No. 128040

IN THE SUPREME COURT OF ILLINOIS

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

Plaintiffs-Appellees,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Appellant.

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

BRIEF AND ARGUMENT OF DEFENDANT-APPELLANT WESTWARD MANAGEMENT, INC.

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E-FILED
5/4/2022 3:00 PM
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TABLE OF CONTENTS

POINTS AND AUTHORITIES

Page(s)

NATURE OF THE CASE

This appeal arises out of a decision of the Illinois Appellate Court, First District, on a Rule 308 appeal regarding an issue raised by the pleadings. The Circuit Court of Cook County denied defendant's §2-615 motion to dismiss plaintiffs' complaint. The court ruled that §22.1 of the Condominium Property Act implies a right of action against a property manager for allegedly overcharging for §22.1 documents.

CERTIFIED QUESTION

> Does Section 22.1 of the Illinois Condominium Property Act provide an implied cause of action in favor of a condominium unit seller against a property manager, agent of a condominium association or board of managers, based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under Section 22.1 of the Act?
>
> (A.35).

JURISDICTION

This Court has jurisdiction under Supreme Court Rules 308 and 315. On February 5, 2021, the circuit court certified the above question for review (A.35). On April 19, 2021, the appellate court granted Westward's Rule 308 application for leave to appeal. On October 26, 2021, the appellate court issued a Rule 23 order (A.27). On November

16, 2021, the court withdrew its order, and on December 7, 2021, filed its opinion (A.3-27). Westward did not file a petition for rehearing.

On January 5, 2022, Westward filed its petition for leave to appeal under Rule 315. On March 30, 2022, this Court allowed it (A.36).

STATUTES INVOLVED

(*See* Appendix of Statutes Involved at the end of this brief)

Section 22.1 of the Condominium Property Act (765 ILCS 605/22.1); Section 19 of the Condominium Property Act (765 ILCS 605/19); Section 18.4 of the Condominium Property Act (765 ILCS 605/18.4).

STATEMENT OF FACTS

Defendant Westward Management, Inc. is a property manager and managing agent for the Kenmore Club Condominium Association in Chicago (A.52-53, ¶7). Plaintiffs Harry and Dawn Channon owned a unit in the condominium building (A.59, ¶37). In February 2016, the Channons contracted to sell it (A.59-60, ¶38). The contract required them to give their buyers documents described in §22.1 of the Condominium Property Act (the Act) [A.92-93, ¶15(d)].

The Channons asked Westward to provide the documents (A.127-28). Westward supplied a form listing available documents, including a statement of prices:

- Paid Assessment Letter—$150.00
- Declaration—$30.00
- Bylaws—$20.00
- Articles of Incorporation—$10.00
- Rules & Regulations—$15.00
- Year to Date Income Statement & Budget—$20.00
- Condo Questionnaire/Disclosure Statement/22.1 (each)—$75.00
- Insurance Contact Information—$0.00
- Super Rush (turnaround of one business day)—$200.00
- Rush (turnaround of 3 business days)—$150.00

(A.128).

The Channons requested a: (1) paid assessment letter—$150.00; (2) income statement and budget—$20.00; (3) §22.1 disclosure statement—$75.00; and (4) insurance contact information—$0.00 (*Id.*). The total cost was $245.00, which the Channons paid (A.128). They did not allege that prior to closing they sought a reduction, nor did they ask the Association for documents (A.62, ¶49).

The sale closed on April 18, 2016 (A.59, ¶37). Over 15 months later, the Channons demanded that Westward explain the charges (A.64, ¶57; A.136-37). In April 2019, they filed a two-count class action complaint against Westward (A.51-151). They did not sue the Association or its board of managers. The Channons alleged that Westward is the Association's agent for providing §22.1 documents

(A.52, ¶7). They alleged that they did not have a contract with Westward; the Association did (A.56, ¶20). The Channons did not attach Westward's agreement with the Association to their complaint.

At Count I, the Channons alleged that as the Association's agent, Westward violated §22.1 of the Act by charging unreasonable fees (A.68-75). They claimed that the Act implies a right of action against property managers (A.70, ¶82). At Count II, they alleged that Westward violated the consumer fraud statute by charging unfair fees contrary to §22.1 of the Act (A.75-80).

Westward moved to dismiss both counts (A.152-220). As to Count I, Westward argued that the Act does not imply a cause of action against a property manager based on allegedly unreasonable charges (A.155-57). As the Association's agent, Westward is not liable for the charges (A.157-58). And the Channons voluntarily paid the fees without coercion by Westward (A.158).

In October 2020, the circuit court denied Westward's motion (A.37-43). As to Count I, it agreed that §22.1 does not expressly grant a seller a right of action against a property manager (A.38). But it ruled that §22.1 implies one, finding in part that although §22.1 was intended to protect purchasers, it provides a "shred" of protection to

sellers (A.38-39). On February 5, 2021, the court certified the following question of law under Rule 308:

> Does Section 22.1 of the Illinois Condominium Property Act provide an implied cause of action in favor of a condominium unit seller against a property manager, agent of a condominium association or board of managers, based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under Section 22.1 of the Act?
>
> (A.35).

The First District allowed Westward's application for leave to appeal, limited at the Channons' request to the Condominium Act claim (A.28). On December 7, 2021, the appellate court filed an opinion answering yes to the certified question (A.3-26). It agreed that §22.1 did not expressly provide a right of action against a property manager (A.10-12, ¶14-15). It found that the legislative debates did not involve §22.1 and were "of little assistance in resolving the question before us" (A.16, ¶20).

The court noted that a four-factor test governs whether a statute implies a private right of action. *E.g., Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004) [(1) plaintiffs are members of a class that a statute benefits, (2) the statute was designed to prevent plaintiff's injury, (3) a private

right of action is consistent with the statute's purpose, and (4) a private right of action is needed to provide an adequate remedy].

The appellate court rejected the import of federal and state decisions ruling that the purpose of §22.1 was to protect potential purchasers (A.16, ¶21). It stated:

> Although that may be the statute's primary purpose, it is clear from the plain language of this statute that it also has the purpose of benefitting condominium unit owners who wish to sell their units (*Id.*).

The appellate court found that the statute was designed to prevent excessive charges to sellers, and that implying a right of action was consistent with the purpose of §22.1 (A.18-19, ¶23-24). It ruled that because §22.1 does not provide an enforcement mechanism, implying a private right of act for the seller is necessary to effectuate the Act (A.19, ¶25).

Finally, the court ruled that because the Channons alleged that Westward was the Association's agent, Westward can be held liable for violating the Association's duty to provide reasonably priced documents (A.20-23, ¶28-33). It stated that whether the Channons had a cause of action against the Association under §22.1 "is not the issue before this court" (A.23, ¶33). It rejected consideration of §19, which grants a right of action against an association for failing to provide records (A.23-24,

¶34-35). And it rejected consideration of the remedy provided by the consumer fraud statute (A.19-20, ¶26).

ARGUMENT

The Condominium Property Act Does Not Imply A Private Right Of Action Against A Property Manager For Alleged Overcharges.

Whether a court may imply a right of action under a statute is a question of law reviewed *de novo*. *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 391 (1999).

The appellate court agrees that the Act does not expressly provide a right of action against a property manager for allegedly overcharging for §22.1 documents (A.10, ¶15). Whether a court may imply a right of action depends on legislative intent. *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004). The best indicator is a statute's plain language. *Id*. at 35. A statute must be read as a whole, not in isolated parts. *Id*. at 37.

This Court has adopted a four-factor test, all of which must be present to support an implied right of action:

> "Implication by a statute of a private right of action is appropriate when: '(1) plaintiff is a member of the class for whose benefit the Act was enacted; (2) it is consistent with the underlying purpose of the Act; (3) plaintiffs' injury is one the Act was designed to prevent; and (4) it is necessary to provide an adequate remedy for violations of the Act.' *Corgan v. Muehling* (1991), 143 Ill. 2d 296, 312-13, 158

> Ill. Dec. 489, 574 N.E.2d 602." *Rodgers v. St. Mary's Hosp.*, 149 Ill. 2d 302, 308, 173 Ill. Dec. 642, 597 N.E.2d 616 (1992).
>
> *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 393 (1999) (refusing to imply right of action).

A court may imply a right of action under a statute "*only in cases where the statute would be ineffective, as a practical matter, unless a private right of action were implied*." *Id.* at 395 (emphasis supplied). A "'*clear need to effectuate the purpose of an act*'" must exist. *Id.* at 393 (emphasis supplied by *Abbasi*), *quoting Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 389 (1982).

The issue here is not whether suing a property manager is desirable from a seller's perspective. It is whether the Act, read as a whole, supports an implied right of action against a property manager. It does not. The legislature's primary intent in enacting §22.1 was to benefit prospective purchasers, not unit sellers. The legislature provided a remedy for sellers against an association or board of managers. The Channons do not have a right of action, express or implied, under the Act against Westward.

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

A. The primary purpose of §22.1 is to benefit potential purchasers.

Generally, "[t]he Condo Act establishes procedures for the creation, sale, and operation of condominiums. It regulates the duties of boards of managers, as well as condominium associations and unit owners." *Royal Glen Condo Ass'n v. S.T. Neswold & Assocs*., 2014 IL App (2d) 131311, ¶22. But the issue here is not about generalities, nor do they satisfy this Court's first factor. The issue is whether §22.1—the section at the heart of this appeal—was primarily enacted to benefit unit sellers.

This Court has recognized that a statute might benefit more than one class of persons. But an implied right of action only extends to those persons the legislature primarily intended to benefit. In *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004), the issue was whether the Personnel Code supported a private right of action for a whistleblower. A code section prohibited retaliation against state employees for reporting misconduct. *Id*. at 35. In refusing to recognize an implied right of action, this Court ruled that the code was "primarily designed" to benefit the state and its people. *Id*. at 38. Employee protections were only "incidental to the overall purpose." *Id*. State employees were "not

the class for whom the statute was primarily enacted to benefit." *Id*. at 39.

Similarly, in *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455 (1993), this Court held that the Nursing Home Care Act does not imply a private right of action allowing employees to sue for retaliation. The Care Act's "central purpose" was to protect residents, not employees. *Id*. at 463.

Previously, the appellate court has applied the primary-benefit test in rejecting claims that plaintiffs were members of a benefited class. *Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 2017 IL App (1st) 160756, ¶59 (rejecting implied right of action under Workers' Compensation Act); *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶19-22 (rejecting implied private right of action under Medical Studies Act).

Under the primary-benefit test, the Channons cannot establish that §22.1 is primarily designed to protect them. Its plain language shows why. Section 22.1's opening paragraph states:

> (a) In the event of any resale of a condominium unit by a unit owner other than the developer *such owner* shall obtain from the Board of Managers and shall make available for inspection *to the prospective purchaser* . . . ..
>
> 765 ILCS 605/22.1(a) (emphasis supplied).

Section 22.1(a) imposes an obligation, not a benefit, on a seller. It lists nine categories of documents/information that a seller must provide to a prospective buyer. Under subsection (b), the seller must do so within 30 days of a request. These provisions benefit prospective buyers by timely giving them information needed to assess whether to buy a unit.

Section 22.1(c)'s first paragraph imposes another obligation on a unit owner: notify a board of managers of any mortgage or trust deed recorded against a unit. 765 ILCS 605/22.1(c). The owner's obligation is so serious that an association may recover damages, costs, and attorney's fees for non-compliance (*Id.*). This provides added evidence that §22.1 was not primarily designed to benefit a unit owner.

Section 22.1(c)'s second paragraph is what the Channons rely on to support their claim:

> 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.*
>
> 765 ILCS/22.1(c) (emphasis supplied).[1]

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[1] On April 6, 2022, HB 5246 of the 102nd General Assembly passed both houses. If signed by the Governor, the bill will amend §22.1 of the Act 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 to a unit seller. Westward charged $245 for the documents.

This paragraph imposes still another obligation on a seller: to pay an association's charges for providing §22.1 documents. It benefits prospective purchasers, who must decide whether a condominium is financially stable, and its regulations are acceptable. Along the way, §22.1(c) lets associations recoup expenses incurred in helping sellers satisfy their obligations to potential buyers. The "reasonable fee" language governing an association's charge is, at most, an incidental benefit to sellers. That a fee must be "reasonable" does not negate the fact that the legislature obligated sellers to pay it. The obligation benefits potential buyers—the purpose of §22.1. They are the legislature's intended primary beneficiaries.

Notably, the legislature did not give sellers an express right of action under §22.1 against associations for overcharges. Yet associations, through their boards, are charged with providing documents to sellers. This omission supports the conclusion that the legislature did not view sellers as the primary beneficiaries of the statute.

B. The history of the Act establishes that the primary purpose of §22.1 is to protect potential purchasers.

The Act's legislative history proves that unit sellers are not the primary beneficiaries of §22.1. As originally enacted, the Act did not

contain §22.1. *See* Ill. Rev. Stat. 1963, ch. 30, §301 *et seq*. A potential buyer had no statutory means to demand documents regarding condominium expenses and operations. Getting them was a matter of negotiation with a seller and/or association. The original Act did not restrict what they could charge.

In 1980, the General Assembly added §22.1. *See* Ill. Rev. Stat. 1981, ch. 30, §22.1. It required unit re-sellers to provide documents to prospective purchasers at no charge. *Id.* Associations could charge sellers a "reasonable fee"—"not to exceed 10 cents per page of copy." *Id.* A 1984 amendment added the current fee language. *Compare* P.A. 83-1271 (1984 Regular Session) *with* 765 ILCS 605/22.1. Unit sellers, not prospective buyers, owed the money. *See Mikulecky v. Bart*, 355 Ill. App. 3d 1006, 1011-12 (1st Dist. 2004), for legislative history of §22.1.

Section 22.1 was largely modeled after §22, enacted about eight years earlier. Section 22 required disclosures by a condominium developer to a unit's first purchaser. *Mikulecky* discussed the legislative history behind §22, which required disclosures by a developer to the original unit purchaser. In the House, its sponsor called it a "truth in selling" bill. 355 Ill. App. 3d at 1011. The Senate sponsor stated that the bill was design to protect the elderly and those on fixed incomes so that they would be financially knowledgeable during purchase

negotiations. *Id*. *Mikulecky* found that a primary motivating factor behind §22 was "the need for purchaser protection" from hidden management agreements. *Id*. Likewise, §22.1 protects potential purchasers by requiring full disclosure of essential information.

