No. 132101
IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

DEBORAH GREENSWAG, AS SUCCESSOR OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, INDIVIDUALLY AND ON BEHALF OF ALL SIMILARLY SITUATED INDIVIDUALS, *Plaintiff-Appellant,*

v.

LIEBERMAN MANAGEMENT SERVICES, INC. *Defendant-Appellee.*

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
Case No. 2016 CH 15920
The Honorable Caroline K. Moreland, Judge Presiding.

BRIEF AND ARGUMENT OF DEFENDANT-APPELLEE

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ISSUES PRESENTED FOR REVIEW

1. Whether the Circuit Court correctly determined that Plaintiff failed to allege any underlying violation of section 22.1(c) of the Illinois Condominium Property Act sufficient to form a basis for an "unfairness" claim under the Illinois Consumer Fraud and Deceptive Practices Act.

2. 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.

STATEMENT OF FACTS

A. Background and Procedural Posture

Plaintiff, an owner and seller of a condominium unit, filed this suit against Lieberman Management Services, Inc. ("Lieberman" or "Defendant"), a property management company retained by the condominium association where Plaintiff owned a unit, alleging that Defendant violated section 22.1 of the Illinois Condominium Property Act ("Condo Act"). Plaintiff alleged the prices Plaintiff paid Defendant for providing copies of disclosure documents violated the statutory language of section 22.1 that authorizes an association or its Board of Managers to charge a reasonable fee for providing the documents listed by the statute. *See* 765 ILCS 605/22.1(c) (version effective January 1, 1992 through December 31, 2022) ("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."). Plaintiff's allegations rested on the theory that section 22.1(c) of the

Condo Act prevented Defendant from charging more than its own costs when it provided Plaintiff disclosure documents, even though section 22.1 does not make any reference to private property management companies and document vendors.

Plaintiff's original complaint asserted three counts: (i) violation of the Condo Act; (ii) violation of the Consumer Fraud and Deceptive Business Practices Act ("Consumer Fraud Act"); and (iii) restitution/unjust enrichment, in the alternative to Counts I and II. (C.29–41.) By order dated June 14, 2017, the circuit court (i) denied the motion to dismiss as to the Condo Act cause of action, Count I; (ii) granted dismissal as to Count II, the Consumer Fraud Act count, but with leave to re-plead; and (iii) granted dismissal with prejudice as to the restitution count, Count III. (C.101.)

On July 12, 2017, Plaintiff filed a First Amended Class Action Complaint ("FAC"). (C.102–16.) On August 22, 2017, Defendant filed a motion to dismiss the Consumer Fraud Act count of Plaintiff's FAC, and a motion to certify question for interlocutory appeal pursuant to Supreme Court Rule 308 in order to address the questions of law at issue in the circuit court's decision not to dismiss the Condo Act count. (C.131–41; C.144–50.) On December 8, 2017, the circuit court certified questions of law pursuant to Supreme Court Rule 308(a) regarding whether an implied cause of action existed under section 22.1 against a property management company by a condo seller for allegedly charging excessive amounts for section 22.1 disclosure documents. (C.319–20.)

The proceedings in the circuit court were stayed by agreement pending resolution of the appeal. (C.207.) After accepting the permissive interlocutory appeal, full briefing, and oral arguments, the First District vacated its order granting leave to appeal as

improvidently granted on March 25, 2019, without deciding the certified questions. (C.322; C.339–47.) The First District dismissed the appeal and remanded the matter back to the circuit court for further proceedings. (C.348.)

On April 29, 2019, Defendant filed its Petition for Leave to Appeal to the Supreme Court, requesting that this Court decide the certified questions of law. On September 25, 2019, this Court denied Defendant's petition. On December 17, 2019, Plaintiff filed its Second Amended Class Action Complaint ("SAC"). (C.350–536.)

Defendant filed a motion to dismiss the SAC on the basis that the Condo Act did not provide Plaintiff with a cause of action against property management companies such as Defendant. (C.538–667.) On April 1, 2021, the circuit court dismissed Counts I (violation of section 22.1 of the Condo Act) and IV (a new Consumer Fraud Act claim alleging an underlying violation of section 9.2 of the Condo Act) with prejudice. (C.1087–93.) The court denied the motion to dismiss Count II (violation of the Consumer Fraud Act based on an underlying violation of section 22.1 of the Condo Act). (C.1087–93.) Plaintiff moved for a Rule 304(a) finding to allow an immediate appeal of the dismissal of Count I, and the circuit court then entered an order with Rule 304(a) language as to Count I. (C.1095–1124; C.1157.) On May 27, 2021, Plaintiff filed a notice of appeal for review of the circuit court's dismissal of Count I, the section 22.1 Condo Act claim. (C.1159–71.)

At the same time the appeal of Count I was pending, the First District was already considering the same questions of law at issue in this case in another matter — *Channon v. Westward Mgmt., Inc*., No. 2019 CH 04869. On December 7, 2021, a panel of the First District in the matter of *Channon v. Westward Mgmt., Inc*., No. 1-21-0176, found that

section 22.1 did provide condominium unit sellers with an implied private cause of action. 2021 IL App (1st) 210176. Subsequently, the defendant in *Channon* filed a petition for leave to appeal to this Court, which was granted.

On April 7, 2022, the First District stayed the appeal of this case pending this Court's resolution of the appeal filed in *Channon* which considered the same question of law. On November 28, 2022, this Court issued its opinion in the *Channon* case, which reversed the First District and held that section 22.1 of the Condo Act does *not* provide an implied cause of action in favor of a condominium unit seller, because section 22.1 was not intended to benefit condo sellers. A Petition for Rehearing was denied by this Court. *See Channon v. Westward Mgmt., Inc.*, 2022 IL 128040, reh'g denied (Jan. 23, 2023).

On February 9, 2023, the parties herein filed an agreed motion to dismiss the appeal pending in the First District in light of the *Channon* decision, which was dispositive of the issue presented in the pending appeal. The First District granted the motion to dismiss the appeal on February 15, 2023. (C.1182.)

On August 16, 2023, Defendant moved to reconsider the circuit court's April 1, 2021 order denying Defendant's motion to dismiss Count II of the SAC in light of the *Channon* decision. (C.1198–1233). On January 26, 2024, the circuit court granted Defendant's motion to reconsider and dismissed Count II with prejudice. (C.1262–1266.) On February 7, 2024, Plaintiff filed a Notice of Appeal.[1] (C.1267–76.)

[1] Although Plaintiff's Notice of Appeal challenged the circuit court's decision to grant the motion to reconsider, Plaintiff's opening brief only addresses the circuit court's substantive decision to dismiss Count II of the SAC. As such, Plaintiff has waived all of its arguments on this point. Ill. Sup. Ct. R. 341(h)(7) ("Points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."); *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 64.

On June 25, 2025, the First District issued its ruling affirming the circuit court's judgment dismissing Count II. (Appendix, A1–A10.) Plaintiff subsequently filed a Petition for Leave to Appeal to this Court which was granted on September 24, 2025. *Greenswag v. Lieberman Mgmt. Servs., Inc.*, 270 N.E.3d 850 (2025).

B. Allegations of the Second Amended Complaint

The SAC alleged that on October 7, 2016, Plaintiff sold a condominium unit that was part of the Mission Hills Condominium Association in Northbrook, Illinois. (C.358 ¶ 37.) Defendant is not a condominium association, but rather is a property management company retained by the association. (C.358 ¶¶ 38–39.) On September 27, 2016, as part of the contract of sale, the buyer of Plaintiff's unit requested information from Plaintiff regarding the condominium and association pursuant to section 22.1. (C.359 ¶ 42.) Plaintiff contractually agreed with the buyer that she would "apply for those items of disclosure upon sale as described in the Illinois Condominium Property Act, and provide same in a timely manner, but no later than the time period provided for by law." (C.413 ¶ 15(d).)[2] Nonetheless, Plaintiff agreed to a closing date of October 4, 2016. (C.411 ¶ 6.)

