure documents." *Id.* The court held that the circuit court did not err in dismissing count II of Greenswag's second amended complaint with prejudice. *Id.* ¶ 32.

¶ 20 We granted Greenswag's petition for leave to appeal pursuant to Illinois Supreme Court Rule 315 (eff. Dec. 7, 2023). For the following reasons, we affirm the judgments of the appellate and circuit courts.

¶ 21 II. ANALYSIS

¶ 22 Greenswag argues that she sufficiently stated a Consumer Fraud Act claim. She first argues that the $470 fee was not a reasonable fee to cover Lieberman's direct out-of-pocket cost for providing the disclosure documents. She further alleges that the proposed class is a captive group who had no other choice but to pay for the disclosure documents in order to sell their condominiums. Greenswag continues that the fee was also unreasonable because Lieberman had already prepared and possessed the documents in its regular course of business. Finally, Greenswag argues that the condominium sellers had already paid for the preparation and maintenance of the documents through their regular association fees.

¶ 23 A. Standard of Review

¶ 24 The circuit court dismissed count II of Greenswag's second amended complaint under section 2-615 of the Code of Civil Procedure. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). "The essential question presented by such a motion is whether the allegations of the complaint, taken as true and construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Berry v. City of Chicago*, 2020 IL 124999, ¶ 25. We review an order granting or denying a section 2-615 motion to dismiss *de novo*. *Bueker v. Madison County*, 2016 IL 120024, ¶ 7.

¶ 25 B. The Condominium Property Act

¶ 26 Although count II of Greenswag's second amended complaint alleged a violation of the Consumer Fraud Act, its primary allegation is that Lieberman violated the "reasonable fee" provision in section 22.1(c) of the Condominium Property Act. Because it is central to Greenswag's Consumer Fraud Act claim, we start our analysis with the Condominium Property Act.

¶ 27 In 2016, section 22.1(a) of the Condominium Property Act required a condominium unit seller to provide, upon demand, particular documents to a prospective purchaser. 765 ILCS 605/22.1(a)(1-9) (West 2016). Section 22.1(b) then required the "principal officer of the unit owner's association or such other officer as is specifically designated" to provide the documents to the condominium unit seller within 30 days of a written request. *Id.* § 22.1(b). Section 22.1(c) provided: "A reasonable fee 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." *Id.* § 22.1(c).

¶ 28 Effective January 1, 2023, the legislature amended section 22.1 of the Condominium Property Act. Section 22.1(c) was amended to provide:

> "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. *** An association may charge an additional $100 for rush service completed within 72 hours." Pub. Act 102-976, § 5 (eff. Jan. 1, 2023) (amending 765 ILCS 605/22.1(c)).

¶ 29 Section 22.1(b) was also amended to provide that a condominium association or specified agent must provide the disclosure documents within 10 days. See *id.*

(amending 765 ILCS 605/22.1(b)).

¶ 30 C. *Channon*

¶ 31 We recently considered the public policy set out in section 22.1 of the Condominium Property Act (765 ILCS 605/22.1 (West 2016)). In *Channon*, the plaintiffs brought a cause of action under section 22.1 alleging that they were charged an "unreasonable" fee for the disclosure documents. *Channon*, 2022 IL 128040, ¶ 4. Similar to this case, the plaintiffs were condominium sellers, and the defendant was a management company hired by the condominium association. *Id.* The defendant had charged the plaintiffs $245 for the disclosure documents. *Id.*

¶ 32 We were tasked with answering the following certified question:

> " 'Whether section 22.1 of the Condominium Property Act provides an implied cause of action in favor of a condominium unit seller against a property manager, as agent of a condominium association or board of directors, based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under that statute.' " *Id.* ¶ 1.

In resolving the certified question, this court focused solely on the first factor of the test from *Metzger v. DaRosa*, 209 Ill. 2d 30 (2004), [6] namely "whether [condominium sellers] are part of the class section 22.1 was intended to benefit." *Channon*, 2022 IL 128040, ¶ 22.

¶ 33 This court found that section 22.1 was designed "primarily to benefit potential unit buyers." *Id.* ¶ 27. We explained that the "plain and ordinary meaning of that section clearly establishes the legislature's intent of protecting potential buyers of

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[6]The test from *Metzger*, 209 Ill. 2d at 36, is used to determine whether a private right of action may be implied from a statute. The full test is:

> "Implication of a private right of action is appropriate if: (1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute." *Id.* (quoting *Fisher*, 188 Ill. 2d at 460).

condominium units." *Id.* We found that section 22.1 gave sellers a "duty to disclose, not a protection," and that this statutory duty was "intended to protect potential buyers by providing them with information vital to making their purchasing decisions." *Id.* ¶ 24. This court stated that the single benefit bestowed on sellers in subsection (c)—the reasonable fee provision—was "merely incidental to the underlying purpose of section 22.1." *Id.* ¶ 27. We held that "the legislature did not intend section 22.1 to imply a private right to relief for unit sellers." *Id.* ¶ 31.