The circuit court referred to incomplete portions of legislative debates to support its ruling that §22.1 of the Act protects sellers and buyers (A.39, n.2). Those portions dealt with §22, not §22.1. Besides, "courts generally give statements by individual legislators in a floor debate little weight when searching for the intent of the entire legislative body." *People v. R.L.*, 158 Ill. 2d 432, 442 (1994) (refusing to "ascribe the views of a few legislators to the entire legislature"). "Such statements by themselves do not affirmatively establish the intent of the legislature." *Id*. A court must examine statements in the context of the entire debate. *Id*. Here, the appellate court found the legislative debates to be "of little assistance in resolving the question before us" (A.14, ¶20).

C. Case law establishes that §22.1 is primarily intended to benefit potential purchasers.

The case law also supports Westward's position. The appellate court has spoken three times about the legislative intent behind §22.1. In *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71 (1st Dist. 1993), a

purchaser sued to terminate a condominium contract or declare it unenforceable because of breaches, including a failure to disclose a land trust. Siding with the purchaser, the appellate court stated that §22.1 is "clearly designed to protect prospective *purchasers* of condominium units." *Id*. at 77 (emphasis supplied):

> [T]he statute was designed to prevent prospective purchasers from buying a unit without being fully informed and satisfied with the financial stability of the condominium as well as the management, rules and regulations which affect the unit he is seeking to purchase.
>
> *Id.*

In *Mikulecky*, a property manager responding to a §22.1 disclosure request stated that sufficient reserves existed to cover anticipated expenditures. After the closing, plaintiff discovered that current unit owners had been previously told about an anticipated assessment for new windows. Plaintiff's share was over $10,000. The appellate court reversed summary judgment for defendant. It agreed with *Nikolopoulos* that §22.1 is designed to provide full disclosure "for the protection of the prospective purchaser." *Id*. at 1012.

In *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, a condominium purchaser sued a seller for failing to timely disclose §22.1 information. The appellate court agreed with *Nikolopoulos* and

Mikulecky that the purpose of §22.1 is to protect prospective purchasers by providing them full information. *Id*. at ¶34, 37. Given §22.1's purpose, a purchaser has an implied right of action to terminate a contract even after closing. *Id*. at ¶39, 47.

Though *Nikolopulos, Mikulecky,* and *D'Attomo* are not factually identical to this case, they are still relevant:

> Unfortunately, it is often not possible to find factual scenarios directly on point when deciding a particular issue. In such cases, general propositions of law are often taken from factually similar cases and applied to the scenario at hand.
>
> *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 20 (2004).

All three are factually close enough to count. Until now, no Illinois reviewing court has stated that §22.1 was enacted to protect sellers.

The federal courts have answered the precise question involved here in Westward's favor. In *Horist v. Sudler & Co.*, 941 F.3d 274 (7th Cir. 2019), plaintiffs were unit owners in different condominiums. Each association used Sudler as property manager. Sudler retained an online document service to assemble and provide electronic documents required by §22.1. The online service charged plaintiffs $240 and $365, respectively, for the documents. Plaintiffs filed a class action complaint against Sudler and the service, claiming that the charges violated

§22.1. The district court ruled that §22.1 did not create an express or implied right of action for unit sellers.

The Seventh Circuit affirmed. It noted that plaintiffs had not named the associations as defendants. *Id.* 278. Recognizing that the Act did not expressly create a private right of action to enforce §22.1, it applied this Court's four-factor test. *Id.* at 278-79.

The court ruled that *Nikolopulos* and *D'Attomo* "largely control the outcome." *Id.* at 279. It agreed with *Nikolopulos* that §22.1's purpose is to protect buyers. *Id*. It found that *D'Attomo* expanded *Nikolopulos* to reach a seller's §22.1 post-closing violations. *Id.*:

> The unmistakable takeaway from these two decisions is that section 22.1 is designed to protect the interests of condominium *purchasers*, not condominium *sellers*. That's enough to defeat plaintiffs' argument for an implied right of action. As owner/sellers they are not within the class of persons the statute was designed to protect, nor have they suffered an injury that the statute was designed to prevent. And implying a remedy for condominium sellers is neither consistent with nor necessary to effectuate the statute's purpose.
>
> *Horist* at 279 (emphasis in original).

The Seventh Circuit rejected plaintiffs' argument that the reasonable-fee language in §22.1(c) shows that unit sellers are within the class of persons §22.1 protects:

> [A]s a general rule of interpretation, Illinois courts read statutes as a whole rather than focusing on isolated subsections. *See Metzger v. DaRosa*, 209 Ill. 2d 30, 805 N.E.2d 1165, 1169, 282 Ill. Dec. 148 (Ill. 2004). Reading section 22.1 in this holistic way, subsection (a) of the statute establishes the seller's duty to disclose an array of important documents to the buyer; subsection (b) requires condominium associations to furnish the required documents to unit owners within 30 days of a written request; and subsection (c) allows associations to charge a reasonable fee for doing so. The statute works as an integrated whole for the benefit of prospective condominium *purchasers*, not *sellers*.
>
> Given the *manifest statutory purpose* of transparency for prospective condominium buyers, *we cannot conclude that the statute was designed to prevent injury to unit sellers. To the contrary, the statute is plainly designed to protect condominium purchasers against fraud (of the concealment variety) by condominium sellers. Together subsections (b) and (c) implement the disclosure duty in subsection (a) and thus work toward that end.* They are not independent entitlements for the benefit of condominium associations and unit sellers. *Id.* at 280 (emphasis in original and supplied).

A federal district court decision pre-dating *Horist* answers the question here consistently with it. In *Ahrendt v. Condocerts.com, Inc.*, 2018 WL 2193140 at *2 (N.D. Ill.), *vacated on other grounds*, plaintiff seller asked his association's property manager for §22.1 documents. The manager directed him to defendant, which maintained an online

data base. Unhappy with the $370 fee, plaintiff brought suit under the Act for overcharges. Relying on *Mikulecky* and *D'Attomo*, the court ruled that §22.1 is intended to benefit purchasers, not sellers. "[Plaintiff] fails to provide any authority implying a private right of action under the [Act] for condominium sellers, *or finding that the legislature intended for the [Act] to protect condominium sellers from the harms at issue here*." *Id*. at *2 (emphasis supplied).

In *Murphy v. Foster Premier, Inc.*, 2018 WL 3428084 at *3 (N.D. Ill.), the district court reached the same result. The property manager of plaintiff's condominium used an online service to retrieve §22.1 documents. Plaintiff seller sued the manager and the online service under §22.1. The district court dismissed the claim:

> The Act seeks to streamline and regulate the different parties and processes related to condo operations. Plaintiffs, as condo owners and sellers, therefore fall within a class for whose benefit the statute was enacted. *But the particular injury suffered here is not one that the statute was designed to prevent. 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.* Limiting costs may be consistent with the purpose of the Act, *but it is not what motivated the legislature.* Moreover, implying a private right of action *is not necessary to provide an adequate remedy to the objectionable behavior*.

Id. at *3 (emphasis supplied).

And in April 2021, Cook County judge Caroline Kate Moreland issued a decision agreeing with the state and federal case law. *Friedman v. Lieberman Mgmt. Srvs. Inc*., 2016 CH 15920 (A.44-50). *See Dawdy v. Union Pac. R.R.*, 207 Ill. 2d 167, 177 (2003) (allowing judicial notice on appeal of matters capable of instant and unquestionable proof). The court dismissed with prejudice a seller's claim under the Act against a property manager for alleged overcharges (A.45-47). The manager charged $450 for §22.1 documents and rush fees (A.44).

Citing *Fisher, Metzger, Horist, Nikolopulos, D'Attomo, and Mikulecky,* the court ruled that the Act does not support a private right of action against a manager (A.45-46).

> The cases cited by the Plaintiff do not support any private right of action or protection in § 22.1(c) for sellers. *Mikulecky* references protection of purchasers and in no way supports the notion that sellers are protected by 22.1 (c). *See Mikulecky v. Bart*, 355 Ill. App. 3d 1006, 1013-14 (1st Dist. 2004). *Any protection for condominium sellers like the plaintiff is incidental to the primary [purposes] of § 22.1. C.f*., *Fisher v. Lexington Health Care*, 188 Ill. 2d 455 (1999).
>
> In *Fisher*, the Illinois Supreme Court held that section 2-608 of the Nursing Home Care Act did not imply a private right of action for employees who reported violations of other provisions in the act. In reaching this

> conclusion the majority of the court found that [while] "encouragement of honesty and candor among nursing home employees is certainly consistent with the underlying purpose of the Act, it is not necessary to imply a private right of action for employees in order to achieve that purpose." *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 464 (1999).
>
> (A.46; emphasis supplied).

In short, the case law is decidedly against the Channons' position.

D. The appellate court's reasoning is contrary to the language of §22.1 and the test for determining whether sellers are class members.

The appellate court drew the wrong conclusion from the case law on §22.1 (A.12-18, ¶16-22). It reasoned that because §22.1 can be read as providing a benefit to sellers, the Channons were benefited class members for purposes of the statute. The court stated:

> Although [protecting potential purchasers] may be the statute's *primary purpose*, it is clear from the plain language of this statute that it also has the purpose of benefiting condominium unit owners who wish to sell their units (A.16, ¶21; emphasis supplied).

The court ruled that §22.1 gives sellers a mechanism to obtain at a reasonable cost the information needed by prospective purchasers (A.16-18, ¶21-22). But sellers would not need to provide that information to buyers unless the legislature required them to do so. For 17 years, the Act did not mandate seller disclosures. Those sellers and

associations willing to disclose information could charge for providing it. Potential buyers would be forced to pay the charges or lose the deals. Through §22.1, the legislature had protected potential buyers by requiring full disclosure at sellers' cost. The primary benefit under the statute is to potential buyers, not sellers.

The appellate court erred by failing to apply *Metzger*, *Fisher*, and its own cases, all of which distinguish between primary and incidental benefits, in determining whether to imply a right of action. *Metzger*, 209 Ill. 2d at 38; *Fisher*, 188 Ill. 2d at 463; *Marque Medicos*, 2017 IL App (1st) 160756 at ¶59; *Tunca*, 2012 IL App (1st) 110930 at ¶19-22. Here, the appellate court found that potential purchasers, not sellers, are the primary beneficiaries of §22.1 (A.16, ¶21). It noted the circuit court's statement that §22.1 offers only "a *shred* of protection against price-gouging" (A.13, ¶16). Having found that the statute's primary purpose is to protect purchasers, the appellate court should have rejected the Channons' position. Instead, it mistakenly ruled that they have an implied right of action.

II. Section 22.1 is not designed to protect sellers through an action against property managers.

The certified question focuses on property managers. It asks whether §22.1 necessarily implies a private right of action against a manager. The answer is no.

The Act does not require the retention of a property manager. Section 22.1 does not mention a property manager, let alone require a manager to deal with §22.1 documents. So, it cannot be concluded that the Act was designed to protect sellers through an action against property managers. *Horist*, 941 F.3d at 279; *Murphy*, 2018 WL 3428084 at *3. Absent a legally imposed duty, Westward can have no liability under the statute. *See Bucheleres v. Chicago Park Dist.*, 171 Ill. 2d 435, 447 (1996) (no liability absent a duty).

This did not leave the Channons without protection. They just failed to seek the right remedy. As discussed at Argument IV, the Channons could have sued their association.

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

By establishing standards and procedures for condominium operations, the Act as a whole is comprehensive. But §22.1 is not. Its specific purpose is to provide full disclosure to potential purchasers. *Nikolopulos*, 245 Ill. App. 3d 71, 77 (1st Dist. 1993); *Horist*, 941 F.3d 274, 279 (7th Cir. 2019).

In finding an implied right of action, the circuit court remarked: "Today's buyer becomes tomorrow's seller, and both roles are incentivized to comply with the Act's provisions when each has the means to keep the other in line" (A.39). The first part is not always true; buyers might own units for their lifetimes. But it is always true that today's sellers were yesterday's buyers. They paid nothing for §22.1 (or §22) disclosure documents. That was the legislature's way of helping them make informed decisions. There is no reason or need to keep potential buyers "in line." So, giving sellers a right to sue property managers does not further the underlying purpose of the statute: protecting buyers.

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

A. The Channons have adequate remedies under the Act, common law, and the consumer fraud statute.

A court may imply a right of action "*only* in cases where a statute *would be ineffective, as a practical matter*, unless a private right of action were implied." *Abbasi*, 187 Ill. 2d at 395 (emphasis supplied). There must be a "*clear need*" to do so. *Id*. at 393 (emphasis in *Abbasi*). That is a strict standard. For example, in *Metzger* this Court found that the Personnel Code was not "*so deficient* that it is necessary to imply a private right of action for employees to effectuate its purpose." 209 Ill.

2d at 42 (emphasis supplied). Here, the Channons did not fully utilize the Act. Implying a right of action against a property manager is unnecessary.

In *Metzger*, the Personnel Code provided employees protections from retaliation. They included: (1) administrative proceedings, (2) judicial review, (3) a compliance action by a state agency director, and (4) criminal penalties. *Id*. at 40. A grievance procedure also existed. *Id*. at 41.

Metzger noted that the code expressly included a right of action in the payroll certification process. This invoked a rule of statutory construction:

> The familiar maxim *expressio unius est exclusio alterius* is an aid of statutory interpretation meaning "the expression of one thing is the exclusion of another." Black's Law Dictionary 581 (6th ed. 1990). "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions ***." *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 148 Ill. 2d 429, 442, 593 N.E.2d 522, 170 Ill. Dec. 633 (1992). This rule of statutory construction is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written. 2A N. Singer, Sutherland on Statutory Construction § 47.24, at 228, § 47.25 at 234 (5th ed. 1992). *Where, as here, the*

> *legislature has expressly provided a private right of action in a specific section of the statute, we believe the legislature did not intend to imply private rights of action to enforce other sections of the same statute.*
>
> 209 Ill. 2d at 44 (emphasis supplied).

The *Metzger* analysis is consistent with *Fisher*, where the Court refused to recognize an implied right of action under the Nursing Home Care Act. 188 Ill. 2d 455, 464-67. And in a decision post-dating the opinion here, the appellate court applied *Metzger* in refusing to imply a right of action under a Chicago building ordinance. *1541 N. Bosworth Condo. Ass'n v. Hanna Architects, Inc.*, 2021 IL App (1st) 200594, ¶53-62; *see also Carmichael v. Prof'l Transport., Inc.*, 2021 IL App (1st) 201386, ¶32) (finding Vehicle Code's remedies not "'so deficient that it is necessary to imply a private right of action to effectuate the statute's purpose.'").