Plaintiff's real estate attorney submitted an order through the document service vendor, CondoCerts.com, requesting section 22.1 disclosure and additional documents for a total cost of $220 (including a $20 service fee to CondoCerts). (C.359 ¶ 45; C.398.) Plaintiff's attorney separately ordered, and Defendant charged for other documents and services, including a $75 rush fee and a $150 paid assessment letter fee (including a $20

[2] Plaintiff's allegations that it was required to provide the documents within five days (*see* C.394 ¶ 144) are false, as the contract states the seller must "apply" for the items of disclosure within five business days, and must provide them "timely," but "no later than the time period provided for by law." Section 22.1(b) allows an association 30 days to provide the information when requested.

CondoCerts fee). (C.400.) There was another $25 buyer's transfer fee noted that was to be charged to the buyer at closing; this was not charged to or paid by the attorney of the Plaintiff seller. (C.400.) Including the rush fee and the CondoCerts fee, Plaintiff's real estate attorney paid a combined total of $445[3] for the section 22.1 disclosure package and the paid assessment letter. (C.398–400.)

In Count II, the SAC alleged that Defendant's act of charging Plaintiff the fees to provide the disclosure documents was an unfair practice pursuant to the Consumer Fraud Act, because it: (i) offended public policy; (ii) was immoral, unethical, oppressive, and unscrupulous; and (iii) caused substantial injury to Plaintiff and class members. (C.374 ¶ 101.) In particular, Plaintiff alleged that Defendant's acts offended Illinois's statutorily defined public policy through violation of the section 22.1 language that states a "reasonable fee covering the direct out-of-pocket costs" may be charged by the association or its Board. Plaintiff alleged Defendant's acts caused substantial injury because Plaintiff was forced to pay unreasonable fees in excess of Defendant's own direct out-of-pocket costs for providing the documents. (C.375–76 ¶ 111.)

C. Legislative Amendment of Section 22.1 of the Condo Act and this Court's Decision in *Channon*

In 2022, after a string of putative class action lawsuits had been filed against property management and document service companies alleging charges to provide disclosure documents violated section 22.1(c) of the Condo Act (including this case, which was the first of these cases), the Illinois General Assembly amended the language of section 22.1 by specifically changing the prior language of section 22.1(c) at issue in

[3] Plaintiff erroneously calculates the amount of the fee as $470, which the circuit court noted in its January 26, 2024 order. (C.1265 fn. 2.)

this case. The pertinent section 22.1(c) language at issue previously read: "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." *See* 765 ILCS 605/22.1 (version effective January 1, 1992 through December 31, 2022). Public Act 102-976, effective January 1, 2023, added that the "reasonable fee" charged by the association or its Board may be up to $375, increasing with inflation, plus an additional $100 rush fee for a total of $475. The section now reads:

> 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.

765 ILCS 605/22.1(c).

On November 28, 2022, this Court issued its decision in *Channon v. Westward Mgmt., Inc.*, holding that section 22.1 of the Condo Act does not create a private right of action by a unit seller against the designated agent of a condominium association, such as a property manager like Defendant. 2022 IL 128040 at ¶ 2. In particular, this Court analyzed the plain language of the statute as well as its legislative history and concluded that the statute was primarily intended to benefit unit *buyers*, not sellers, and any arguable benefit to sellers from the "reasonable fee" language was merely incidental and not the purpose of the statute. *Id.* at ¶¶ 2, 6–28 ("Reading section 22.1 as a whole and applying

the judicial gloss announced in *Metzger*, the legislative intent of that section is primarily to benefit potential unit buyers. The single benefit arguably bestowed on sellers in subsection (c) is merely incidental to the underlying purpose of section 22.1."). Because the *Channon* plaintiffs failed to establish that they were members of a class the Condo Act was intended to benefit, they could not prove a "clear need" for an implied private right of action. *Id.* at ¶ 31.

STANDARD OF REVIEW

The instant case involves the circuit court's January 26, 2024 order granting Defendant's motion to reconsider and dismissing Count II of the SAC with prejudice. Generally, a trial court's ruling on a motion to reconsider is reviewed under the abuse of discretion standard. *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20. In this appeal, Plaintiff does not challenge the circuit court's decision to reconsider its prior order denying Defendant's motion to dismiss as to Count II of the SAC. (*See* Appellant Br. at 11–12, 18.) Plaintiff only seeks review of the substantive order granting Defendant's motion to dismiss. The circuit court's decision to grant Defendant's Section 2-615 motion to dismiss is subject to *de novo* review. *Patrick Eng'g, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Further, where an appeal presents an issue of statutory construction, the standard of review is also *de novo*. *Stern v. Wheaton–Warrenville Cmty. Unit Sch. Dist. 200*, 233 Ill. 2d 396, 404 (2009).

On appeal, a reviewing court may affirm a lower court's ruling for any reasons supported by the record, regardless of the basis relied upon by lower court. *Leonardi v. Loyola Univ. of Chicago*, 168 Ill. 2d 83, 97 (1995).

ARGUMENT

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, inconsistent with the language of section 22.1(c) allowing for associations or their Board of Managers to charge a "reasonable fee." And, Plaintiff argues, because the amount Defendant charged was more than a "reasonable fee," Defendant's conduct violated the Condo Act to such an extent that, even though Plaintiff cannot sue under the Condo Act itself, the alleged Condo Act violation was so offensive to public policy that Plaintiff can recover under the Consumer Fraud Act.

In making such an argument, Plaintiff ignores that *Channon* established that the public policy purpose of section 22.1 of the Condo Act is not to protect condo sellers such as Plaintiff through pricing regulation, but rather to protect condo buyers by facilitating disclosure of the information buyers need to make purchasing decisions. *Channon*, 2022 IL 128040 at ¶¶ 24–27 ("We hold that the plain and ordinary meaning of that section clearly establishes the legislature's intent of protecting potential buyers of condominium units."). Moreover, Plaintiff fails to establish how the incidental existence of the "reasonable fee" language could elevate a claim of an alleged overcharge for this particular service as something recoverable as an unfair business practice under the Consumer Fraud Act when "charging an unconscionably high price generally is insufficient to establish a claim for unfairness." *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418 (2002).

Setting aside that an alleged charge of more than the "reasonable fee" referenced by the Condo Act cannot rise to an unfair practice recoverable under the Consumer Fraud

Act, the circuit court correctly determined that the alleged charges were "reasonable" within the intent of section 22.1(c). (C.1264–65.) In this regard, the circuit court's logic is simple and correct: the fees charged were clearly "reasonable" under the legislature's intended meaning of that word in section 22.1(c), as the legislature expressly clarified through amendment that fees of up to $475 for disclosure documents and a rush fee are "reasonable." (C.1264.)

The $445 charged for providing documents including section 22.1 disclosure documents and a rush fee is a charge clearly within the statutory intent of "reasonable" in this context and consistent with Illinois public policy as expressed by the legislature. After all, the property management company's charge to provide the service of compiling the pertinent documentation and information is in fact the association's exact cost for providing the documents. That cost is directly passed on to the condo seller, just as section 22.1 intended through its language that ensures associations provide the necessary information without financial burden on the association. As such, the charge is far from being so offensive to public policy or so "immoral, unethical, oppressive, or unscrupulous" that it could be considered a sufficiently unfair practice to allow a claim under the Consumer Fraud Act.