¶ 34 D. Consumer Fraud and Deceptive Practices Act

¶ 35 As previously noted, count II of Greenswag's second amended complaint alleged a violation of the Consumer Fraud Act. The Consumer Fraud Act provides:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact *** in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2 (West 2016).

¶ 36 Greenswag has not alleged that Lieberman engaged in any deception or fraudulent conduct. Instead, she alleges that the fee Lieberman charges to provide the disclosure documents is unfair.

¶ 37 Factors to consider in determining whether a business practice is unfair include "(1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers." *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002).[7] All three criteria do not need to be met to support a finding of unfairness. *Id.* at 418 (citing *Cheshire Mortgage Service, Inc. v. Montes*, 612 A.2d 1130, 1143 (Conn. 1992). Instead, " ' "[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." ' " *Id.* (quoting *Cheshire Mortgage Service*, 612 A.2d at 1143-44, quoting Disclosure

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[7]We note that the appellate court erred when it failed to conduct its analysis under the standard set forth in *Robinson*.

Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, Promulgation of Trade Regulation Rule and Statement of Basis and Purpose, 43 Fed. Reg. 59,614, 59,635 (1978)).

¶ 38 Illinois's public policy is primarily determined by the legislature. See *People v. Buffer*, 2019 IL 122327, ¶ 34 (explaining that the General Assembly is "the entity best suited" to establish public policy). A business practice violates public policy when the practice has been condemned by the State. See *Newman v. Metropolitan Life Insurance Co.*, 885 F.3d 992, 1002 (7th Cir. 2018) (citing the Illinois Compiled Statutes and the Illinois Administrative Code as representative of Illinois's public policy). A business practice is oppressive when it leaves the consumer with "little alternative but to submit." See *Tudor v. Jewel Food Stores, Inc.*, 288 Ill. App. 3d 207, 210 (1997); *Saika v. Ocwen Loan Servicing, LLC*, 357 F. Supp. 3d 704, 715 (N.D. Ill. 2018) ("Oppression occurs, for example, if a consumer is forced to choose between paying a greater amount and losing a previously promised benefit.").

¶ 39 Charging a high price, even an unconscionably high price, is generally insufficient to establish a claim of an unfair business practice. See *Robinson*, 201 Ill. 2d at 418; *Saunders v. Michigan Avenue National Bank*, 278 Ill. App. 3d 307, 313 (1996) ("[W]e note that charging an unconscionably high price generally is insufficient to establish a claim for unfairness under the Consumer Fraud Act."). Instead, Illinois courts require additional evidence of unfairness.

¶ 40 For example, courts have found unfairness where a business has "made a practice of charging an unconscionably disproportionate price for little or no services." *People ex rel. Fahner v. Hedrich*, 108 Ill. App. 3d 83, 90 (1982); *People ex rel. Hartigan v. Knecht Services, Inc.*, 216 Ill. App. 3d 843, 856 (1991) (finding an unfair business practice where the business (1) charged for services that were not rendered, (2) charged for servicemen that were not needed or present, (3) was in a superior bargaining position and used intimidation to collect payment, and (4) charged excessively high prices). On the other hand, where a business provides significant goods or services, courts have rejected claims of unfairness based on high prices. See *Galvan v. Northwestern Memorial Hospital*, 382 Ill. App. 3d 259, 267 (2008) ("In this case, because the plaintiff received numerous medical procedures and therapies during his 15-day stay at Northwestern, he could not allege unfairness based on high prices.”).

¶ 41 E. Greenswag Failed to State a Legally Sufficient Claim in Count II

¶ 42 Consideration of the three relevant factors in relation to the facts alleged in count II of the second amended complaint establish that Greenswag failed to state a legally sufficient claim under the Consumer Fraud Act.

¶ 43 To start, Greenswag’s main argument is that Lieberman charged too much for the disclosure documents. This price-based argument is insufficient to establish a claim of an unfair business practice. See *Robinson*, 201 Ill. 2d at 418; see also *Saunders*, 278 Ill. App. 3d at 313. Greenswag further failed to state the presence of facts that would support a claim of unfairness in conjunction with an alleged high price.

¶ 44 The first factor in an unfairness claim asks whether public policy was violated. *Robinson*, 201 Ill. 2d at 417. We made clear in *Channon* that the public policy behind section 22.1 of the Condominium Property Act is to protect condominium buyers, not sellers. See *Channon*, 2022 IL 128040, ¶ 31 (explaining that condominium sellers are not “members of the class the Act was intended to benefit”). We went so far as to say that the “single benefit arguably bestowed on sellers in subsection (c)”—the reasonable fee provision—“is merely incidental to the underlying purpose of section 22.1.” *Id.* ¶ 27.