The Channons had remedies. Originally, the Act only required a manager or board to make available to unit owners the receipts and expenditures for common expenses. Ill. Rev. Stat. 1963, ch. 30, §319. By 1984, the legislature expanded §319 to require boards to make available:

> (a) Copies of the recorded Declaration, and By-Laws, other condominium instruments and any amendments, Articles of Incorporation of the

> association, annual reports and any rules and regulations adopted by the association or its Board of Managers ….

P.A. 83-1271 (83d Gen. Assembly); Ill. Rev. Stat. 1985, ch. 30, §319. Subsection (f) authorized an association or board to charge a reasonable fee for copying the documents. *Id.*

In 1997, the legislature amended and renumbered §319 to its current form. P.A. 90-496; 765 ILCS 605/19. Subsection (a) requires an association to "keep and maintain" all listed documents. Section 19(b) gives unit owners "the right to inspect, examine, and make copies" of the documents "at the association's principal office." An association may charge its actual cost for retrieving, showing, and copying records. §19(f). An association's failure to make records available within 30 days constitutes a denial. *Id.* In that event, the Act expressly authorizes an enforcement suit and even allows an owner to recover attorney's fees and costs "*from the association*." §19(b) (emphasis supplied). Here, the Association owed a statutory duty to provide documents, and the Channons had a statutory right to get them from it. That failing, the Channons could have sued the Association under §19(b). The inclusion of this remedy reasonably infers that the legislature did not intend a remedy against a property manager.

Section 22.1 is also relevant to a unit seller's ability to obtain documents. It directs a seller to obtain §22.1 documents "*from the Board of Managers*." 765 ILCS 605/22.1(a) (emphasis supplied). Under subsection (b), the Act places the duty to provide documents on the "*principal officer of the unit owner's association or such other officer as is specifically designated*" (emphasis supplied). The Act does not make a property manager an "officer" of an association, nor do the Channons allege that Westward was an officer of their Association. Nothing in §22.1 gives an association or board the right to refuse a request by a unit seller for documents. If the Channons were unwilling to pay Westward's charges, they had the right to get documents directly from the Association.

Because §§19 and 22.1 impose on an association and board the duty to keep and provide reasonably priced documents, sellers have recourse against them. It is unnecessary is to imply a private right of action against a property manager to effectuate the Act.

The Act provides another remedy against an association and board: an action for breach of fiduciary duty. Section 18.4 states in pertinent part:

> In the performance of their duties, the officers and members of the board, whether appointed by the developer or elected by the unit owners,

> *shall exercise the care required of a fiduciary of the unit owners.*
>
> 765 ILCS 605/18.4 (emphasis supplied).

An association, through its board, has a fiduciary duty to unit owners to control costs charged under §§19 and 22.1. It may set what a property manager—as alleged here the Association's agent—may charge for documents. Alternatively, it can reimburse sellers for charges an association or board deems excessive. The Act does not limit what a property manager or other vendor may charge for its services. It is up to an association—the agent's principal—to ensure that a seller only pays a reasonable amount. Here, if the Channons could not get relief from the Association and board, they could have sued under common law for breach of fiduciary duty. *See Murphy v. Foster Premier, Inc.*, 2018 WL 3428084 at *3 (N.D.Ill.).

This result is consistent with *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386 (1999). There, plaintiffs argued that the Lead Poisoning Prevention Act provided a private right of action for a child sickened by lead paint. But because plaintiffs had a common law negligence claim based on the same conduct, implying a right of action was unnecessary. *Id*. at 393. A negligence claim "effectively implements the public policy

behind the Act. *The threat of liability is an efficient method of enforcing a statute*." *Id.* at 395 (emphasis supplied).

The legislature has provided an additional remedy—one that the Channons are now using. They have brought a claim that Westward's charges violate the consumer fraud statute (A.75-80). This Court has recognized a claim under the statute for unfair pricing. *Robinson v. Toyota Motor Credit Corp*., 201 Ill. 2d 403, 417-18 (2002). It provides an adequate remedy for a violation of the Act. *Abbasi*, 187 Ill. 2d at 393. In fact, the Channon's consumer fraud claim alleges that the charges were unfair because they violated §22.1 of the Act (A.76-79). If successful, the Channon's consumer fraud claim will effectuate the Act.

B. The appellate court's agency analysis does not justify implying a right of action against property managers.

The appellate court relied on agency arguments to support its position, but those arguments disprove it (A.20-23, ¶28-36). The court stated:

> We now turn to the question of agency and consider whether a unit seller's implied right of action exists *only against a unit owners' association or board of managers, or whether it also exists* against a property manager that acts as agent for that association or board (A.18, ¶28; emphasis supplied).

By recognizing a seller's right of action against an association or board, the court has effectively conceded that implying one against a property

manager is unnecessary. A remedy exists against an association or board to recover alleged overcharges. That is the point of *Fisher*, *Metzger*, *Abbasi*, and the appellate court decisions: where a remedy already exists, implication is unnecessary. As recently stated in *1541 N. Bosworth Condo. Ass'n*: "[T]he focus should be on whether an implied right of action is necessary to enforce the provisions of the statute, *not on whether a particular plaintiff could recover from a particular defendant*." 2021 IL App (1st) 200594, ¶56 (emphasis in original and supplied).

The appellate court then stated that an agent may be held liable for taking an active part in violating a duty a principal owes a third party (A.19, ¶29). It agreed with the trial court's reasoning that "'to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging fees—and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document[s]'" *Id*. (emphasis in original). But an association cannot rid itself of a legislatively imposed fiduciary duty, *i.e.*, a duty to comply with §§19 and 22.1, by assigning it to an alleged agent. An agent acts on behalf of a principal, not to the exclusion of a principal. *See Bogenberger v. Pi Kappa Alpha Corp*., 2018 IL 120951, ¶30. Besides, a motion to dismiss does not admit conclusions of fact or

law, *i.e.*, that only Westward can assemble or provide documents. *Zander v. Carlson*, 2020 IL 125691, ¶25. The Association and board had a statutory duty to assemble and provide records. §§19(a) and 22.1(a). That board members might need help in doing so does not negate that the statutory duty is theirs.

In implying a right of action, the appellate court distinguishes between a manager's remitting fees to an association and a manager's keeping the fees (A.22, ¶31). But in either case, a seller has been overcharged. Because a principal is responsible for its agent's conduct, the principal has liability under the Act and common law. *See* §§19 and 22.1; *Lawlor v. N. Am. Corp. of Ill.*, 2012 IL 112530, ¶42. Under agency law, a principal has a right to control its agent. *Carney v. Union Pac. R.R.*, 2016 IL 118984, ¶31. A principal can dictate how much an agent charges, and who keeps the fees. So, implication under the Act is unnecessary.

The appellate court rejected Westward's argument that if dissatisfied with Westward's charges, the Channons could have sought recourse from the Association (A.23, ¶33). "Whether the plaintiffs could also assert a cause of action against Kenmore Club Association based on the defendant's agreement to perform its duties under section 22.1 is not the issue before this court" (*Id.*). But it is the issue. A court must

analyze whether implying a right of action is necessary to remedy a statutory violation. *Abbasi*, 187 Ill. 2d at 393. The availability of recourse directly bears on the issue.

One of those available alternatives is §19 of the Act, which the court found "unhelpful" (A.24, ¶35).

> Ultimately, we cannot agree that section 19 demonstrates a legislative intent that *only* a condominium association or its board of managers may be liable if a managing agent has accepted a delegation of the association's duties to provide documents and information required by section 22.1 and that agent takes an active part in violating the statutory duty owned by the association or board to a unit owner (*Id.*).

But by conceding an association or board's liability for a manager's alleged overcharges, the court again disproves its position. Under §22.1, an association owes the duty; a unit owner has recourse against it. Implying a right of action against a property manager is unnecessary.

The court minimized the Channon's right of action under the consumer fraud statute as "not before us" (A.20, ¶26). But a court must consider remedies outside a statute in determining whether an adequate remedy exists. *Abbasi* at 393, 395. And contrary to the court's statement, Westward did not inadequately brief the issue (A.20, ¶26). The appellate court excluded the consumer fraud claim as part of

appeal (A.28). Besides, on a motion to dismiss, well-pled facts are admitted. The Channon's consumer fraud claim has withstood a motion to dismiss (A.41-43). A violation of the statute "constitutes the tort of statutory fraud" for which the Association is vicariously liable. *People ex rel. Madigan v. United Constr. of Am., Inc.*, 2012 IL App (1st) 120308, ¶12 (statutory tort); *Lawlor*, 2012 IL 112530 at ¶42 (vicarious liability). The availability of a consumer fraud action negates the need to imply a cause of action under the Act.

The Channons might have preferred to not sue the Association or its board because of friendships with members. They might have preferred to sue Westward because they otherwise cannot meet class action requirements. But a "*clear need*," not a preference, must exist to imply a right of action against a property manager. *Abbasi* at 393 (emphasis in *Abbasi*). The Channons could have sued the Association or board in small claims court or sought mandatory arbitration. Either route would provide a cheap and easy way to seek a refund. There is no need to imply an action under §22.1 against a property manager.

CONCLUSION

The Channons cannot meet the four-factor test. Westward Management, Inc. urges this Court to: (1) answer the certified question in the negative, (2) remand this case to the circuit court with directions

to dismiss count I of plaintiffs' complaint with prejudice, and (3) grant such further relief as this Court deems just.

Respectfully submitted,

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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 7,403 words.

Dated: May 3, 2022

/s/ Paul V. Esposito
Paul V. Esposito

APPENDIX OF STATUTES INVOLVED

Section 22.1 of the Condominium Property Act (765 ILCS 605/22.1):

> Sec. 22.1. (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand, the following:
>
> (1) A copy of the Declaration, by-laws, other condominium instruments and any rules and regulations.
>
> (2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of this Act or the condominium instruments.
>
> (3) A statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding two fiscal years.
>
> (4) A statement of the status and amount of any reserve for replacement fund and any portion of such fund earmarked for any specified project by the Board of Managers.
>
> (5) A copy of the statement of financial condition of the unit owner's association for the last fiscal year for which such statement is available.
>
> (6) A statement of the status of any pending suits or judgments in which the unit owner's association is a party.
>
> (7) A statement setting forth what insurance coverage is provided for all unit owners by the unit owner's association.

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

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

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

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that unit owner shall be liable to the association for all costs, expenses and reasonable attorney's fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

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.

Section 19 of the Condominium Property Act (765 ILCS 605/19):

Sec. 19. Records of the association; availability for examination.

(a) The board of managers of every association shall keep and maintain the following records, or true and complete copies of these records, at the association's principal office:

(1) the association's declaration, bylaws, and plats of survey, and all amendments of these;

(2) the rules and regulations of the association, if any;

(3) if the association is incorporated as a corporation, the articles of incorporation of the association and all amendments to the articles of incorporation;

(4) minutes of all meetings of the association and its board of managers for the immediately preceding 7 years;

(5) all current policies of insurance of the association;

(6) all contracts, leases, and other agreements then in effect to which the association is a party or under which the association or the unit owners have obligations or liabilities;

(7) a current listing of the names, addresses, email addresses, telephone numbers, and weighted vote of all members entitled to vote;

(8) ballots and proxies related to ballots for all matters voted on by the members of the association during the immediately preceding 12 months, including, but not limited to, the election of members of the board of managers; and

(9) the books and records for the association's current and 10 immediately preceding fiscal years, including, but not limited to, itemized and detailed records of all receipts, expenditures, and accounts.

(b) Any member of an association shall have the right to inspect, examine, and make copies of the records described in subdivisions (1), (2), (3), (4), (5), (6), and (9) of subsection (a) of this Section, in person or by agent, at any reasonable time or times, at the association's principal office. In order to exercise this right, a member must submit a written request to the association's board of managers or its authorized agent, stating with particularity the records sought to be examined. Failure of an association's board of managers to make available all records so requested within 10 business days of receipt of the member's written request shall be deemed a denial.

Any member who prevails in an enforcement action to compel examination of records described in subdivisions (1), (2), (3), (4), (5), (6), and (9) of subsection (a) of this Section shall be entitled to recover reasonable attorney's fees and costs from the association.

(c) (Blank).

(d) (Blank).

(d-5) As used in this Section, "commercial purpose" means the use of any part of a record or records described in subdivisions (7) and (8) of subsection (a) of this Section, or information derived from such records, in any form for sale, resale, or solicitation or advertisement for sales or services.

(e) Except as otherwise provided in subsection (g) of this Section, any member of an association shall have the right to inspect, examine, and make copies of the records described in subdivisions (7) and (8) of subsection (a) of this Section, in person or by agent, at any reasonable time or times but only for a purpose that relates to the association, at the association's principal office. In order to exercise this right, a member must submit a written request, to the association's board of managers or its authorized

agent, stating with particularity the records sought to be examined. As a condition for exercising this right, the board of managers or authorized agent of the association may require the member to certify in writing that the information contained in the records obtained by the member will not be used by the member for any commercial purpose or for any purpose that does not relate to the association. The board of managers of the association may impose a fine in accordance with item (l) of Section 18.4 upon any person who makes a false certification. Subject to the provisions of subsection (g) of this Section, failure of an association's board of managers to make available all records so requested within 10 business days of receipt of the member's written request shall be deemed a denial; provided, however, that the board of managers of an association that has adopted a secret ballot election process as provided in Section 18 of this Act shall not be deemed to have denied a member's request for records described in subdivision (8) of subsection (a) of this Section if voting ballots, without identifying unit numbers, are made available to the requesting member within 10 business days of receipt of the member's written request.

Any member who prevails in an enforcement action to compel examination of records described in subdivision (7) or (8) of subsection (a) of this Section shall be entitled to recover reasonable attorney's fees and costs from the association only if the court finds that the board of directors acted in bad faith in denying the member's request.

(f) The actual cost to the association of retrieving and making requested records available for inspection and examination under this Section may be charged by the association to the requesting member. If a member requests copies of records requested under this Section, the actual costs to the association of reproducing the records may also be charged by the association to the requesting member.

(g) Notwithstanding the provisions of subsection (e) of this Section, unless otherwise directed by court order, an association need not make the following records available for inspection, examination, or copying by its members:

(1) documents relating to appointment, employment, discipline, or dismissal of association employees;

(2) documents relating to actions pending against or on behalf of the association or its board of managers in a court or administrative tribunal;

(3) documents relating to actions threatened against, or likely to be asserted on behalf of, the association or its board of managers in a court or administrative tribunal;

(4) documents relating to common expenses or other charges owed by a member other than the requesting member; and

5) documents provided to an association in connection with the lease, sale, or other transfer of a unit by a member other than the requesting member.