Plaintiff attacks the circuit court's logic and decision in this regard by arguing that the circuit court improperly applied the statutory amendment retroactively. However, the circuit court did not apply the amendment retroactively. Rather, it looked to the amendment of the statute as an interpretive tool of statutory construction to determine the legislature's intended meaning of "reasonable" in these circumstances. In doing so, both the circuit court and the First District correctly noted that the amendment clarified what

constitutes a "reasonable fee." (C.1265); *Greenswag as Tr. of Franklin P. Friedman Living Tr. v. Lieberman Mgmt. Servs., Inc.*, 2025 IL App (1st) 240289-U, ¶ 30.

Finally, Plaintiff argues that the First District erroneously affirmed the circuit court's judgment based on an incorrect reading of this Court's decision in *Channon*. But it is Plaintiff who misreads *Channon* by incorrectly asserting that this Court refused to imply a private right of action for sellers because they had an adequate remedy under the Consumer Fraud Act, even though this Court never made any such holding. Rather, this Court held that condo sellers were not "members of the class the statute was intended to benefit," and therefore implying a private action remedy for sellers would be inappropriate. *Channon*, 2022 IL 128040 at ¶¶ 21, 27. Regardless of the lower court's reasoning, this Court should not reverse a correct judgment simply because the First District may have utilized a different or even erroneous reason as the basis for its determination. *See Material Serv. Corp. v. Dep't of Revenue*, 98 Ill. 2d 382, 387 (1983). Rather, this Court should affirm the lower courts' judgments because the SAC simply fails to allege that Defendant engaged in any practice that is so unfair or against established public policy as to support a cause of action under the Consumer Fraud Act.

I. The Allegations of the SAC Do Not Support a Claim of "Unfairness" Under the Consumer Fraud Act and thus, the Circuit Court Properly Dismissed Count II

Plaintiff's entire Consumer Fraud Act claim is based upon the lynchpin allegation that Defendant's charges were "unfair" because they violated the public policy of the state of Illinois. (C.373–74.) Plaintiff identifies the "public policy" violated as the "stated intent" of section 22.1 of the Condo Act that sellers such as Plaintiff should be charged no more than the association's direct-out of pocket cost for providing the documents and copying. (C.373 ¶ 102.) But that entire argument collapses because 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. 2022 IL 128040 at ¶¶ 26–27. The ultimate question at issue in this case is slightly different than in *Channon* – viability of a Consumer Fraud Act cause of action theory instead of viability of a Condo Act cause of action theory – but the only question that matters is the same: did the legislature enact section 22.1(c) for the purpose of instituting pricing regulation to protect condo sellers? This Court already definitively answered that question with a "no" in *Channon*. Therefore, no underlying public policy violation exists, which means Plaintiff cannot make out a viable unfairness claim under the Consumer Fraud Act and requisite *Robinson* factors.

Plaintiff's arguments all ignore the impact of the analysis and reasoning of *Channon*. Plaintiff argues the SAC adequately pled a claim for unfairness under the Consumer Fraud Act and that the circuit court erred in dismissing Count II by misapplying the *Robinson* factors that must be considered to establish "unfairness" claims. How so? By arguing that the circuit court should have found that the intent of section 22.1(c) was to protect sellers and apparently that the statute should be construed broadly in Plaintiff's favor. (*See* Appellant Br. at 24.) Such an argument cannot stand in light of *Channon*.

Plaintiff further argues that the circuit court erred in its interpretation and application of the statutory amendment of section 22.1(c) of the Condo Act. In particular, Plaintiff asserts that the circuit court erroneously found the statute to be ambiguous and retroactively applied the amendment of section 22.1(c) in granting the motion to dismiss

despite the amendment's effective date of January 1, 2023. How does Plaintiff argue against ambiguity? By claiming the statutory language unambiguously protected Plaintiff seller. (*See id.* at 27–29.) In addition, Plaintiff argues that the circuit court incorrectly interpreted the statutory amendment by reading the words "reasonable fee" and "direct out of pocket expenses" out of the provision. Again, these arguments are based on the untenable assertion that the intent of section 22.1 was to protect sellers from paying more than the sellers think they should pay.

To prevail on a claim under the Consumer Fraud Act, a plaintiff must plead and prove that the defendant committed a deceptive or unfair act with the intent that others rely on the deception, and that the act occurred in the course of trade or commerce. *Robinson,* 201 Ill. 2d at 418. No deception is alleged in the SAC. (C.350–95.) Plaintiff argues instead that the practice of charging allegedly excessive fees to provide the required disclosure materials is unfair. A trade practice may be deemed unfair if it: (i) offends public policy; (ii) is "immoral, unethical, oppressive, or unscrupulous;" (iii) causes substantial injury to consumers. *Robinson,* 201 Ill.2d at 418. "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.* Plaintiff, however, fails to allege that Defendant's conduct met any of these requirements.

Plaintiff's Consumer Fraud Act claim essentially rests on two theories: (i) Defendant's conduct was unfair because it violated the Condo Act; and (ii) Defendant's conduct was unfair because the fees it charged to provide disclosure documents were excessively high. Neither theory is viable.

A. Plaintiff Cannot Rely on Section 22.1 of the Condo Act to Support Her Consumer Fraud Act Claim

The SAC alleges that "Lieberman's acts offend Illinois' statutorily-defined public policy because its acts violate the Condo Act's stated intent that only a "reasonable fee covering the direct out-of-pocket cost of providing [22.1 disclosures] and copying may be charged." (C.374 ¶102.) Plaintiff further alleges that the fee charged by Defendant is not a "reasonable fee" as required by section 22.1. (C.374 ¶103.) In its opening brief, Plaintiff continues to rely on her theory that because Defendant violated section 22.1's "reasonable fee" requirement, it violated Illinois public policy. (Appellant Br. at 24.) However, Plaintiff ignores the fact that in *Channon*, this Court made it plainly clear that section 22.1 was not intended to benefit sellers, but rather to protect buyers and mandate duties of sellers. 2022 IL 128050 at ¶ 24. In specifically addressing the "reasonable fee" provision of section 22.1, the Supreme Court rejected the Channons' argument that this provision is plainly intended to benefit the sellers, and instead stated that it can just as readily be viewed as aiding potential buyers by ensuring that information critical to their purchasing decisions is readily available. *Id*. at ¶ 26. "The single benefit arguably bestowed on sellers" – the reasonable fee provision in section 22.1(c) – was held by this Court to be "merely incidental to the underlying purpose of section 22.1." *Id*. at ¶ 27. In holding so, this Court joined the Seventh Circuit Court of Appeals in expressly rejecting the argument that the fee limit indicates a legislative intent to protect sellers. *Id.* at ¶ 30 (citing *Horist v. Sudler & Co.*, 941 F.3d 274, 280–81 (7th Cir. 2019)).

As was made clear by this Court in *Channon*, section 22.1 is not the pricing regulation statute intended to benefit condo sellers that Plaintiff claims it is. It follows then that there is no public policy of protecting condo sellers by that statute. The public

policy of this State is "reflected in its constitution, its statutes and its judicial decisions." *O'Hara v. Ahlgren, Blumenfeld and Kempster*, 127 Ill. 2d 333, 341 (1989).

The circuit court did not base its dismissal of the Consumer Fraud Act claim on *Channon*, as it noted that *Channon* only decided the issue of whether section 22.1 created a private right of action. (C.1264.) Because an underlying violation of a statute that does not create a private right of action may, in some cases, be sufficient to serve as a basis of a Consumer Fraud Claim, the circuit court found that *Channon* did not control whether Plaintiff sufficiently pled a cognizable claim. (C.1264.) The circuit court stated that "nothing in the *Channon* Court's holding or reasoning would prevent Plaintiff in this matter from bringing a claim under the [Consumer Fraud Act] despite only being incidentally benefitted by section 22.1 of the Condo Act." (C.1264.) Although the circuit court ultimately reached the correct decision in its dismissal of the claim, the court's treatment of *Channon* was incorrect.