¶ 45 Greenswag did not sufficiently allege a public policy violation. The public policy behind section 22.1 was fulfilled where the prospective condominium buyer was supplied with the disclosure documents in a timely manner. See *id.* ¶ 26 (explaining that section 22.1(c) can be “viewed as aiding potential buyers by ensuring that information critical to their purchasing decisions is readily available”).

¶ 46 Second, Greenswag also did not sufficiently allege that Lieberman’s business practice is immoral, unethical, oppressive, or unscrupulous. See *Robinson*, 201 Ill. 2d at 417-18. Greenswag argues that Lieberman’s business practice meets this standard because plaintiffs are a captive audience who are forced to buy the disclosure documents from Lieberman. We disagree.

¶ 47 The force making plaintiffs a captive audience is the statutory scheme, not Lieberman's business practice. Section 22.1(a) of the Condominium Property Act provides that a condominium seller "shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand," the disclosure documents. 765 ILCS 605/22.1(a) (West 2016). Section 22.1(b) then provides who "shall furnish" the disclosure documents—"[t]he principal officer of the unit owner's association or such other officer as is specifically designated." *Id.* § 22.1(b).

¶ 48 To support the second factor of an unfairness claim, it must be the defendant's business practice that is immoral, unethical, oppressive, or unscrupulous. See *Batson v. Live Nation Entertainment, Inc.*, 746 F.3d 827, 833 (7th Cir. 2014) (focusing on the business defendant's conduct in determining whether there was oppression). Where courts have found oppressive conduct, that oppression was the result of a defendant's business practice. See, *e.g.*, *Ekl v. Knecht*, 223 Ill. App. 3d 234, 242 (1991) (finding oppressive conduct where a company used "strong-arm tactics against a consumer who was acting within her rights when she questioned defendant's substantial charges"); *Newman*, 885 F.3d at 1002-03 (finding oppressive conduct where the customer was forced to accept premium increases or forfeit years of sunk costs).

¶ 49 In short, to the extent that there is a lack of meaningful choice for condominium sellers, that outcome derives from statutory directives and not from a management company's business practices. Greenswag has failed to allege how Lieberman's business practice itself is oppressive.

¶ 50 For many of the same reasons, Greenswag failed to allege that she was substantially injured by Lieberman's business practice. Lieberman delivered the statutorily required documents in a timely manner, allowing the condominium sale to occur seamlessly. The crux of Greenswag's claim, that the documents were too costly, is not the type of injury that the Consumer Fraud Act was designed to remedy.

¶ 51 Finally, we briefly address the General Assembly's amendment. Both lower courts found that the legislative amendment clarified what a "reasonable fee" is under section 22.1(c) of the Condominium Property Act. See 2025 IL App (1st) 240289-U, ¶ 19 ("The trial court found that the amended language 'not to exceed $375' resolved the ambiguity by clarifying 'that a reasonable fee is less than $375 plus $100 for any rush services.' "); *id.* ¶ 30 ("This amendment clarifies what constitutes a 'reasonable fee' under section 22.1(c) and it places a cap of $475 as the maximum fee a condominium association can charge unit sellers to obtain statutorily required disclosure documents.").

¶ 52 We need not determine whether the legislature clarified the "reasonable fee" language in section 22.1(c). It suffices to say that the legislature implicitly rejected two of Greenswag's primary arguments: namely, (1) that Lieberman's compilation and delivery of the disclosure documents provide a *de minimis* value and (2) that plaintiffs had already paid for the preparation and delivery of the disclosure documents through association fees.

¶ 53 Contrary to Greenswag's arguments, the General Assembly appears to believe that there is considerable value in the services provided to satisfy section 22.1's disclosure requirements. The fact that Lieberman has the documents prepared and immediately accessible cuts against Greenswag's *de minimis* value claim. As the Seventh Circuit has stated, "this convenience carries a cost." *Horist v. Sudler & Co.*, 941 F.3d 274, 278 (7th Cir. 2019). And both the version of the statute in effect and the amended statute refute Greenswag's double payment argument because the statutes presuppose that condominium sellers can be charged for the compilation and delivery of the disclosure documents. In other words, both versions of the statute reject the notion that the service provided by Lieberman has already been paid for.

¶ 54 III. CONCLUSION

¶ 55 In sum, we hold that the circuit court properly dismissed count II of Greenswag's second amended complaint because it failed to state a legally sufficient claim under the Consumer Fraud Act. Accordingly, we affirm the judgment of the appellate court, which affirmed the circuit court's order dismissing count II of Greenswag's second amended complaint.

¶ 56 Judgments affirmed.

¶ 57 JUSTICE TAILOR took no part in the consideration or decision of this case.