(h) The provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument that contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any condominium instrument that fails to contain the provisions required by this Section shall be deemed to incorporate the provisions by operation of law.

Section 18.4 of the Condominium Property Act (765 ILCS 605/18.4):

Sec. 18.4. Powers and duties of board of managers. The board of managers shall exercise for the association all powers, duties and authority vested in the association by law or the

condominium instruments except for such powers, duties and authority reserved by law to the members of the association. The powers and duties of the board of managers shall include, but shall not be limited to, the following:

(a) To provide for the operation, care, upkeep, maintenance, replacement and improvement of the common elements. Nothing in this subsection (a) shall be deemed to invalidate any provision in a condominium instrument placing limits on expenditures for the common elements, provided, that such limits shall not be applicable to expenditures for repair, replacement, or restoration of existing portions of the common elements. The term "repair, replacement or restoration" means expenditures to deteriorated or damaged portions of the property related to the existing decorating, facilities, or structural or mechanical components, interior or exterior surfaces, or energy systems and equipment with the functional equivalent of the original portions of such areas. Replacement of the common elements may result in an improvement over the original quality of such elements or facilities; provided that, unless the improvement is mandated by law or is an emergency as defined in item (iv) of subparagraph (8) of paragraph (a) of Section 18, if the improvement results in a proposed expenditure exceeding 5% of the annual budget, the board of managers, upon written petition by unit owners with 20% of the votes of the association delivered to the board within 21 days of the board action to approve the expenditure, shall call a meeting of the unit owners within 30 days of the date of delivery of the petition to consider the expenditure. Unless a majority of the total votes of the unit owners are cast at the meeting to reject the expenditure, it is ratified.

(b) To prepare, adopt and distribute the annual budget for the property.

(c) To levy and expend assessments.

(d) To collect assessments from unit owners.

(e) To provide for the employment and dismissal of

the personnel necessary or advisable for the maintenance and operation of the common elements.

(f) To obtain adequate and appropriate kinds of insurance.

(g) To own, convey, encumber, lease, and otherwise deal with units conveyed to or purchased by it.

(h) To adopt and amend rules and regulations covering the details of the operation and use of the property, after a meeting of the unit owners called for the specific purpose of discussing the proposed rules and regulations. Notice of the meeting shall contain the full text of the proposed rules and regulations, and the meeting shall conform to the requirements of Section 18(b) of this Act, except that no quorum is required at the meeting of the unit owners unless the declaration, bylaws or other condominium instrument expressly provides to the contrary. However, no rule or regulation may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 4 of Article I of the Illinois Constitution including, but not limited to, the free exercise of religion, nor may any rules or regulations conflict with the provisions of this Act or the condominium instruments. No rule or regulation shall prohibit any reasonable accommodation for religious practices, including the attachment of religiously mandated objects to the front-door area of a condominium unit.

(i) To keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the property.

(j) To have access to each unit from time to time as may be necessary for the maintenance, repair or replacement of any common elements or for making emergency repairs necessary to prevent damage to the common elements or to other units.

(k) To pay real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the real property of the condominium.

(l) To impose charges for late payment of a unit

owner's proportionate share of the common expenses, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, to levy reasonable fines for violation of the declaration, by-laws, and rules and regulations of the association.

(m) By a majority vote of the entire board of managers, to assign the right of the association to future income from common expenses or other sources, and to mortgage or pledge substantially all of the remaining assets of the association.

(n) To record the dedication of a portion of the common elements to a public body for use as, or in connection with, a street or utility where authorized by the unit owners under the provisions of Section 14.2.

(o) To record the granting of an easement for the laying of cable television or high speed Internet cable where authorized by the unit owners under the provisions of Section 14.3; to obtain, if available and determined by the board to be in the best interests of the association, cable television or bulk high speed Internet service for all of the units of the condominium on a bulk identical service and equal cost per unit basis; and to assess and recover the expense as a common expense and, if so determined by the board, to assess each and every unit on the same equal cost per unit basis.

(p) To seek relief on behalf of all unit owners when authorized pursuant to subsection (c) of Section 10 from or in connection with the assessment or levying of real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof or of any lawful taxing or assessing body.

(q) To reasonably accommodate the needs of a unit owner who is a person with a disability as required by the federal Civil Rights Act of 1968, the Human Rights Act and any applicable local ordinances in the exercise of its powers with respect to the use of common elements or approval of modifications in an individual unit.

(r) To accept service of a notice of claim for purposes of the Mechanics Lien Act on behalf of each respective member of the Unit Owners' Association with

respect to improvements performed pursuant to any contract entered into by the Board of Managers or any contract entered into prior to the recording of the condominium declaration pursuant to this Act, for a property containing more than 8 units, and to distribute the notice to the unit owners within 7 days of the acceptance of the service by the Board of Managers. The service shall be effective as if each individual unit owner had been served individually with notice.

(s) To adopt and amend rules and regulations (l) authorizing electronic delivery of notices and other communications required or contemplated by this Act to each unit owner who provides the association with written authorization for electronic delivery and an electronic address to which such communications are to be electronically transmitted; and (2) authorizing each unit owner to designate an electronic address or a U.S. Postal Service address, or both, as the unit owner's address on any list of members or unit owners which an association is required to provide upon request pursuant to any provision of this Act or any condominium instrument.

In the performance of their duties, the officers and members of the board, whether appointed by the developer or elected by the unit owners, shall exercise the care required of a fiduciary of the unit owners.

The collection of assessments from unit owners by an association, board of managers or their duly authorized agents shall not be considered acts constituting a collection agency for purposes of the Collection Agency Act.

The provisions of this Section are applicable to all condominium instruments recorded under this Act. Any portion of a condominium instrument which contains provisions contrary to these provisions shall be void as against public policy and ineffective. Any such instrument that fails to contain the provisions required by this Section shall be deemed to incorporate such provisions by operation of law.

(Source: P.A. 99-143, eff. 7-27-15; 99-849, eff. 1-1-17; 100-292, eff. 1-1-18.)

No. 128040

IN THE SUPREME COURT OF ILLINOIS

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

Plaintiffs-Appellees,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Appellant.

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

SEPARATE APPENDIX TO BRIEF AND ARGUMENT OF DEFENDANT-APPELLANT WESTWARD MANAGEMENT, INC.

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS TO SEPARATE APPENDIX AND TABLE OF CONTENTS TO THE RECORD ON APPEAL AND SUPPLEMENTAL RECORD

TABLE OF CONTENTS TO THE RECORD ON APPEAL AND SUPPLEMENTAL RECORD

2021 IL App (1st) 210176
No. 1-21-0176
Opinion filed December 7, 2021

SECOND DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

HARRY CHANNON and DAWN CHANNON, Individually and on Behalf of All Others Similarly Situated, Plaintiffs-Appellees, v. WESTWARD MANAGEMENT, INC., an Illinois corporation, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 19-CH-4869 The Honorable Anna M. Loftus, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court, with opinion.

Justices Lavin and Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 The plaintiffs, Harry Channon and Dawn Channon, have filed a class action complaint against the defendant, Westward Management, Inc., the property management agent retained by the board of managers of the condominium unit owners' association for the building in which the plaintiffs formerly owned a condominium unit. The plaintiffs allege that, when they sold their condominium unit in 2016, the defendant charged excessive and unreasonable fees to provide them with the documents and other information that the plaintiffs were required to provide to the prospective

purchasers of their unit in connection with the sale. Relevant to this appeal, the plaintiffs allege that the defendant's actions violated section 22.1 of the Condominium Property Act. 765 ILCS 605/22.1 (West 2016). The trial court denied the defendant's motion to dismiss the complaint but certified a question of law to this court, which we allowed. The certified question asks whether section 22.1 of the Condominium Property Act (*id.*) 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. For the following reasons, we hold that such an implied cause of action exists under the statute.

¶ 2 I. BACKGROUND

¶ 3 When the owner of a condominium unit (other than the developer) sells that unit, section 22.1 of the Condominium Property Act requires the owner to obtain from the board of managers of the condominium unit owners' association—and make available to the prospective purchaser—nine categories of documents and information concerning the condominium and its unit owners' association. *Id.* Generally speaking, these items include governance documents of the unit owners' association, as well as statements concerning any liens, anticipated capital expenditures, the status and amount of funds held in reserve and any portion earmarked for specific projects, the association's financial condition, the status of any pending lawsuits or judgments in which the association is a party, the insurance coverage provided for unit owners, the compliance with condominium instruments of the prior unit owner's improvements or alterations, and the identity and mailing address of the association's principal officer or the other officer or agent designated to receive notices. *Id.* § 22.1(a)(1)-(9). Section 22.1(b) requires "[t]he principal officer of the unit owner's association or such other officer as is specifically designated" to furnish this information

within 30 days of a request. *Id.* § 22.1(b). Section 22.1(c) provides in pertinent part that "[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).

¶ 4 The plaintiffs' class action complaint alleges that the defendant violated section 22.1(c) by charging more than a "reasonable fee covering the direct out-of-pocket cost" of providing the plaintiffs with the information that they were required under section 22.1(a) to obtain and provide to the prospective purchasers when selling their condominium unit. The plaintiffs allege that, in February 2016, they decided to sell the unit that they owned in a condominium property located on North Kenmore Avenue in Chicago. They entered into a contract with prospective purchasers, which was a standard form contract requiring the plaintiffs to obtain and provide the prospective purchasers with the various documents and information set forth in section 22.1(a). The defendant was the management agent retained by the board of managers of the Kenmore Club Condominium Association (Kenmore Club Board or Kenmore Club Association, respectively), which is the unit owners' association for the building in which plaintiffs owned their condominium unit.

¶ 5 Among the duties designated to the defendant as management agent was the duty to provide a selling unit owner with the documents and information required by section 22.1(a). Knowing that the defendant had been assigned this duty by the Kenmore Club Association, the plaintiffs notified the defendant of their intent to sell their unit. The defendant provided them with a standard form with which to request documents. The form listed various categories of documents, along with a price next to each category of document. The plaintiffs submitted the form to the defendant, requesting to be provided with (1) a paid-assessment letter at a cost of $150.00, (2) a year-to-date income statement and budget at a cost of $20.00, (3) a "Condo Questionnaire/Disclosure

Statement/22.1 (each)" at a cost of $75.00, and (4) insurance contact information at a cost of $0.00. The plaintiffs also submitted a form authorizing the defendant to charge their credit card in the amount of $245.00 for providing these documents. The defendant then provided the requested documents, and the plaintiffs' credit card was charged $245.00. The plaintiffs allege that the $245.00 fee charged by the defendant for providing the documents required by section 22.1(a) is not a "reasonable fee covering the direct out-of-pocket cost of providing such information," as required by section 22.1(c). See *id.* Instead, they allege, it is an "excessive and unreasonable fee" that does not reflect the defendant's direct out-of-pocket costs for providing this information. They allege that they cannot reasonably obtain the documents and information necessary to sell their unit from any source other than the defendant, and thus they were "beholden" to the defendant and had no choice but to pay the excessive and unreasonable fee it requested to receive the documents. They allege that the defendant's actions violate section 22.1 of the Condominium Property Act (*id.* § 22.1), as well as the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2016)).

¶ 6 The defendant filed a motion to dismiss the plaintiffs' complaint. It argued that no implied private right of action existed in favor of a condominium seller under section 22.1 because the purpose of that statute is to protect prospective purchasers of condominium units, not unit sellers. It also argued that section 22.1(c) did not govern the fees that property management companies providing services to condominiums could charge, as its unambiguous language mentions only what condominium associations or their boards of managers may charge for providing information. Finally, it argued that the plaintiffs had failed to plead a cause of action in second count under the Consumer Fraud Act.

¶ 7 In a written order, the trial court denied the defendant's motion to dismiss and determined

that an implied cause of action existed in favor of condominium sellers under section 22.1. In doing so, it noted that prior case law had recognized an implied cause of action under the statute in favor of buyers (see *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71, 77 (1993); *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 39), but that neither of those cases had addressed the question of whether an implied cause of action could also exist in favor of sellers. It next considered the purpose of the Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2016)) and of section 22.1 specifically. It noted that the Condominium Property Act contained protections for both buyers and sellers alike, as "[t]oday's buyer becomes tomorrow's seller." It found that section 22.1 reflected this reality by imposing "substantial obligations on sellers to secure the provision of certain documents from management, but in turn offers them a shred of protection against price-gouging." It also noted that a condominium seller was by definition a unit owner and that other implied statutory causes of action had been recognized in favor of unit owners, citing *Boucher v. 111 East Chestnut Condominium Ass'n*, 2018 IL App (1st) 162233, ¶¶ 20-21 (majority recognized cause of action in favor of unit owner against owners' association under section 18.4(h) of the Condominium Property Act (765 ILCS 605/18.4(h) (West 2012)) for violating owner's free speech rights). Based on its determination that condominium sellers were within the class of persons that section 22.1 was designed to protect, the trial court concluded that implying a cause of action against the imposition of unreasonable fees would be consistent with the statute's purposes, that the charging of an unreasonable fee was the type of injury that section 22.1(c) was designed to prevent, and that establishing a cause of action is the only method to enforce the statutory requirement.

¶ 8 Next, the trial court rejected the reasoning of *Horist v. Sudler & Co.*, 941 F.3d 274, 279-80 (7th Cir. 2019), in which the federal court of appeals, relying on *Nikolopulos* and *D'Attomi*,

concluded that the purpose of section 22.1 is for the protection of purchasers only and therefore held that no implied cause of action exists in favor of sellers under the statute. The trial court reasoned that the court of appeals had read *Nikolopulos* and *D'Attomi* too narrowly as "permitting no other purpose to be read into the statute" than protecting purchasers, whereas the trial court had concluded that section 22.1 was intended to protect sellers as well as purchasers. The trial court further reasoned that the decision of the court of appeals was likely based on the hesitancy of federal courts to recognize "novel state law claims," which the trial court reasoned that this was.