Even though this Court did not rule on the issue of whether an alleged overcharge for section 22.1 disclosure documents could serve as the basis of a Consumer Fraud Act claim in *Channon*, it did unquestionably determine that the "reasonable fee" language was not motivated by a public policy to protect sellers from being overcharged by associations for disclosure documents. *See Channon*, 2022 IL 128040 at ¶¶ 24–30. Given the lack of a public policy to protect sellers with the "reasonable fee" language, there is no basis to find an alleged overcharge "offends public policy," or is so "immoral, unethical, oppressive, or unscrupulous," or that it causes consumers substantial injury such that it could be considered a sufficiently unfair practice to allow a claim under the Consumer Fraud Act. *See Robinson*, 201 Ill. 2d at 418.

Although a violation of an underlying statute may serve as a predicate for an unfairness claim under the Consumer Fraud Act, there must be a sufficient nexus between the objective or intent of the statute and the allegedly unfair conduct. Given this Court's evaluation of the intent and purpose of section 22.1 in *Channon*, section 22.1 does not provide Plaintiff with a sufficient basis in public policy to support a Consumer Fraud Act claim.

For example, in *City of Chicago v. Purdue Pharma L.P.*, 211 F. Supp.3d 1058 (N.D. Ill. 2016), plaintiff city brought an action alleging that pharmaceutical companies, through deceptive and unfair marketing campaigns, overstated the benefits and downplayed the risks of long-term opioid therapy to expand the chronic pain market, causing city to spend substantial sums on fraudulent claims. The city asserted claims under the Consumer Fraud Act, alleging both deceptive and unfair practices. For its unfairness claim, the city argued that the defendants' conduct violated the public policy of discouraging drug addiction in Illinois as set forth in 745 ILCS 35/2. The defendants argued that the intent of this statute – the Alcoholism and Drug Addiction Intervenor and Reporter Immunity Law – was to "promote and encourage use of the intervention process to help initiate successful treatment of alcoholism and drug addiction" and thus irrelevant to the city's claims of unfair marketing practices of specific drugs. *Id.* at 1075, fn. 17. The court agreed with the defendants' argument that 745 ILCS 35/2 is a drug-intervention statute that was irrelevant to the city's claims. *Id.* Additionally, the city asserted in its complaint that the federal regulatory framework governing the marketing of specific drugs reflected a public policy designed to ensure that drug companies are responsible for providing prescribers with the information they need to accurately assess the risks and

benefits of drugs for their patients. *Id.* The court refused to accept the city's inferred public policy without more than the bare assertions made in the complaint that these federal statutes in fact reflected such a public policy. *Id.* Thus, the court held that the city had not sufficiently alleged that defendants' allegedly unfair conduct violated any public policy. *Id.*

On the other hand, in *Boyd v. U.S. Bank, N.A., ex rel. Sasco Aames Mortg. Loan Tr., Series 2003-1*, 787 F. Supp.2d 747 (N.D. Ill. 2011), the court held that mortgagor's allegation that the mortgage holder and services company engaged in an unfair practice by breaking into and padlocking his home, dispossessing him of his property without notice or court approval, in violation of the Illinois Mortgage Foreclosure Law, was a sufficient basis upon which to predicate his claim under the Consumer Fraud Act. Specifically, the court noted that the Illinois Mortgage Foreclosure Law creates a presumption in favor of the mortgagor's right to possession in the case of residential real estate, and construing the plaintiff's allegations as true, held that the defendants' alleged conduct "offended public policy as embodied in the IMFL." *Id.* at 756. This case is much more like *City of Chicago* than *Boyd*.

Here, this Court does not need to infer public policy or guess the legislature's intent in passing section 22.1, because it previously already held that section 22.1 contains no legislative intent to benefit sellers, and thus there is no public policy violation here. *Channon*, 2022 IL 128040 at ¶ 30. Multiple federal courts have held similarly. *See, e.g.*, *Horist*, 941 F.3d at 280-81 (holding that because Condo Act is designed to protect purchasers and association, not sellers, any alleged violation of Condo Act by property manager did not offend public policy); *Ahrendt v. Condocerts.com, Inc.*, 2018 WL

2193140 (N.D. Ill. May 14, 2018) (same); *Murphy v. Foster Premier, Inc.*, 2018 WL 3428084 (N.D. Ill. July 16, 2018) ("The goal of §22.1 was to increase disclosure. And though the legislature clarified that an association could charge reasonable costs for providing those documents, excessive fees is not the injury the Act was designed to prevent."). Thus, Plaintiff cannot rely on the Condo Act to establish that Defendant violated public policy, and thus acted unfairly within the meaning of the Consumer Fraud Act.

B. Unable to Rely on the Condo Act, Plaintiff's Allegations of Unreasonably High Fees Cannot Support a Consumer Fraud Act Claim

Plaintiff argues that the SAC has sufficiently alleged that Defendant's conduct was "unfair" because it (i) offends public policy; (ii) is "immoral, unethical, oppressive, or unscrupulous"; and (iii) causes substantial injury to consumers. (Appellant Br. at 24–26.) However, as discussed above, Plaintiff's argument that Defendant violated section 22.1 and thus violated public policy is not supported by the law. Stripped of that premise, Plaintiff's claim rests solely on the generic allegation that the fees charged by Defendant are too high. That argument, however, is similarly unavailing, as Illinois courts have repeatedly held that charging even an unconscionably high price, without more, is insufficient to establish unfairness under the Consumer Fraud Act. *See, e.g., Robinson*, 201 Ill. 2d at 403; *Horist*, 941 F.3d at 280 (dismissing Consumer Fraud Act claim based on allegations that charging excessive fees to furnish disclosure documents required under section 22.1 of Condo Act was unfair); *Ahrendt*, 2018 WL 2193140 at *3 (same). Rather, the "defendant's conduct must violate public policy, be so oppressive as to leave the consumer with little alternative but to submit, and injure the consumer." *Saunders v. Michigan Ave. Nat. Bank*, 278 Ill. App. 3d 307, 313 (1st Dist. 1996).

Although Plaintiff has alleged an unconscionably high fee, this allegation alone is not enough to establish unfairness. Specifically, Plaintiff has failed to allege the type of oppressiveness and lack of meaningful choice necessary to establish unfairness.

1. Plaintiff Fails to Allege that Defendant's Conduct Offends Public Policy

A practice, even if not unlawful, may offend public policy as established by statutes, the common law or otherwise. *Elk v. Knecht*, 223 Ill. App. 3d 234, 242 (2d Dist. 1991). In other words, courts consider whether the practice "is at least within the penumbra of some established concept of unfairness." *Id.*

Here, Plaintiff's opening brief argues that she sufficiently alleged the first *Robinson* factor because Defendant charged unreasonably high fees in violation of section 22.1, and that this Court recognized a relevant public policy underlying section 22.1(c). (Appellant Br. at 24.) However, as discussed above, this Court's holding in *Channon* was expressly contrary to this assertion. Thus, Plaintiff fails to allege an established public policy of protecting condo sellers under section 22.1, sufficient to support a cause of action under the Consumer Fraud Act.

Although Plaintiff's opening brief does not identify any other public policy which Defendant's conduct allegedly violated, the SAC alleges that Defendant's act offends Illinois public policy because it does not provide any real service in exchange for the fee charged because the documents are already in Defendant's possession. (C.374 ¶ 104.)

However, the allegations contained elsewhere in the SAC belie that argument. Under the Condo Act, associations had thirty days to provide the requested documents. *See* 765 ILCS 605/22.1(b) (the version in effect prior to January 1, 2023). Plaintiff paid a rush fee and obtained the requested documents within 7 days of the request. (C.398–400; C.505–07; C.509–10.) In addition, Plaintiff requested and obtained documents from

Defendant that were not required under section 22.1. (C.398–400; C.512–14.) If providing documents that Defendant had no obligation to provide and 23 days faster than it was required to provide them is not a service that Plaintiff found valuable, it is unclear why Plaintiff paid for them. *See Murphy*, 2018 WL 3428084 at *4 (finding plaintiffs' allegations of unfairness to be insufficient, in part, because plaintiffs paid more to HomeWise in exchange for getting documents more quickly, which court recognized can be necessary if seller is looking to sell her home immediately).

Plaintiff notes that the sale of her unit closed on October 7, 2016. (C.360 ¶ 51.) If Plaintiff had not received the requested documents on October 3 and October 4, 2016 (C. 505–10), the sale likely would not have been completed. Thus, Plaintiff's allegations that Defendant did not provide any "real" service or that Plaintiff did not receive any countervailing benefit is undermined by the allegations of the SAC.

2. Plaintiff's Conclusory Allegations Fail to Adequately Plead That Defendant's Conduct is Immoral, Unethical, Oppressive or Unscrupulous

A practice is oppressive if plaintiffs "had no reasonable alternative." *See Murphy*, 2018 WL 3428084 at *4. Plaintiff alleged that she could not obtain the disclosure documents from any other source but Defendant, leaving her and the putative class members no meaningful choice but to pay Defendant's unreasonable fees in order to sell their homes. (C.360 ¶50.) Plaintiff's brief similarly argues that Plaintiff and the class members were captive consumers who had no choice but to obtain the disclosure documents from Defendant in exchange for the excessive and unreasonable fee of $470. (Appellant Br. at 25.)

As an initial matter, although Plaintiff attempts to paint the fee charged by Defendant as something that was *required* of Plaintiff and that Plaintiff had no choice but

to pay, a closer examination of the invoices and letters attached to and incorporated into the SAC show otherwise. Exhibits to a complaint such as the invoices and correspondence incorporated and attached as Exhibits A, B and K to the SAC control over inconsistent allegations within a complaint. 735 ILCS 5/2-606; *Flores v. Aon Corp.,* 2023 IL App (1st) 230140, ¶ 20; *Indep. Voters of Illinois Indep. Precinct Org. v. Ahmad,* 2014 IL App (1st) 123629, ¶ 42. "Where unsupported by allegations of fact, legal and factual conclusions may be disregarded." *Flores*, 2023 IL App (1st) 230140 at ¶ 20.

Plaintiff paid for the following services and documents:

1. "Resale Disclosure (22.1) for Condominium – Full Document Package - Resale Disclosure per 765 ILCS 605/22.1 *plus all available Association Documents"* for $220. This consisted of:
    - $125 to provide the statutorily required documents ($105 base fee, plus a $20 service fee to CondoCerts); and
    - $95 to provide *other optional documents* (*i.e.*, documents not required by section 22.1)
2. "Paid assessment letter" for $150 (including $20 service fee to CondoCerts); and
3. "Rush response fee" (to provide the paid assessment letter within 10 days) for $75.

(C.398–400.)

To obtain the statutorily required documents, Plaintiff was only required to pay $275 ($125 + $150). Thus, it is disingenuous and misleading for Plaintiff to allege that it was required to pay $470, when in reality, it was only required to pay $275. Plaintiff's

real estate attorney elected to obtain the optional Association documents (for $95) and to request that Defendant provide these documents on an expedited basis (for $75). Thus, this Court should disregard Plaintiff's conclusory and false allegations that Plaintiff had no choice but to pay the allegedly excessive and unreasonable $470 fee where the exhibits attached and incorporated into the SAC plainly show otherwise.

Plaintiff also still could have ordered the documents from Defendant without electing to incur a "Rush response fee." (C.400.) If Plaintiff was unhappy with the prices being charged by the property management company to sellers, as a member of the association, Plaintiff could have sought to have the association hire a different property management company or could have chosen not to use a property management company at all.

Although Plaintiff generally alleges that she had no reasonable alternative but to use Defendant's service, that argument is based on the missing allegation that Defendant somehow caused Plaintiff's condominium association to stop providing the disclosure documents when properly asked. Plaintiff could have requested the documents from the association in writing, and the association would have then had 30 days to provide the documents. *See* 765 ILCS 605/22.1(b) (effective prior to January 1, 2023).

In *Horist*, the Northern District of Illinois correctly noted that although plaintiffs there generally alleged that defendants' conduct is oppressive because plaintiffs have no reasonable alternative than to use HomeWise,[4] plaintiffs "must, but have not, at least allege facts to plausibly suggest that the associations would not comply with their

[4] HomeWise is a third-party vendor that provides electronic copies of documents, much like CondoCerts in this case. *Horist*, 2018 WL 1920113 at *1.

obligations under the act if requested properly to do so." 2018 WL 1920113 at *1 (N.D. Ill. Apr. 24, 2018). The Seventh Circuit, in affirming the Northern District's judgment in *Horist*, noted that any statutory duty rests with the association itself, not the property management company: "although the association may retain a professional management firm to handle the day-to-day operation of the property, it cannot outsource its statutory duties to the property-management company." 941 F.3d 274, 280. *See also Ahrendt*, 2018 WL 2193140 at *4. Like the plaintiffs in *Horist* and *Ahrendt,* Plaintiff here does not allege that she requested disclosure documents from the association, much less that associations will not provide unit sellers with documents on account of their relationship with Defendant. Plaintiff does not plead factual allegations as to how Defendant would have caused associations to supposedly abandon their obligations to the association members by entering into a property management contract. Plaintiff makes conclusory allegations that Plaintiff had no meaningful choice in using Defendant's services, but the SAC lacks factual support for that statement.

Furthermore, Plaintiff's argument that she could have obtained the disclosure documents only from Defendant is wrong as a matter of law. Plaintiff or Plaintiff's real estate attorney could have done the work to compile the disclosure documents listed in section 22.1 on their own. As a member of the condominium association, Plaintiff had the right to "inspect, examine, and make copies" of the broadly-defined records of the association pursuant to 765 ILCS 605/19(b). Of course, this would have required significant work by Plaintiff or Plaintiff's attorneys to analyze the documents of the association and compile the specific documents listed in section 22.1 from the records of the association and Plaintiff's personal records of account. Plaintiff had plenty of

alternative options but instead decided to avail herself of the convenient and expedited services provided by Defendant. That Plaintiff would have preferred Defendant's services were cheaper does not form the basis for a Consumer Fraud Act claim. *See also Horist*, 2018 WL 1920113 at *4. Since Plaintiff could have obtained the documents elsewhere, she did not face "the type of oppressiveness and lack of meaningful choice necessary to establish unfairness." *See Siegel v. Shell Oil Co.*, 656 F. Supp. 825, 833 (N.D. Ill. 2009); *Saunders*, 278 Ill. App. 3d at 314 (holding plaintiff failed to allege unfairness where bank provided plaintiff with all information necessary to make meaningful choice in selecting banks, and plaintiff had control over whether she would be assessed overdraft fee, but was also free to select another bank).

Finally, as detailed below in section II of the argument, the legislature's clarifying amendment of section 22.1(c) in 2023 shows that the charges at issue are "reasonable" given that they would be explicitly permissible under the current statute.