¶ 9 Finally, the trial court addressed whether a seller's implied cause of action for charging unreasonable fees could be brought against a property manager acting as agent for a condominium unit owners' association or its board of managers in providing documents and information to sellers under section 22.1. The trial court noted that it had been thoroughly alleged in the complaint that the defendant was acting as the agent of the unit owners' association, that it had been delegated and had taken on the association's statutory duty of providing the requisite documents, and that the defendant was the only source from which the plaintiffs could have obtained these documents. Citing and quoting *Landau v. Landau*, 409 Ill. 556, 564 (1951), the trial court recognized that an agent may be held liable for breaching a duty owed by a principal where the agent " 'takes some active part in violating some duty the principal owes to a third person.' " The trial court reasoned that the plaintiffs' allegations fell squarely within this rule, because, to whatever extent the duty not to charge unreasonable fees was placed on the association, the defendant was the one charging the fees and was the only party that could fulfill the statutory duty of providing the documents. Additionally, the trial court denied the motion to dismiss the count under the Consumer Fraud Act.

¶ 10 The defendant then filed a motion under Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019), seeking to have the trial court certify the question of law to this court of whether section 22.1

provides an implied cause of action in favor of a condominium seller against a property manager based on allegations that the property manager charged excessive fees for producing documents and information. The plaintiffs objected to this, arguing that it would be premature because issues of fact existed on the question of the agency relationship between the defendant and the board of managers or unit owners' association of the plaintiffs' condominium building, and this court had declined to answer a similar certified question on a previous occasion due to the issues of fact surrounding the question of agency. See *Friedman v. Lieberman Management Services, Inc.*, 2019 IL App (1st) 180059-U. In reply, the defendant asserted that in this case "agency has been established," at least for purposes of the certified question. The trial court agreed but modified the defendant's proposed certified question "to explicitly identify the agency relationship." This court then allowed the defendant's application for leave to appeal.

¶ 11 II. ANALYSIS

¶ 12 The certified question is whether section 22.1 of the Condominium Property Act (765 ILCS 605/22.1 (West 2016)) 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. We first address whether an implied right of action exists under the statute at all before considering the question of agency.

¶ 13 Determining whether an implied cause of action exists under a statute involves an application of the principles of statutory interpretation. *First Capital Mortgage Corp. v. Union Federal Bank of Indianapolis*, 374 Ill. App. 3d 739, 741 (2007). It is a question of law subject to *de novo* review. *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004). A court's primary objective when presented with any issue requiring statutory interpretation is to ascertain and give effect to the intent of the

legislature. *Oak Lawn Professional Firefighters Ass'n, Local 3405 v. Village of Oak Lawn*, 2018 IL App (1st) 172079, ¶ 18. The court looks first to the plain language of the statute as the best indication of legislative intent. *LaSalle Bank National Ass'n v. Cypress Creek 1, LP*, 242 Ill. 2d 231, 237 (2011). The language of the whole statute is evaluated, with words and phrases considered in context to other relevant statutory provisions and not in isolation. *Oak Lawn Professional Firefighters Ass'n*, 2018 IL App (1st) 172079, ¶ 18. A court may also consider the purpose behind the law, the evils that the legislature was seeking to remedy, and the consequences that would result from interpreting the law one way or the other. *Rivera v. Commonwealth Edison Co.*, 2019 IL App (1st) 182676, ¶ 25. Where the statutory language is plain, ordinary, and unambiguous, it will be enforced as written without resort to other tools of statutory interpretation. *Stinson v. Chicago Board of Election Commissioners*, 407 Ill. App. 3d 874, 876 (2011).

¶ 14 Section 22.1 of the Condominium Property Act provides in its entirety as follows:

> "(a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand, the following:
>
> (1) A copy of the Declaration, by-laws, other condominium instruments and any rules and regulations.
>
> (2) A statement of any liens, including a statement of the account of the unit setting forth the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of Section 9 of this Act or the condominium instruments.
>
> (3) A statement of any capital expenditures anticipated by the unit owner's association within the current or succeeding two fiscal years.

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

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

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

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

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

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

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

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that

unit owner shall be liable to the association for all costs, expenses and reasonable attorneys fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

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." 765 ILCS 605/22.1 (West 2016).

¶ 15 It is undisputed that no express cause of action exists under this statute. However, the absence of statutory language expressly granting such a right is not dispositive because a court may determine that a private right of action is implied in a statute. *Metzger*, 209 Ill. 2d at 35. Implication of a private right of action is appropriate if four factors are satisfied: (1) the plaintiffs are members of the class for whose benefit the statute was enacted, (2) the plaintiffs' 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.* at 36.

¶ 16 The defendant's principal argument on appeal is that no cause of action may be implied in favor of the plaintiffs in this case because, as sellers of a condominium unit, they are not members of the class for whose benefit section 22.1 was enacted. The defendant contends that section 22.1 imposes only obligations on unit sellers and does not provide sellers with any protections or benefits. Rather, all protections and benefits provided by the statute are conferred on prospective purchasers, by ensuring that they are provided in a timely manner with the documents and information necessary to make an informed decision about whether to purchase a unit within a condominium property. The defendant argues that even subsection 22.1(c) has the purpose of benefitting purchasers, not sellers, because the information obtained under section 22.1 helps them

by enabling them to decide whether a condominium property is financially stable and has acceptable governing documents. The defendant asserts that subsection 22.1(c) also "lets associations recoup expenses incurred by them in helping sellers satisfy their obligations to potential buyers" and that the " 'reasonable fee' language prevents sellers from getting away cheap." The defendant disputes the trial court's characterization of subsection 22.1(c) as providing sellers with "a shred of protection against price-gouging," arguing that such protection is merely "tangential" to the statute's overall intended purpose of benefitting prospective buyers.

¶ 17 The defendant also relies upon the various cases that have recognized that the purpose of section 22.1 is to protect potential purchasers of units within condominiums by providing them with important information needed to make an informed purchase. Indeed, multiple cases have held that section 22.1 was designed to protect prospective purchasers of condominium units. In *Nikolopulos*, 245 Ill. App. 3d at 77, this court described the statute as being "designed to prevent prospective purchasers from buying a unit without being fully informed and satisfied with the financial stability of the condominium as well as the management, rules and regulations which affect the unit he is seeking to purchase." The court thus recognized that an implied right of action existed in favor of a prospective purchaser to terminate a contract to purchase a unit within a reasonable time after being furnished with the required documents and information showing previously undisclosed material expenses or conditions. *Id.* In *Mikulecky v. Bart*, 355 Ill. App. 3d 1006, 1012-13 (2004), this court again quoted the above statement of the statute's purpose from *Nikolopulos* before holding that issues of fact precluded summary judgment in favor of a seller of a condominium unit, where the unit's purchaser alleged that the seller had violated section 22.1 by failing to disclose an anticipated capital expenditure for an expensive window-replacement project at the property of which the seller had reason to know. Finally, in *D'Attomo*, 2015 IL App (2d)

140865, ¶ 39, the court extended the holding of *Nikolopulos* to recognize an implied private right of action in favor of a purchaser post-closing, where the unit seller was alleged to have concealed documents requested under the statute, the purchaser did not discover the concealment until after the closing, and the nondisclosed information materially affected the purchaser's rights in the unit.

¶ 18 In *Horist*, 941 F.3d at 276-77, the court of appeals was faced with a case similar to the one before us—namely, a proposed class action by condominium unit owners alleging that a property management company and its third-party vendor that compiled electronically-downloadable disclosure documents had violated section 22.1(c) by charging the plaintiffs excessive fees to provide those documents in connection with sales of condominium units. Among the issues before the court was whether the plaintiffs, as sellers of condominium units, had a right of action to enforce section 22.1. *Id.* at 278. After reviewing *Nikolopulos* and *D'Attomo*, the court of appeals reasoned that the "unmistakable takeaway from these two decisions is that section 22.1 is designed to protect the interests of condominium *purchasers*, not condominium *sellers*." (Emphases in original). *Id.* at 279. "As owner/sellers they are not within the class of persons the statute was designed to protect, nor have they suffered an injury that the statute was designed to prevent." *Id.* The court held that it was not persuaded that the statutory provision for a reasonable fee in section 22.1(c) meant that unit sellers were within the class of persons the statute was designed to protect. *Id.* at 279-80. It reasoned that neither *Nikolopulos* nor *D'Attomo* had distinguished the statute's subsections, but rather had discussed only " '[t]he disclosure requirements imposed by [section] 22.1.' " *Id.* at 280 (quoting *D'Attomo*, 2015 IL App (2d) 140865, ¶ 34). The court also relied on the principle of statutory interpretation that statutes are read as a whole without focusing on isolated subsections, reasoning:

"Reading section 22.1 in this holistic way, subsection (a) of the statute establishes the

> seller's duty to disclose an array of important documents to the buyer; subsection (b) requires condominium associations to furnish the required documents to unit owners within 30 days of a written request; and subsection (c) allows associations to charge a reasonable fee for doing so. The statute works as an integrated whole for the benefit of prospective condominium *purchasers*, not *sellers*." (Emphases in original). *Id.*

The court went on to reason that subsections (b) and (c) implement the duty of disclosure of subsection (a) and were not "independent entitlements for the benefit of condominium associations and unit sellers." *Id.*

¶ 19 In addition to *Horist*, the defendants draw our attention to two other federal district court cases decided prior to *Horist*, both of which again involved claims similar to those of this case. In *Ahrendt v. Condocerts.com, Inc.*, No. 17-cv-8418, 2018 WL 2193140, at *2 (N.D. Ill. May 14, 2018), the district court rejected the plaintiff's claim based on the absence of any authority that a private right of action existed in favor of condominium sellers or that the legislature intended to protect sellers from excessive charges. In *Murphy v. Foster Premier, Inc.*, No. 17-cv-8114, 2018 WL 3428084, at *3 (N.D. Ill. July 16, 2018), the district court reasoned that the plaintiffs, as condominium unit owners and sellers, fell within the class for whose benefit the statute was enacted. However, the district court went on to reason that the goal of the statute was to increase disclosure, and thus the plaintiffs' injury of paying excessive charges was not the one the statute was designed to prevent. *Id.* The court further reasoned that the plaintiffs had alternative remedies available, such as suing their owners' association or passing the cost onto the purchasers who benefited from the sellers' prompt disclosures. *Id.* While we may consider the federal district court and court of appeals decisions interpreting state law for their persuasive value, it is well settled that federal decisions are not binding on Illinois state courts. *Trilisky v. City of Chicago*, 2019 IL

App (1st) 182189, ¶ 43 n.5.

¶ 20 Finally, the defendant discusses the trial court's reliance on the transcripts of the legislative debates involving the Condominium Property Act cited by the plaintiffs and argue that other portions of those transcripts support the purpose of section 22.1 as being for the protection of purchasers. We note that we have reviewed the transcripts of the legislative debates that are contained in the supporting record, which are from 1972 and 1983. These debates do not appear to involve the enactment of section 22.1, which occurred in 1979. See Pub. Act 81-897 (eff. Jan. 1, 1980) (adding 765 ILCS 605/22.1). A fundamental rule of statutory interpretation is that we interpret statutes as they were intended to be interpreted at the time they were passed. *Grauer v. Clare Oaks*, 2019 IL App (1st) 180835, ¶ 157 (citing *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 441 (2008)). We find these debates to be of little assistance in resolving the question before us.

¶ 21 Nevertheless, we find that the plain language of section 22.1 requires us to reject the defendant's argument that its purpose is only for the benefit or protection of potential purchasers of condominium units. Although that may be the statute's primary purpose, it is clear from the plain language of this statute that it also has the purpose of benefiting condominium unit owners who wish to sell their units. Most of the information required by section 22.1(a) concerns the financial status of the property's unit owners' association and anticipated capital expenditures involving the condominium property as a whole. Most of it is information that is not within the knowledge or possession of an individual unit owner. Regardless, it is information that any prospective purchaser would insist upon receiving to be "fully informed and satisfied with the financial stability of the condominium as well as the management, rules and regulations which affect the unit he is seeking to purchase." See *Nikolopulos*, 245 Ill. App. 3d at 77. Thus, a unit

owner who wants to sell his or her unit would be significantly hindered in doing so if he or she has no legal method to acquire this information from the party in possession of it to provide to a potential buyer to assuage that buyer's concerns about buying a unit within a particular condominium property or association. It goes without saying that there are many unknowns in buying a unit within a condominium property. Many condominium properties have owners' associations that are in strong financial condition and buildings that are not in need of major improvements. But other properties are not in such a good position, and most potential purchasers would be hesitant to buy into a condominium property without receiving some information on these matters in advance. Thus, a seller without a mechanism to obtain this information from an association to disclose it to a buyer is likely to encounter difficulty finding a purchaser willing to buy the seller's unit. Section 22.1 thus protects unit owners who want to sell their condominium units by ensuring that they have a statutory mechanism to obtain this information from an association to provide in connection with a sale. It protects unit owners who could otherwise be locked into the purchase of a condominium unit, unable to sell it. The statute thus facilitates sales, just as it protects purchasers.

¶ 22 The statute also protects unit owners wishing to sell (as well as owners' associations and their boards of managers) by specifying what may be charged for providing the selling unit owner with the information required under section 22.1. Without the last sentence of section 22.1(c), it is not difficult to imagine how disputes could arise between a unit seller and an owners' association or board of managers about whether and how much the unit seller could be charged to receive this information. Much of the information required by section 22.1(a) requires a certain amount of time or expense to accurately compile, but in many cases the person compiling it will hold a voluntary, nonremunerative position on a condominium association board of managers. Thus, the association

or board might insist on charging a fee that compensates those compiling the information for their time and for reimbursement for expenses in doing so, whereas a unit seller might dispute the amount of the charge or insist that he or she is entitled to receive the information without charge. Thus, the final sentence of section 22.1(c) prevents such disputes and protects all parties in the process by (1) specifying that copying and providing documents or information is something for which the association or its board of managers may charge the unit seller and (2) providing general parameters of what the amount of that charge may be. The fact that the General Assembly chose to specify that only a direct out-of-pocket charge would be considered reasonable is especially indicative of a legislative intent to protect unit sellers needing to obtain this information.

¶ 23 Having concluded that the plaintiffs, as sellers of a condominium unit, are members of the class for whose benefit section 22.1 was enacted, we next consider whether the injury alleged by the plaintiffs is one that section 22.1 was designed to prevent. See *Metzger*, 209 Ill. 2d at 36. Here, the injury alleged by the plaintiffs' class action complaint is that the defendant charged them an "excessive and unreasonable fee" of $245.00 for providing the documents required by section 22.1(a), which did not reflect the defendant's direct out-of-pocket costs for providing that information. Section 22.1(c) states, "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." 765 ILCS 605/22.1(c) (West 2016). Setting aside for a moment the question of whether this section controls what an entity acting as agent of an association or board of managers may charge, we hold that the plaintiffs' alleged injury of being charged an excessive fee to receive documents and information required by section 22.1 is an injury that the statute was designed to prevent.