Where Plaintiff made no attempt to obtain the disclosure documents from any other source besides Defendant (including directly from the association, from the efforts of her own attorney or herself), and elected to purchase optional products on a rush basis, Plaintiff has failed to allege sufficient facts to support her conclusory allegation that Defendant's conduct was oppressive to such an extent as to leave Plaintiff with no meaningful choice but to comply with Defendant's pricing.

3. Plaintiff Fails to Allege that Defendant's Conduct Causes Injury to Customers, Let Alone "Substantial Injury"

In determining whether a given course of conduct or act is unfair, the Consumer Fraud Act mandates that "consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal

Trade Commission Act." *Robinson*, 201 Ill. 2d at 417; 815 ILCS 505/2. In discussing the third criterion of the "unfairness" test – substantial injury – the Federal Trade Commission has stated: "The independent nature of the consumer injury criterion does not mean that every consumer injury is legally 'unfair,' however. To justify a finding of unfairness the injury must satisfy three tests. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided." *Cheshire Mortg. Serv., Inc. v. Montes*, 612 A.2d 1130, 1147 (Conn. 1992) (quoting letter from Federal Trade Commission to Senators Ford and Danforth (Dec. 17, 1980) (reprinted in Averitt, "The Meaning of 'Unfair Acts or Practices' in § 5 of the Federal Trade Commission Act," 70 Geo. L.J. 225, 291 [1981]). Illinois courts have consistently cited to this test in examining the "substantial injury" factor in analyzing Consumer Fraud Act claims alleging unfairness. *See, e.g.*, *Murphy*, 2018 WL 3428084 at *4; *Siegel*, 612 F.3d at 935.

Plaintiff argues that Defendant's conduct has caused substantial injury because the fees charged are excessive, and unreasonable because Plaintiff has already paid for the preparation and maintenance of section 22.1 disclosure documents through HOA fees that paid for governing documents and records. In other words, Plaintiff was allegedly charged twice for the same service. (Appellant Br. at 25.)

However, as discussed above, Plaintiff alleges in the SAC that her attorney paid a rush fee and obtained the section 22.1 disclosure documents within 7 days of the request, even though under the Condo Act, associations have thirty days to provide the requested documents. (C.398–400; C.505–07; C.509–10.) *See* 765 ILCS 605/22.1(b) (the version in

effect prior to January 1, 2023). In addition, Plaintiff also requested and obtained optional documents from Defendant that were *not* required under section 22.1. (C.398–400; C.512–14.) Plaintiff closed on the sale of the condominium unit just a few days after the requested disclosure documents were provided. (C.360 ¶51; 505–10.)

In analyzing whether plaintiffs adequately alleged an unfair practice sufficient to support a Consumer Fraud Act claim, the Northern District of Illinois recognized that paying more to obtain disclosure documents quickly can be necessary if a seller is looking to sell her home immediately and stated that it was not clear from plaintiff's allegations that their injury was not outweighed by a countervailing benefit. *See Murphy*, 2018 WL 3428084 at *4. Thus, Plaintiff's allegations that Defendant did not provide any "real" service or that Plaintiff did not receive any countervailing benefit is undermined by the allegations of the SAC.

II. The Circuit Court Did Not Err in its Interpretation or Consideration of the Statutory Amendment of Section 22.1 of the Condo Act

Plaintiff argues that the circuit court erroneously dismissed Count II because it misinterpreted and misapplied the statutory amendment of section 22.1 of the Condo Act. In particular, Plaintiff argues: (i) the circuit court erroneously held that the "reasonable fee" requirement of section 22.1 was ambiguous and in doing so, improperly applied the amendment to section 22.1 retroactively; and (ii) the circuit court misinterpreted section 22.1. of the Condo Act by reading the words "reasonable fee" and "direct out-of-pocket costs" out of the statute. Plaintiff's argument with respect to retroactivity is flawed because the court did not apply the amendment retroactively; rather, it properly considered the clarification in the amendment as an interpretive tool to construe the existing statutory language. Illinois law allows amendments that clarify the original act to

be used to interpret the original act. Plaintiff's retroactive argument further fails because it relies on section 4 of the Statute on Statutes, 5 ILCS 70/4, which plainly does not apply here. This statute only applies to a *new* law which is construed as a repeal of a prior law.

A. The Circuit Court Correctly Found That the Amendment to Section 22.1(c) Merely Clarified the Statute

Plaintiff argues that the circuit court erred by retroactively applying the legislative amendment to this case even though the amendment was effective January 1, 2023. This, however, misunderstands the court's analysis. Much like how courts rely on legislative history or dictionary definitions in order to interpret a statute, the circuit court used the amended language as another tool of statutory construction. An amendment to a statute is an appropriate source for determining the original legislative intent of the statute. *Hyatt Corp. v. Sweet*, 230 Ill. App. 3d 423, 433 (1st Dist. 1992) (citing *People v. Bratcher*, 63 Ill. 2d 534 (1976)).

If the legislature changes the law, courts must determine whether that change applies prospectively or retroactively. Defendant does not contest that in Illinois, there is a presumption that statutory amendments are "intended to change the law as it previously existed." *K. Miller Const. Co. v. McGinnis*, 238 Ill. 2d 284, 299 (2010). However, that presumption does not apply where the "circumstances surrounding the amendment" indicate that the legislature intended merely to interpret or clarify the original act. *Id.* This Court has identified certain factors that may indicate whether an amendment is merely a clarification rather than a substantive change in the law, including "whether the enacting body declared that it was clarifying a prior enactment; whether a conflict or ambiguity existed prior to the amendment; and whether the amendment is consistent with a

reasonable interpretation of the prior enactment and its legislative history." *Id.* (internal citations omitted).

In *McGinnis*, this Court considered the effect of an amendment to the Home Repair and Remodeling Act and its impact on the enforceability of an oral contract between plaintiff and defendants. *Id.* at 289. There, section 15 of the Home Repair and Remodeling Act required agreements for remodeling work worth over $1,000 to be memorialized in writing. Section 30 of the Act stated that it was "unlawful" for any person engaged in the business of home repairs to make repairs or remodel before obtaining a signed contract for work over $1,000. *Id.* at 296. Defendants, who hired plaintiff to perform certain remodeling work, refused to pay for the work and argued that, because the agreement was for work totaling more than $1,000, the oral contract between the parties was unenforceable. *Id.* at 289. A subsequent amendment to section 30 removed all references to the word "unlawful," and specifically indicated that the remedy for violations of the Act is to be had under the Consumer Fraud Act. *Id.* at 298.

To determine whether the amendment was intended to clarify the original act or change the law going forward, the Court analyzed the timing and circumstances surrounding the amendment. In doing so, the Court noted that at the time the General Assembly was considering the bill which would ultimately become the amended statute, there was disagreement among the appellate courts as to the effect a violation of the Act had on the legal claims that could be pursued by a contractor. *Id.* The existence of conflicting appellate decisions, as well as the legislative history of the bill negated the presumption that the legislature's removal of the word "unlawful" from section 30 was a change in the law. *Id.* at 300–01. Rather, the Court held, the amendment was meant to

clarify the prior statute and must be accepted as a legislative declaration of the meaning of the original act. *Id.* at 301. There was, therefore, no public policy requiring that oral contracts for home remodeling over $1,000 be held unenforceable. Accordingly, the Court reversed the appellate court's order affirming the trial court's dismissal of plaintiff's complaint. *Id.*; *see also People v. Rink*, 97 Ill. 2d 533 (1983) (holding that amendment to statute enacted shortly after circuit court decision holding statute unconstitutional was legislative interpretation or clarification of original statute rather than change in law); *Bruni v. Dep't of Registration and Ed.*, 59 Ill. 2d 6 (1974) (holding that amendment to Medical Practice Act was clarification of the term "conviction of a felony" and not intent to change law as it previously existed).

Here, the amendment to section 22.1(c) does not change the law, it merely clarifies the term "reasonable fee" by adding a monetary amount on what associations may charge for providing the requested disclosure documents. As the circuit court correctly noted, without the added language "not to exceed $375" following the phrase "reasonable fee," the statute is ambiguous because the word "reasonable" is not defined, but the term is capable of being understood in more than one way. (C.1265.) Even if a statute is unambiguous, the legislature is not precluded from later clarifying an already unambiguous law to confirm its earlier intent, without being held to have thereby intended to change the law. *People v. Parker*, 123 Ill. 2d 204, 212 (1988).

Just as the *McGinnis* Court did, in order to determine whether the legislature intended to clarify the existing section 22.1(c) or change it, this Court must consider the timing and circumstances surrounding the amendment. The bill which would eventually become Public Act 102-976 was first introduced to the legislature in January 2022. It was

passed by both houses of the legislature and ultimately signed into law by the Governor in May 2022. Although the Condo Act was first enacted in 1992, fees charged by associations to provide documents required by section 22.1 did not begin to be litigated until approximately 5 years before the introduction of the amendment. *See Horist*, Case No. 17-CV-8113 (complaint filed on November 9, 2017); *Ahrendt*, Case No. 17-CV-8418 (complaint filed on November 20, 2017); *Murphy*, Case No. 17-CV-8114 (complaint filed on November 9, 2017); *Channon*, 2019-CH-04869 (complaint filed on April 16, 2019); *Brown v. GNP Mgmt. Group*, 2019 CH 06868 (complaint filed on June 6, 2019). The present case was the first of these lawsuits, filed on December 8, 2016. (C.29–43.)

In amending a statute, the legislature is presumed to have been aware of judicial decisions interpreting the statute and to have acted with this knowledge. *Bruso by Bruso v. Alexian Bros Hosp.*, 178 Ill. 2d 445, 458 (1997). Thus, it is presumed that when the legislature chose to amend section 22.1(c), it was aware of increasing litigation over the amount of fees that associations may charge sellers and chose to remedy that ambiguity by adding certain monetary limits on what "reasonable" fees associations may charge. The existence of this ambiguity on what "reasonable" fees associations may charge negates the presumption that the legislature's amendment was a change in the law. Rather, faced with the prospect of increased litigation over "reasonableness" of fees and the possibility of inconsistent judicial rulings, the legislature chose to clarify the ambiguous phrase in section 22.1(c). It follows, therefore, that the amendment merely clarifies the original act and as such, informs the construction of the original act.

B. The Circuit Court's Interpretation of Section 22.1 Comports with the Legislature's Intent and Purpose in Amending the Statute

Having determined that the amendment may be consulted to interpret the meaning of section 22.1(c), the circuit court looked to the standard of conduct set forth in the Condo Act to evaluate Plaintiff's claim under the Consumer Fraud Act. (C.1265.) The circuit court ultimately held that Plaintiff's allegations cannot amount to a claim under the Consumer Fraud Act "when the statute upon which the [Consumer Fraud Act] claim is predicated expressly allows an association to charge a maximum fee, including any rush fee, of $475, and Plaintiff in this matter alleges he was charged $470." (C.1265.) In so holding, Plaintiff argues that the circuit court read the phrase "reasonable fee" out of the statute.

The fundamental principle of statutory construction is to give effect to the intent of the legislature. *Parker*, 123 Ill. 2d at 210. However, in determining legislative intent, courts must consider not only the language of the statute, but also the "reason and necessity for the law, the evils to be remedied, and the objects and purposes to be obtained." *Id.* (internal citations omitted). Subsequent amendments to a statute are an appropriate source for discerning legislative intent. *Bratcher*, 63 Ill. 2d at 542. Moreover, if the intent and purpose of the legislature can be determined from a statute, "words may be modified, altered, or even supplied so as to obviate any repugnancy or inconsistency with the legislative intention." *Id.* (citing *Cmty. Consol. Sch. Dist. No. 210 v. Mini*, 55 Ill. 2d 382, 386 (1973)).

Here, both the plain language of the amended provision, as well as the intent of the legislature support the circuit court's interpretation and application of section 22.1. The amendment provides that a "[r]easonable 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." 765 ILCS 605/22.1.

As discussed above, it is presumed that the legislature was aware of the various pending and final lawsuits that were making their way through the state and federal courts in Illinois litigating the very issue of what constitutes a "reasonable fee" when the amendment was first introduced. *See supra* at 29–30. If the legislature's aim in amending the statute was to clarify the meaning of "reasonable" in an effort to reduce the likelihood of duplicative litigation, inconsistent rulings and to provide a guide for associations on what "reasonable" fees they may charge – the only possible intent that can be gleaned from the amendment to section 22.1(c) – Plaintiff's interpretation of the amendment undermines that goal and reintroduces the same ambiguity that the legislature likely intended to erase by this amendment.

Plaintiff's argument that even under the amended statute, associations can only recover "reasonable fees" covering the "direct out-of-pocket" costs of providing the documents does not clarify what "reasonable" means. Plaintiff's interpretation only provides an outer limit to what associations can charge but provides no guidance on what "reasonable" amount they can charge. However, expressly permitting associations to charge up to $375 to produce the required documents, with an additional $100 for rush fees, provides bright-line guidance. The amendment clarifies the meaning of "reasonable," provides certainty and finality on a heavily litigated matter, reduces duplicative and unnecessary lawsuits, and eliminates the risk of inconsistent judicial rulings. The circuit court's interpretation of the amended provision achieves the intent

and purpose of the legislature's act to amend the statute in the first place. *See Sweet*, 230 Ill. App. 3d at 434 (reiterating fundamental rule of statutory construction that where the letter of the statute conflicts with the spirit of it, the spirit will be controlling).

Finally, the charges Plaintiff's real estate attorney elected to pay for Defendant's services in order to obtain the documents in time to close on the sale cannot be considered unreasonable, considering the context and purpose of section 22.1. Section 22.1(c) affirmatively permits associations and Boards of Managers to charge a reasonable fee to recoup direct out-of-pocket costs in providing the disclosure documents to sellers. The association here engaged Defendant to provide disclosure documents as needed. Defendant provided its services, and rather than the association then paying Defendant and then subsequently billing the seller to recoup the costs, Defendant billed Plaintiff directly, ensuring that the seller paid the *exact* cost of providing the documents directly to the service provider. Therefore, the section 22.1(c) purpose of ensuring associations would efficiently provide disclosure documents by removing any financial disincentive was met.

C. The Statute on Statutes Simply Does Not Apply Here

Plaintiff argues that where the legislature has not clearly defined the temporal reach of a statute, section 4 of the Statute on Statutes, 5 ILCS 70/4 controls. This statute, however, only applies to a *new* law which is construed to repeal a prior law. Section 4 provides:

> *No new law shall be construed to repeal a former law*, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the

> proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. *This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act*.