¶ 24 Our third consideration is whether a private right of action is consistent with the underlying

purpose of section 22.1. See *Metzger*, 209 Ill. 2d at 36. As discussed above, we find that the purpose of section 22.1 is both for the protection of prospective purchasers and to ensure that condominium owners wishing to sell their units have a legal mechanism to obtain information about the financial status of the owners' association and the condition of the condominium property as a whole necessary to assuage the concerns of a potential purchaser about buying a unit within a condominium property. It also protects unit sellers by specifying that the fee they may be charged to receive this information is a reasonable fee covering the direct out-of-pocket cost of providing such information and copying. Again, setting aside for a moment the issue of agency, we find that implying a private right of action in favor of unit sellers charged fees in excess of this amount to receive the documents and information they need to provide to buyers in connection of the sale of their condominium units is consistent with these statutory purposes.

¶ 25 Finally, we consider whether implying a private right of action is necessary to provide an adequate remedy for violations of the statute. *Id.* A private right of action is implied " 'only in cases where the statute would be ineffective, as a practical matter, unless such an action were implied.' " *Id.* at 39 (quoting *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 464 (1999)). Here, section 22.1 provides for no penalty or other enforcement mechanism for the charging of an excessive or unreasonable fee for documents or information. Without an implied private right of action in favor of a seller, the statutory prohibition on the charging of an excessive fee would be ineffective.

¶ 26 The defendant argues that implying a private right of action under section 22.1 of the Condominium Property Act is unnecessary because the Consumer Fraud Act (815 ILCS 505/1 *et seq.* (West 2016)) "provides a cause of action against a property manager for unfairly charging for documents." The defendant points out that the plaintiffs' count under the Consumer Fraud Act

remains pending in the trial court. We note, however, that the defendant took the contrary position in the trial court, arguing in its motion to dismiss that the misconduct alleged by the plaintiffs is not the type of conduct that falls within the purview of the Consumer Fraud Act. The trial court rejected this argument, but the issue is not before us on the certified question. The issue is also not adequately briefed to allow us to resolve it, and we decline to address the sufficiency of the consumer fraud count in the absence of briefing by the parties. The defendant's cursory assertion that the Consumer Fraud Act provides an adequate cause of action for relief is insufficient to allow us to conclude that it is unnecessary to imply a private right of action for violations of section 22.1.

¶ 27 For these reasons, we hold that the necessary elements are satisfied to imply a private right of action in favor of a condominium unit seller charged an excessive or unreasonable fee to receive the documents or information required by section 22.1 of the Condominium Property Act. 765 ILCS 605/22.1 (West 2016). In doing so, we disagree with the analysis of *Horist*, 941 F.3d at 279-80, and other federal cases discussed above and conclude that they interpreted the purpose of section 22.1 too narrowly. Neither *Nikolopulos* nor *D'Attomo* held that the section 22.1 had the exclusive purpose of protecting purchasers of condominium units and had no purpose of providing protection to sellers. Whether the statute also protected sellers was simply not the question before the courts in those cases.

¶ 28 We now turn to the question of agency and consider whether a unit seller's implied right of action exists only against a unit owners' association or board of managers, or whether it also exists against a property manager that acts as agent for that association or board. The plain language of section 22.1 contains no mention of agents acting on behalf of unit owners' associations or their boards of managers. Instead, section 22.1(a) provides that a unit owner shall obtain the requisite documents and information "from the Board of Managers." 765 ILCS 605/22.1(a) (West 2016).

Section 22.1(b) provides that "[t]he principal officer of the unit owner's association or such other officer as is specifically designated shall furnish the above information." *Id.* § 22.1(b). And section 22.1(c) provides that a reasonable fee "may be charged by the association or its Board of Managers to the unit seller for providing such information." *Id.* § 22.1(c). However, the Condominium Property Act separately grants the board of managers of a condominium association the ability to "engage the services of a manager or managing agent." *Id.* § 18(a)(5).

¶ 29 It is undisputed for purpose of appeal that the defendant was acting as agent of the Kenmore Club Association in providing the documents and information required by section 22.1 to the plaintiffs and in charging them for doing so. The trial court, in concluding that the defendant could be held liable as the association's agent for allegedly charging excessive fees in violation of section 22.1(c), found that, on the allegations, the defendant "took on the Section 22.1 duty" owed by the association to the plaintiffs when it accepted the Kenmore Club Association's delegation of every aspect of its duties under section 22.1. The trial court cited and quoted *Landau*, 409 Ill. at 564, for the principle that an agent may be held liable for the breach of a duty owed by a principal where the agent " 'takes some active part in violating some duty the principal owes to a third person.' " The trial court reasoned that the plaintiffs' allegations fit squarely within this rule, that "to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging the fees—and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document[s]." (Emphasis in original).

¶ 30 We agree with the trial court's reasoning. Although section 22.1 itself does not specifically mention that the statutory duties of a condominium unit owners' association may be performed by its managing agent, we see no reason why this would not be one of the "services" for which an association's board of managers may engage a managing agent under section 18(a)(5). 765 ILCS

605/18(a)(5) (West 2016). While the defendant correctly points out that only a few sections of the Condominium Property Act mention managing agents or property managers and that none involve the issue here, this shows a legislative intent not to delineate the specific services that an agent or property manager can and cannot provide to condominium associations. The fact that the Kenmore Club Association delegated the performance of its duty under section 22.1 to the defendant and that the defendant agreed to accept it supports the conclusion that this is a service that a property manager may provide as agent to a condominium association.

¶ 31 Where a property manager, as part of the services for which it is engaged as an agent by a condominium association, is delegated and agrees to perform the duties of an association or board of managers under section 22.1, it cannot be delegated or agree to perform those duties as agent in a way that the association or board would be prohibited from doing as principal. An agent's power is inherently limited by the power of the principal to act on its own behalf, since the capacity to do a legally consequential act by means of an agent is coextensive with the principal's capacity to do the act itself. 2A C.J.S. *Agency* § 161 (2021). This includes a property manager's charging, as agent, a fee to unit sellers that the association or board of managers would be statutorily prohibited from charging, as principal, for performing the same duty itself. After all, the property manager is acting as the association's agent both for purposes of producing the documents and information and in charging the fee. If a property manager used its status as agent to collect a fee from sellers greater than that allowed by the statute and then remitted that fee to the association or board, it would be taking an active part in violating a statutory duty owed by the principal; its defense to liability in that instance would be that the principal had received the money. But, if the property manager charged a unit seller the exact same fee and kept the money instead of remitting it to the association or board, we fail to see how the agent could not be liable under the statute.

¶ 32 The defendant argues that the plain language of section 22.1 neither requires the retention of a property manager to disclose documents and information nor imposes any affirmative duties on property managers. It argues that the statute places duties, including the duty of imposing reasonable charges, only upon unit owners' associations. While the defendant may be correct that it was not required to take on the Kenmore Club Association's statutory responsibilities under section 22.1, it is undisputed in this instance that it did so and agreed to act as Kenmore Club Association's agent for that purpose. Having agreed to act as agent, the defendant can be held liable if it takes an active part in violating a statutory duty that its principal owes to a third party. *Landau*, 409 Ill. at 564.

¶ 33 The defendant argues that the plaintiffs' only cause of action was against the Kenmore Club Association, which is the only party upon which the statute imposes responsibilities or duties. The defendant points out that the Kenmore Club Association, as principal, had the ability by contract to limit the prices that the defendant, as its agent, could charge unit owners for providing documents under section 22.1. It states that regardless of the delegation by Kenmore Club Association of its duties or the defendant's agreement to perform them, Kenmore Club Association still owed the plaintiffs a statutory duty to keep costs reasonable. It contends that if the plaintiffs were dissatisfied with the charges for documents, the party from whom they should have sought recourse was the Kenmore Club Association. We reject this argument. Whether the plaintiffs could also assert a cause of action against Kenmore Club Association based on the defendant's agreement to perform its duties under section 22.1 is not the issue before this court. In any event, the defendant could be liable as agent it if took an active part in violating a statutory duty that Kenmore Club Association owed to the plaintiffs. See *id.*

¶ 34 The defendant also directs our attention to section 19 of the Condominium Property Act,

which addresses a unit owner's right to inspect, examine, and copy various documents to be kept by a unit owner's association, including the association's governing documents, articles of incorporation, meeting minutes, insurance policies, contracts, information about voting members, ballots and proxies, and books and records. 765 ILCS 605/19(a), (b), (e) (West 2016). Section 19(f) provides that the "actual cost" to the association of retrieving, copying, or making the records available may be charged "by the association to the requesting member." *Id.* § 19(f). Section 19(b) contemplates that a unit owner who is denied the right to inspect, examine, or make copies of the listed records may bring an "enforcement action" in which the prevailing owners "shall be entitled to recover reasonable attorney's fees and costs from the association." *Id.* § 19(b). The defendant argues that section 19 demonstrates a legislative intent of the Condominium Property Act to impose duties on associations and boards of managers, not property managers or agents, and that the parties against whom unit owners "displeased with the cost of documents" shall have recourse are associations and boards.

¶ 35 Overall, we find the language of section 19, which appears to contemplate an express cause of action, unhelpful to our interpretation of section 22.1, which we have held permits an implied cause of action. Whether section 19 would permit a cause of action against a managing agent that takes on an association's duties under that section is not before us. Ultimately, we cannot agree that section 19 demonstrates a legislative intent that only a condominium association or its board of managers may be held liable if a managing agent has accepted a delegation of the association's duties to provide documents and information required by section 22.1 and that agent takes an active part in violating the statutory duty owed by the association or board to a unit owner.

¶ 36 Finally, the defendant argues that it is no different than other vendors hired by a condominium association—such as painters, electricians, roofers, or landscapers—and it points out that the

Condominium Property Act does not control what such vendors may charge for services even though they are ultimately paid for by unit owners. The defendant asserts that the Condominium Property Act does not authorize unit owners to sue vendors with whom they have no contractual relationship. While there may be a number of distinctions between a condominium association's managing agent and the painters, electricians, roofers, or landscapers it hires, the primary difference would be that the latter are independent contractors. They are not agents acting on behalf of the association who have undertaken the performance of the association's statutory duties owed to unit owners. Thus, the fact that the Condominium Property Act does not control what such independent contractor vendors may charge for services or authorize unit owners to sue such vendors has no bearing on the certified question in this case.

¶ 37 III. CONCLUSION

¶ 38 For the foregoing reasons, our answer to the certified question is that section 22.1 of the Condominium Property Act (765 ILCS 605/22.1 (West 2016)) 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.

¶ 39 Certified question answered.

No. 1-21-0176

Cite as:	*Channon v. Westward Management, Inc.*, 2021 IL App (1st) 210176
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 19-CH-4869; the Hon. Anna M. Loftus, Judge, presiding.
Attorneys for Appellant:	Melinda S. Kollross, Brian J. Riordan, James M. Weck, and Paul V. Esposito, of Clausen Miller P.C., of Chicago, for appellant.
Attorneys for Appellee:	Terrie C. Sullivan, Jeffrey C. Blumenthal, and Michael D. Richman, of Jeffrey C. Blumenthal Chtrd., of Northbrook, Karnig S. Kerkonian and Elizabeth Al-Dajani, of Kerkonian Dajani LLP, of Evanston, and Richard A. Greenswag, of Greenswag & Associates, P.C., of Northfield, for appellees.

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
SECOND DIVISION

HARRY CHANNON and DAWN CHANNON, Individually and on behalf of all others similarly situated,	)	
Plaintiffs-Appellees,	)	
v.	)	No. 1-21-0176
WESTWARD MANAGEMENT, INC.,	)	
Defendant-Appellant.	)	

ORDER

Upon consideration of Plaintiffs-Appellees Harry Channon and Dawn Channon, Individually and on behalf of all others similarly situated's Motion to Publish in the above-captioned cause,

IT IS HEREBY ORDERED THAT:

Plaintiffs-Appellees Harry Channon and Dawn Channon, Individually and on behalf of all others similarly situated's Motion to Publish is GRANTED.

IT IS FURTHER ORDERED THAT:

The Rule 23 Order filed in this cause by this Court on October 26, 2021 is withdrawn, and an Opinion will be filed in its stead forthwith.

James Fitzgerald Smith
Presiding Justice

ORDER ENTERED
NOV 16 2021
APPELLATE COURT FIRST DISTRICT

Terrence Lavin
Justice

Cynthia Y. Cobbs
Justice

No. 1-21-0176

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated Plaintiffs-Respondents, v. WESTWARD MANAGEMENT, INC., an Illinois Corporation, Defendant-Petitioner.	)	On Application for Leave to Appeal under Supreme Court Rule 308 from the Circuit Court of Cook County, County Department, Chancery Division, No. 19 CH 4869 Hon. Anna M. Loftus Judge Presiding

ORDER

THIS MATTER coming before the Court on the Application of Westward Management, Inc. for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308, due notice having been given, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that Westward's Application for Leave to Appeal Pursuant to Supreme Court Rule 308 is granted as to the question certified by the circuit court which strictly concerns Count I, and specifically, Section 22.1 of the Illinois Condominium Property Act 765 ILCS 605/22.1.

DATED: _____

ORDER ENTERED

APR 19 2021

APPELLATE COURT FIRST DISTRICT

/s/ Carl A. Walker
PRESIDING JUSTICE

/s/ Mary Coghlan
JUSTICE

/s/ Eileen Burke
JUSTICE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Harry Channon & Dawn Channon, individually and on behalf of all others similarly situated, Plaintiffs, v. Westward Management, Inc., Defendant.	No. 19 CH 4869 Calendar 15 Hon. Anna M. Loftus Judge Presiding

OPINION, ORDER, AND CERTIFICATION

Plaintiffs, former owners of a condominium unit, are suing their former property management company for allegedly charging unreasonable fees for the provision of documents pursuant to Section 22.1 of the Condominium Property Act. The Court previously denied Defendant's Motion to Dismiss, holding in relevant part that Section 22.1 conferred an implied cause of action permitting Plaintiffs to enforce the statute's reasonable fee provision.

Defendant has sought to certify the question for interlocutory appeal. For the reasons identified below, Defendant's Motion to Certify is granted.

The Court's prior Order of October 27, 2020 explained in some detail its reasoning in permitting the claim to stand. Familiarity with that Order is assumed for the remainder of this one.

Rule 308 permits a trial court to certify a question of law for immediate interlocutory appeal. ILL. SUP. CT. R. 308(a). Certification is only appropriate where (1) there is a substantial ground for difference of opinion as to the issue, and (2) "immediate appeal may materially advance the ultimate determination of the litigation." *Eshaghi v. Hanley Dawson Cadillac Co.*, 214 Ill. App. 3d 995, 998–99 (1st Dist. 1991). Rule 308 certification should be "reserved for exceptional circumstances." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶21. Furthermore, certification in inappropriate where the answer sought would be advisory, depends on the facts of the case, or seeks the application of law to the facts of the case. *Id.* ¶21 (citations omitted).

I. Rule 308 Analysis

Defendant has proposed to certify the question of whether Section 22.1 provides an implied cause of action. The proposed question is a question of law, upon which there is substantial ground for difference of opinion, which resolution

would materially advance the ultimate termination of litigation. Certification is appropriate.

A. Proposed Question

Defendant has moved to certify the following question:

> Does §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner against a property manager retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under §22.1 of the Act?

Whether a statute implies a cause of action is a question of law. *Marque Medicos Fullerton, LLC v. Zurich Am. Ins. Co.*, 2017 IL App (1st) 160756, ¶57. In this respect, the question is proper.

Additionally, this Court has an obligation to ensure the question is concise and clearly states the issue. *Williams v. Athletico, Ltd.*, 2017 IL App (1st) 161902, ¶11. Though the Court would have perhaps phrased it differently, the question is straightforward and unambiguous.[1]

B. Substantial Ground for Difference of Opinion

There is no brightline test for what constitutes a substantial ground for difference of opinion. How could there be, when certified questions by definition concern unsettled areas of law? Here, however, the Court is satisfied that such grounds exist.

The Court's conclusion is that all four elements of the test required to read an implied cause of action into a statute have been met, and therefore that "Section 22.1 permits a cause of action to be brought by a unit owner for the imposition of unreasonable fees in connection with the provision of Section 22.1 documents." Order of Oct. 27, 2020, p. 2.

In this respect, as Plaintiff observes, the Court is in accord with two of its colleagues to have addressed the issue. *Friedman v. Lieberman*, 16 CH 15920, Order of June 14, 2017 (Cir. Ct. Cook Co.), *Brown v. GNP Mgmt.*, 19 CH 6868, Order of Oct. 23, 2020 (Cir. Ct. Cook Co.). The Court is unaware of other Circuit Court holdings on the issue, either way.

The Appellate Court has not squarely addressed this issue. It has, however, twice read implied causes of action into Section 22.1, but in substantially different contexts. *Nikolopulos* and *D'Attomo* say much of Section 22.1's role in protecting purchasers, but neither contemplates the fee provisions at issue here. *See generally*,

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[1] The Court observes the phrasing of this question is similar to the ones in *Friedman*, which were dismissed on other grounds. *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶8.

Nikolopulos v. Balourdos, 245 Ill. App. 3d 71 (1st Dist. 1993), *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865.

Defendant argues these decisions have closed the set of causes of action that may be read into Section 22.1, by exclusively defining the statute's purpose as protecting purchasers, and not sellers like Plaintiffs here. The Court, of course, disagrees. But these arguments have found purchase elsewhere. Multiple federal judges in the Northern District have rejected substantially identical claims based on that exact reasoning. *Ahrendt v. Condocerts.com, Inc.*, 2018 U.S. Dist. LEXIS 80935, **5–6 (N.D. Ill. 2018), *Murphy v. Foster Premier, Inc.*, 2018 U.S. Dist. LEXIS 117781, *6 (N.D. Ill. 2018). Thereafter, the Seventh Circuit adopted this reasoning, settling the issue in the federal sphere. *Horist v. Sudler & Co.*, 941 F.3d 274, 279–80 (7th Cir. 2019).

Plaintiffs point out the federal caselaw is not binding, the Illinois Appellate Court has not addressed the issue, and all circuit decisions went the same way. There is technically no split in authority, but such a formalistic approach misses the point. Federal courts routinely address issues of Illinois law, and Illinois courts in turn treat those decisions as persuasive. *Falk v. N. Trust Co.*, 327 Ill. App. 3d 101, 108 (1st Dist. 2001). Rule 308 has long been applied to reconcile diverging state and federal interpretations. *E.g.*, *First Federal Sav. & Loan Asso. v. Royal Faubion*, 131 Ill. App. 3d 368, 370 (1st Dist. 1985) (whether federal antitrust violations may be stated as affirmative defenses under old foreclosure statute).

The Court understands the federal caselaw arises in a slightly different posture; indeed, one of the decisions recognizes that federal courts cannot consider novel claims grounded in state law, but state courts can. *Ahrendt*, 2018 U.S. Dist. LEXIS 80935, *6 (quoting *Birchler v. Gehl Co.*, 88 F.3d 518, 521 (7th Cir. 1996)). But this quibbling is again beside the point. The Court does not lightly disagree with the Seventh Circuit. There is substantial ground for difference of opinion.

C. Materially Advance the Ultimate Termination of Litigation

Plaintiffs have pled two claims: Count I claims an implied right of action under Section 22.1, and Count II is a straight Illinois Consumer Fraud Act claim. The Court held Plaintiffs' allegations sufficient as to both claims.

As Plaintiff points out, certification affects Count I but not Count II, and so litigation would proceed regardless of what happens to Count I. Defendant counters this by arguing the Appellate Court would have authority to look beyond the question certified and potentially address the viability of both claims.

Defendant's argument plays on edge cases, and to call it a stretch feels like an understatement. More importantly, though, this Court has neither the power nor inclination to attempt to circumscribe the Appellate Court's mandate, or game out how it might respond to the question. The question to be certified is centered squarely on Count I, so the Court treats it as such.

Ultimately, both Counts ask whether Defendant should have charged the fees it did. In some respects, the claims will overlap; the Court would imagine much

discovery and large parts of the class certification process would be similar on both the Section 22.1 and ICFA claims.

But in many respects, the claims differ. Most notably, the central standard is different. Section 22.1 explicitly permits only "reasonable" fees. 765 ILL. COMP. STAT. 605/22.1(c). The implied cause of action is for unreasonable fees.

ICFA, however, prohibits unfair consumer practices. 815 ILL. COMP. STAT. 505/2. This implicates a five-prong test. *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶56. One of those prongs is unfairness, which is subject to a three-prong balancing test. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417 (Ill. 2002). One of *those* prongs requires "substantial" injury. *Id.* And here, even an "unconscionably high price" would generally be insufficient. *Id.* at 418.

ICFA claims enjoy a robust and well-developed body of caselaw. The parameters of the action are well-understood, including the elements of the claim, defenses thereto, and so forth. Section 22.1, however, is largely novel, and the parties would need to chart their own course in litigating the action. The issues might be pled together, and perhaps someday tried together, but each Count will follow a separate path along its way.[2]

The certified question must advance the litigation, but it need not be dispositive of the entire cause of action. Confirming—or rejecting—the parameters of the Section 22.1 claim will materially advance the case, even though a portion of it remains. That is sufficient.[3]

D. Agency Arguments

In a most curious reversal, Plaintiffs argue certification is inappropriate because, they claim, there remain unaddressed questions of agency. To understand this argument, it is necessary to address and dissect *Friedman*.[4]

In *Friedman*, plaintiff sold a condominium unit, secured Section 22.1 documents through the property management company, and paid them for privilege. *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶4.

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[2] Furthermore, not all litigation happens in court. For example, ICFA contains a fee-shifting provision, 815 ILL. COMP. STAT. 505/10a(c), and Section 22.1 does not. The parties' settlement postures as to each claim may be substantially different. The Court is not well-positioned to prognosticate on how such talks, if any, may develop, but it is mindful that each Count also poses different considerations outside the four corners of the courtroom, so to speak.

[3] As with the framing of the question to be certified, the Court notes the original complaint in *Friedman* pled three counts: Section 22.1, ICFA, and unjust enrichment. Only the Section 22.1 question was certified, and it was rejected on other grounds. *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶5.

[4] The Court is well aware that Rule 23 dispositions are not precedential, and that only decisions *published* after January 1, 2021 may be cited. ILL. SUP. CT. R. 23(e)(1). In the unique circumstances of this case, however, it is best to call a spade a spade and address the case head-on, rather than dance around the point. That said, the Court reiterates that its reasoning is its own, and takes care to note that no portion of its holding, either here or in the prior Order of October 27, 2020, is founded on *Friedman* in any respect.

The management company sought dismissal, but the trial court held Section 22.1 implied a right of action, *id.* ¶6, and certified two similar questions, *id.* ¶8.

The Appellate Court dismissed the appeal as improvidently granted, because the underlying complaint did not allege an agency relationship between the condo board and the management company. 2019 IL App (1st) 180059-U, ¶11. This led to two main flaws. First, absent such an allegation, answering the certified questions—which assumed the existence of an agency relationship—would make the answer advisory, and therefore improper. *Id.* ¶12. Second, though the appeal could be saved if the management company had admitted to the existence of an agency relationship, thereby curing the otherwise insufficient pleading, no such admission was made. *Id.* ¶13. Ultimately, "because the existence of an agency relationship was not pleaded and is not yet at issue, an answer to the certified questions would be provisional." *Id.* ¶14.

And so we return to the case at bar. Plaintiffs here urge denial of certification, asserting the questions assume the existence of an agency relationship, which Defendant has neither admitted nor denied. Absent either an admission or a finding of fact that such a relationship exists, Plaintiffs conclude, the proposed question would meet the same fate as that in *Friedman*.

Much like a doughnut, Plaintiffs' logic circumscribes a hole: in this complaint, Plaintiffs *have* pled an agency relationship. The Court held as much when denying dismissal. Order of Oct. 27, 2020. The Complaint explicitly pleads an agency relationship *ad nauseam*. Complaint, ¶¶7, 9, 13, 21, 23, 40, 42–44, 46, 49, 51, 55, 73, 90, 92, 96–97, 101. Perhaps a dozen pages of the Complaint are dedicated to fleshing out the parameters of the relationship between Defendant and the condominium association. To call agency adequately pled is a gross understatement.

Plaintiffs request an opportunity to do discovery to resolve this factual issue. Their argument here seems to reference the second issue in *Friedman*—that the appeal could be saved if the defendant there had admitted agency, or it had already been established as a factual matter. But the only reason that came up in *Friedman* was because agency had not been pled. Here, it has.

Should Defendant choose to deny those allegations, agency *will* become a question of fact, and discovery thereupon will be proper. But for the purposes of the Motion to Dismiss, Plaintiffs' abundant agency allegations are advisorially admitted. The existence of an implied cause of action is an issue of law, analyzed on the well-pled facts of the Complaint. Those facts were not present in *Friedman*, but are present here. The Appellate Court may decline to take the question, or may dismiss it on other grounds. But it does not appear to share the defect of *Friedman*. Certification is appropriate.

At hearing, Plaintiffs in the alternative argued the question as framed was defective, in that it did not explicitly acknowledge the agency relationship pled in the Complaint. The Court read the question as sufficient; it did not explicitly identify agency, but doing so did not seem necessary to adequately present the issue. Nevertheless, out of an abundance of caution, the Court has slightly modified the proposed language, so as to explicitly identify the agency relationship.

II. Stay

Certification of a question does not automatically stay proceedings. ILL. SUP. CT. R. 308(e). At hearing, Defendant suggested a stay might be appropriate; the Court disagrees.

A court may stay proceedings as part of its inherent authority to control the disposition of cases before it. *Philips Electronics, N.V. v. New Hamp. Ins. Co.*, 295 Ill. App. 3d 895, 901 (1st Dist. 1998) (citing *Disciplined Investment Advisors v. Schweihs*, 272 Ill. App. 3d 681, 692 (1st Dist. 1995)). Factors to consider include the orderly administration of justice and judicial economy in determining whether to stay proceedings. *Vasa North Atlantic Ins. Co., v. Selcke*, 261 Ill. App. 3d 626, 628–29 (1st Dist. 1994).

Here, a broad stay is inappropriate. The certified question concerns only Count I. But Count II is unaffected, and as noted above, both Counts stem from the same set of facts. Defendant will be ordered to Answer, and discovery may proceed. The Court will, however, stay dispositive motion practice targeted towards Count I, to ensure any eventual proceedings here are not potentially moot.

* * *

III. Orders

Defendant's Motion to Certify is granted. The Court finds the following question of law to be one on which there is substantial ground for difference of opinion, and for which an immediate appeal may materially advance the termination of this litigation. The Court therefore certifies the following question, pursuant to Rule 308(a):

> Does Section 22.1 of the Illinois Condominium Property Act provide an implied cause of action in favor of a condominium unit seller against a property manager, agent of a condominium association or board of managers, based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under Section 22.1 of the Act?

Defendant is ordered to Answer the Complaint, in full, within 28 days.

Neither party may engage in further motion practice with respect to Count I until further Order of Court. A party wishing to lift this stay may do so by simple oral motion.

This case is set for status on discovery and the appeal, if any, on **Thursday, April 8, 2021, at 10:00 a.m.**

The status will occur via Zoom, and may be accessed through the following hearing link: https://circuitcourtofcookcounty.zoom.us/j/95535573920.

Chambers staff will email a copy of this Order to the parties.

ENTERED:

Judge Anna M. Loftus
FEB - 5 2021
Circuit Court-2102

/s/ Anna M. Loftus

Judge Anna M. Loftus, No. 2102

SUPREME COURT OF ILLINOIS
SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
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FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
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March 30, 2022

In re: Harry Channon et al., etc., Appellees, v. Westward Management, Inc., etc., Appellant. Appeal, Appellate Court, First District. 128040

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Harry Channon & Dawn Channon, individually and on behalf of all others similarly situated, Plaintiffs, v. Westward Management, Inc., Defendant.	No. 19 CH 4869 Calendar 15 Hon. Anna M. Loftus Judge Presiding

OPINION & ORDER

This matter comes before the Court for ruling on Defendant's Motion to Dismiss. For the reasons identified below, the Motion is denied.

The facts of the claim and relevant authorities are known to the parties, and the Court does not summarize them here. Likewise, the procedural history of this case, which includes a brief expedition to federal court, is known to the parties and otherwise irrelevant here. *See Channon v. Westward Mgmt.*, 2020 U.S. Dist. LEXIS 43697 (N.D. Ill. 2020).

Defendant's Motion is brought under Section 2-615, which is premised on defects and other legal points apparent on the face of the Complaint. 735 ILL. COMP. STAT. 5/2-615(a). In such an analysis, the Court accepts as true all well-pleaded facts and inferences stemming therefrom. The essential question is whether the allegations, "when construed in the light most favorable to the [non-moving party], are sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer*, 2016 IL 118781, ¶19. Here, the allegations are sufficient.