5 ILCS 70/4 (emphasis added). Plaintiff's reliance on this statute is misguided.

This Court has analyzed this statute before and held that it applies in cases where a new law, whether by outright repeal or amendment, changes the substance of an existing law. *People v. Glisson*, 202 Ill. 2d 499, 506–07 (2002). In *Glisson*, the defendant was convicted of the chemical breakdown of an illicit controlled substance pursuant to section 401.5(a-5) of the Illinois Controlled Substances Act. *Id.* at 502. The judgment was entered on November 3, 1999. Effective January 1, 2000, the General Assembly added a subsection to the Controlled Substances Act exempting the defendant's conduct from criminal liability. Following the amendment, the appellate court vacated the defendant's conviction. The sole issue before the Court was whether section 4 of the Statute on Statutes preserved defendant's conviction despite the subsequent repeal of the statutory prohibition of the conduct in question. The Court analyzed the language of section 4 and held that it prohibits construing a new statute to affect penalties, punishments or rights accrued; in other words, it forbids retroactive application of substantive changes to statutes. *Id.* at 507. However, the Court held that section 4 allows retroactive application of *procedural* changes to statutes. *Id.* Turning to the facts of the case, the Court held that since the amendment repealed the crime of which defendant was convicted, it was clearly not of a procedural nature. *Id.* at 508. Rather, it was a substantive change to the scope of the crime of chemical breakdown of illicit controlled

substances. As such, section 4 barred the retroactive application of the statutory change, and thus defendant's conviction was preserved. *Id.*

Plaintiff cites several cases in support of her argument that because the legislature did not explicitly state its intent to apply the amendment to section 22.1 retroactively, section 4 of the Statute on Statutes requires courts to apply the amendment prospectively. However, all of these cases interpret and apply section 4 of the Statute on Statutes. Because the Statute on Statutes simply does not apply in this case, none of these cases are relevant. For example, Plaintiff cites to *Perry v. Dep't of Fin. & Prof'l Reg.*, 2018 IL 122349 as support. The issue before the Court in *Perry*, however, was whether the circuit court erred in retroactively applying a newly enacted section of the Department of Professional Regulation Law, which if applicable, exempted the type of information sought by the plaintiffs from disclosure pursuant to a Freedom of Information Act request even though the information requested could be properly disclosed at the time the requests were made. *Id.* at ¶ 30. Undergoing the same analysis as *Glisson*, the Court in *Perry* concluded that because the amendments altered the scope of information that is accessible, they were substantive changes and thus could not be applied retroactively.

The other cases Plaintiff cites suffer from similar defects. *See Hayashi v. Illinois Dep't of Fin & Prof'l Reg.*, 2014 IL 116023 at ¶ 25 (analyzing retroactive application of different section of the Department of Professional Regulation Law Act which mandated permanent revocation, without hearing, of license of healthcare worker who had been convicted of specific criminal offenses before new section was enacted); *Caveney v. Bower*, 207 Ill. 2d 82 (2003) (holding taxpayers were not eligible for research and development tax credit under amendment of tax credit statute because such amendment

was substantive); *People v. Blanks*, 361 Ill. App. 3d 400 (1st Dist. 2005) (analyzing whether defendant's burglary conviction should be reversed because amendment to residential burglary statute which included burglary as lesser-included offense of residential burglary was not effective until after his conviction).

It is clear that section 4 of the Statute on Statutes relates to *substantive changes* in the law, not amendments which merely clarify or interpret the original act. Here, the amendment to section 22.1(c) does not affect substantive, or even procedural rights or penalties. The amendment simply clarified the meaning of "reasonable" by instituting a cap on the amounts associations may charge for providing the required disclosure documents. Because the amendment at issue does not make substantive changes to the original provision of the Condo Act or any other law, section 4 of the Statute on Statutes simply does not apply here.

III. The First District's Reasoning Does Not Prevent This Court from Affirming an Otherwise Correct Judgment

Finally, Plaintiff argues that the First District affirmed the circuit court's order erroneously because it misread this Court's decisions in *Robinson* and *Channon* and the plain language of section 22.1 and misapplied the Consumer Fraud Act. (Appellant Br. at 40–48.) In doing so, Plaintiff argues, the First District employs circular logic and leaves condo sellers like Plaintiff in a "Catch-22" situation – such sellers cannot bring a direct cause of action under section 22.1 of the Condo Act because they have no private right of action under *Channon*, but also cannot bring a cause of action under the Consumer Fraud Act predicated on a section 22.1 violation for the same reason. (*Id.* at 41.) Thus, Plaintiff argues, the First District's decision leaves sellers without any available remedy to recover excessive overcharges for section 22.1 documents. (*Id.* at 42.) Because the First District's

decision "has no durable legal basis," Plaintiff urges this Court to "reverse both the circuit and appellate courts." (*Id.*)

However, 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. *People v. Johnson*, 208 Ill. 2d 118, 137 (2003); *Brettman v. Virgil Cook & Son, Inc.*, 2020 IL App (2d) 190955, ¶ 109. This Court may do so because the question before the Court on appeal is "the correctness of the result reached by the lower court and not the correctness of the reasoning upon which that result was reached." *Johnson*, 208 Ill. 2d at 128. Thus, regardless of the reasoning employed by the First District – even if that reasoning is one that is erroneous or insufficient, or different from that urged or argued by the parties – this Court may nevertheless affirm the judgment based on any valid legal ground or theory supported by the record. *Leonardi*, 168 Ill. 2d at 97.

Furthermore, Plaintiff appears to argue that because this Court referenced alternative remedies available to the *Channon* plaintiffs under the Consumer Fraud Act in the context of analyzing whether there is an implied private right of action under the Condo Act, that it must mean the Consumer Fraud Act *is*, indeed, a viable cause of action for condo sellers to pursue. (Appellant Br. at 43–46.) Plaintiff singles out a moment during oral argument where Justice Carter asked counsel whether the *Channon* plaintiffs were pursuing a claim under the Consumer Fraud Act and argues that he "noted the existence of an express remedy under the ICFA obviated the need to imply a private right of action under Section 22.1." (Appellant Br. at 44–45.) However, this Court, in deciding *Channon,* did not analyze whether it was necessary to imply a private right of action to provide an adequate remedy for a violation of the statute. Rather, the Court stated that

because the Channons had failed to establish the first *Metzger* factor by showing they were members of the class the Condo Act was intended to benefit, it was unnecessary to analyze the remaining *Metzger* factors, including whether there was an adequate remedy for a violation of the statute. *Channon*, 2022 IL 128040 at ¶ 31. This Court simply 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.

CONCLUSION

Plaintiff has failed to allege the presence of any public policy outside the Condo Act which supports its Consumer Fraud Act claim. Moreover, its generic allegations that Defendant charged high prices is similarly unavailing because Plaintiff has failed to allege that Defendant's conduct was so oppressive as to leave Plaintiff with no reasonable alternative except to comply with Defendant's pricing and that Defendant's conduct substantially injured Plaintiff and other class members. As if the plain and simple failure to allege sufficient facts was not enough, the legislature's amendment of section 22.1(c) deals the final blow to Plaintiff's claims because the prices allegedly charged by Defendant were lower than what the legislature deemed to be a "reasonable fee."

For the reasons set forth above, Defendant-Appellee Lieberman Management Services prays that this Court affirm the January 26, 2024 judgment of the circuit court, and the June 25, 2025 judgment of the First District and for such other relief as this Court deems just.

Respectfully submitted,

By: /s/ *Scott Stirling*

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CERTIFICATE OF COMPLIANCE

I certify that this 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 39 pages.

/s/ *Scott Stirling*
Scott Stirling

No. 132101

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

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

NOTICE OF FILING AND PROOF OF SERVICE

TO:

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Counsel for Plaintiff-Appellant

PLEASE TAKE NOTICE that on March 25, 2026, the undersigned caused to be filed with the Clerk of the Illinois Supreme Court, 200 East Capitol Avenue, Springfield IL 62701 its Defendant-Appellee's Response Brief, a copy of which is attached hereto and hereby served upon you via the Odyssey eFileIL system.

Further, the undersigned attorney certifies that he emailed true and correct copies of the aforesaid Defendant-Appellee's Response Brief and this Notice of Filing and Proof of Service to counsel listed above, at their respective email addresses on March 25, 2026.

Respectfully submitted,

LIEBERMAN MANAGEMENT SERVICES, INC.

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