I. Count I: Section 22.1

Count I seeks recovery under Section 22.1 of the Illinois Condominium Property Act. 765 ILL. COMP. STAT. 605/22.1. Specifically, Plaintiffs allege that Defendant, management company for their former condominium association, Kenmore Club, charged unreasonable fees for production of Section 22.1 disclosure documents, in violation of Section 22.1(c).[1]

[1] The Court observes that the fee provision is tucked away into Section 22.1(c), a seemingly odd place to put it. This placement is a historical quirk. As originally enacted in 1980, Section 22.1 contained just what we now know as (a), with subsections (1) through (10), and then the "reasonable fee" clause. In 1991, Section 22.1 was modified to turn what was then subsection (10) into standalone section (b), and then to add new section (c), which requires unit owners to timely inform the Board about any new mortgagor. P.A. 87-692 (eff. Sept. 23, 1991). The "reasonable fee" clause ended up

A. Implied Cause of Action

The central legal question is whether Plaintiffs have the right to sue for such a statutory violation. The Act does not explicitly provide for a right of action. Courts may read an implied cause of action into a statute, but such a cause of action is dependent on a four-point test:

> (1) whether the plaintiff is within the class of persons the statute is designed to protect;
> (2) whether implying the cause of action is consistent with the underlying purpose of the act;
> (3) whether the plaintiff's injury is one the statute was designed to prevent; and
> (4) whether implying a cause of action is necessary to effectuate the purpose of the act.

Nikolopulos v. Balourdos, 245 Ill. App. 3d 71, 77 (Ill. 1993) (citing *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 470 (Ill. 1989)).

Two Illinois cases have read a cause of action into Section 22.1, both on the buyer's behalf. *Nikolopulos* held that a prospective buyer in receipt of Section 22.1 documents has "the right to terminate the contract within a reasonable time after being furnished information revealing previously undisclosed material expenses," and may sue to accomplish such termination. *Id.* at 77.

Nearly twenty years later, *D'Attomo* held that a prospective buyer has a right to terminate, even after the closing date, where the seller concealed material facts that should have been disclosed in the Section 22.1 documents. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶39.

Defendant makes much of the fact that both cases imply a cause of action in favor of the buyer. But the courts in those cases were only asked to determine whether a buyer has a cause of action. Indeed, *D'Attomo* explicitly recognized that there was "no language in *Nikolopulos* that limits a buyers's [sic.] implied remedies" and that it "addressed only pre-closing remedies because, in that case, the nondisclosure was discovered prior to the closing." *Id.* at ¶38.

By that same token, the Court notes that neither *Nikolopulos* nor *D'Attomo* says anything about limiting Section 22.1 to *buyers*, because the question of sellers simply did not arise. Though both cases are instructive, neither resolves whether Section 22.1 is designed to protect sellers as well as buyers.

B. The Act's Purposes

On this point, Plaintiff's exhortation to examine the Act through a broader lens comes into play. Viewed as a whole, the Act protects buyers and sellers alike.

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getting punted to the end of the revised statute, trailing subsection (c). It probably could have been turned into a standalone subsection (d). All this is to say that the Court finds no substantial benefit from a review of the statutory history of the provision at issue.

And why would it not? Today's buyer becomes tomorrow's seller, and both roles are incentivized to comply with the Act's provisions when each has the means to keep the other in line. Indeed, Section 22.1 itself reflects this reality: it imposes substantial obligations on sellers to secure the provision of certain documents from management, but in turn offers them a shred of protection against price-gouging.

This is consistent with the remainder of the Act. After all, a seller is also definitionally a unit owner. And unit owners may bring other implied statutory causes of action. *E.g.*, *Boucher v. 111 E. Chestnut Condo. Ass'n*, 2018 IL App (1st) 162233, ¶20 (establishing cause of action by unit owner against association for violation of First Amendment rights).

And, this conclusion is wholly consistent with the legislative history. Plaintiffs have provided excerpts from that history on their Response, and it is telling that Defendant does not seriously question the statements therein.[2] The Act protects both sellers and buyers, and was meant to from the start. The fact that those protections take different forms is a simple function of the parties' different roles in a sales transaction, rather than any indication of deliberate omission.[3]

The Court concludes that Section 22.1 was designed to protect sellers, as well as buyers. Given this conclusion, the remainder of the four-part test for an implied cause of action falls into place. Because (1) Section 22.1 is designed to protect sellers, the Court easily finds that (2) implying a cause of action against the imposition of unreasonable fees is consistent with the purpose of Section 22.1, given that Section 22.1(c) explicitly prohibits the imposition of unreasonable fees; (3) charging an unreasonable fee is exactly the type of injury a statutory prohibition against unreasonable fees is designed to prevent; and (4) establishing a cause of action is the only method to enforce the statutory requirement.

The Court therefore concludes that Section 22.1 permits a cause of action to be brought by a unit owner for the imposition of unreasonable fees in connection with the provision of Section 22.1 documents.

C. The Federal Authorities

Defendant makes much of the federal caselaw on this point. While Illinois courts of review have yet to address the private-right-of-action issue, federal courts have made their position well-known. The leading case is *Horist*, which provides in no uncertain terms that there is no such cause of action. Reviewing *Nikolopulos* and

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[2] The Court notes that the legislative history in question dates to the late '70s, and as such the Court is unable to easily secure full copies of the transcripts or amendments in question. What is quoted, however, is unambiguous and speaks for itself.

[3] The Court notes that references to the Uniform Condominium Property Act are only distantly useful as a matter of statutory construction. The UCPA itself contains a similar provision to our Section 22.1 in its Section 4-109, but that section does *not* contain a "reasonable fee" provision. Comment 2 to Section 4-109 provides that the association may charge a reasonable fee in accordance with Section 3-102, which is in turn the general provision for powers of the association. Because the UCPA itself does not contemplate the assigning out of Section 22.1 authority, its provisions are not directly analogous. Court decisions interpreting other analogues of the UCPA, however, are quite useful for determining the *intent* of those statutes—and, by reflection, Section 22.1 itself.

D'Attomo in a somewhat cursory fashion, the *Horist* court reached a clear-cut conclusion: "The unmistakable takeaway from these two decisions is that section 22.1 is designed to protect the interests of condominium purchasers, not condominium sellers. That's enough to defeat the plaintiffs' argument for an implied right of action." *Horist v. Sudler & Co.*, 941 F.3d 274, 279 (7th Cir. 2019).

The Court respectfully disagrees. *Horist* reads *Nikolopulos* and *D'Attomo* as exhaustive statements as to what Section 22.1 is, permitting no other purpose to be read into the statute. But neither *Nikolopulos* nor *D'Attomo* purports to close out the scope of Section 22.1, such that it would protect buyers *only*, or otherwise say anything about sellers. And reading the Act as a whole—inclusive of the legislative history and its other protections to unit owners—it seems apparent that Section 22.1 was intended to protect sellers and buyers alike.

Furthermore, as Plaintiffs consistently note, this Court is not bound by federal decisions, even Seventh Circuit ones, interpreting Illinois law. Beyond simply not being bound, however, the Court observes that it is long-established policy in the Seventh Circuit that "plaintiffs desirous of succeeding on novel state law claims [must] present those claims initially in state court." *Birchler v. Gehl Co.*, 88 F.3d 518, 521 (7th Cir. 1996). Reading a seller's implied cause of action into Section 22.1 is indeed a novel claim. And to whatever extent the novelty may limit the relief available in federal court, it is of no consequence here. Plaintiffs have stated a claim, and may proceed on it.

D. Agency Arguments

Finally, Defendant raises arguments grounded in agency law. On a Motion to Dismiss, the Court takes Plaintiffs' allegations as true. Plaintiffs have thoroughly alleged not only that Defendant is an agent of Kenmore Club, but that Kenmore Club does not have either the Section 22.1 documents or the means to obtain them. In other words, with respect to Section 22.1, Defendant is both the beginning and end of the equation, and Kenmore has handed over *every* aspect of its Section 22.1 duties—and Defendant accepted those duties.[4] On the allegations, Defendant took on the Section 22.1 duty owed to Plaintiffs.

Defendants appear to be arguing—though it is not entirely clear—that Kenmore Club retains the duty, though Defendant actually discharges it by assembling and tendering requested documents. The Court is not convinced at this stage that there is sufficient authority to support such a split duty. Perhaps Kenmore Club *also* has an obligation to ensure its agents do not charge unreasonable fees. But whether Kenmore Club is on the hook or not, Plaintiffs have alleged that Defendant is directly responsible for its actions.

Regardless of where duties originate, or where they may be owed, Plaintiffs finally point to *Landau* for the proposition that an agent is liable for a duty owed by

[4] Presumably, the contract between Defendant and Kenmore Club might shed more light on this. But it is not in the record and not public record, and Plaintiffs have not attached a copy to their Complaint. But at this point the Court takes the allegations as true.

the principal where the agent "takes some active part in violating some duty the principal owes to a third person." *Landau v. Landau*, 409 Ill. 556, 564 (Ill. 1951).

Landau may be seventy years old, but the Court has seen no indication that this core rule is no longer good law. And Plaintiffs here squarely allege facts within the *Landau* rule: to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging the fees—and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document.

E. *Friedman*

As a final note, the Court must acknowledge the proverbial elephant in the room: Justice Walker's dissent in *Friedman*. *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶¶18–45. The precedential value of a *dissent* to a *Rule 23* opinion is, of course, nil. The Court takes care to note that, though it agrees with much of the *Friedman* reasoning, it has reached its own conclusion based on the arguments presented to it.[5]

II. Count II: Illinois Consumer Fraud Act

Count II seeks recovery of the same fees under the Illinois Consumer Fraud Act. 815 ILL. COMP. STAT. 505/2. Specifically, Plaintiffs charge that the imposition of unreasonable fees under Section 22.1 is actionable. ICFA claims come in two main flavors, based on whether the targeted practice is deceptive or unfair; Plaintiffs have brought their claim on the unfairness prong only.[6]

A. Unfairness

An ICFA claim premised on unfair conduct has five elements: (1) an unfair practice (2) defendant intended plaintiff to rely on (3) in the course of trade or commerce (4) proximately causing (5) actual damages. *E.g.*, *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶56.

Defendant does not particularly challenge the sufficiency of the allegations as to most of those points. The parties' real dispute is with the sufficiency of that first point: whether charging allegedly unreasonable fees is, in fact, an unfair practice.

Unfairness is measured on a three-point balancing test of whether the practice (1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) causes substantial injury. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417–18 (Ill. 2002). "All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Id.* at 418 (numerous nested quotations omitted).

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[5] Whether the Appellate Court has an appetite for this issue might well be relevant in other procedural postures. *See, e.g.*, ILL. SUP. CT. R. 308. But that question is not before the Court today.

[6] And it is well they did, because there is nothing deceptive about what Defendant are alleged to have done.

Here, and at the pleadings stage, all three prongs line up in Plaintiffs' favor.

1. Policy

Regardless of whether Section 22.1 contains an implied right of action, it certainly prohibits the imposition of reasonable fees. Because Section 22.1 explicitly establishes a directly applicable standard of conduct, *viz.* fees chargeable for Section 22.1 documents, it is an expression of policy. *See, e.g., Boyd v. U.S. Bank, N.A.*, 787 F. Supp. 2d 747, 752 (N.D. Ill. 2011) (ICFA unfairness claim can hinge on otherwise unactionable violation of statutory policy). Violation of Section 22.1 is therefore a violation of policy within the meaning of the first prong.

2. Oppressiveness

Plaintiffs' allegations go into some detail about the level of control Defendant exercised over the Section 22.1 documents. Specifically, they allege that Kenmore Club's had no control over the documentation, would be unable to provide it if requested, and relied entirely on Defendant for the documents.

Whether that is true is a question for another day. For now, however, Plaintiffs have alleged they had no choice but to comply with Defendant's procedures and pay the requested fees. Their failure to do so would—allegedly—result in an inability to ever secure the requested documents.[7] The alternative would be to never sell, which is no alternative at all.

3. Substantial Injury

Despite having a dollar amount attached to it—$245—the nature of the injury is unclear. What would a *reasonable* fee be? If $240 were reasonable, the injury could hardly be said to be substantial. (Of course, if $240 were reasonable, the claims would have other issues to work through, but the point stands.)

For now, Plaintiffs have alleged the imposition of an unreasonable fee, one that is higher than what it should have cost, and one which they could not have otherwise avoided. *See Ciszewski v. Denny's Corp.*, 2010 U.S. Dist. LEXIS 55903, at **9–11 (characterizing *Robinson* as adopting *Montes* test, under which injury is substantial if it is (a) is more harmful than any benefits the act produces, and (b) could not reasonably be avoided; *see Cheshire Mortg. Serv. v. Montes*, 223 Conn. 80, 113 (Conn. 1992)).

Plaintiffs have alleged that the fees are unreasonable. Whether those fees are *unconscionably high*, and whether that alone is sufficient, are beyond the present pleadings challenge. *See Robinson*, 201 Ill. 2d at 418 ("charging an unconscionably high price generally is insufficient to establish a claim for unfairness"). For now, however, Plaintiffs need not make out a definitive case on all three points, and the question of injury is best left as a question of fact—at least, for now.

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[7] Whether Section 22.1(b) requires that Defendant turn over the documents within 30 days regardless of payment, and whether sellers could sue to enforce *that* provision, are questions not presented in this case. For now, suffice it to say that such litigation would quite likely, and quite reasonably, scare off any potential buyer, defeating the purpose of the sale.

Because Plaintiffs have alleged facts going to all three of the prongs on which an unfairness claim is assessed, the Court holds the allegations sufficient to establish an ICFA claim for unfair conduct.

B. Voluntary Payment Doctrine

The voluntary payment doctrine provides that "money voluntarily paid with full knowledge of the facts cannot be recovered on the ground that the claim for payment was illegal." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶2; *accord id.* at ¶¶18–31 (comprehensive overview of doctrine). Defendant's argument on this point is simple: because the fees were fully disclosed, and Plaintiffs chose to pay them, they cannot now quibble about the amount paid.[8]

"To avoid application of this long-standing doctrine, it is necessary to show not only that the claim asserted was unlawful but also that the payment was not voluntary, such as where there was some necessity that amounted to compulsion and payment was made under the influence of that compulsion." *Id.* at ¶23.

Plaintiffs have sufficiently alleged the duress exception to the voluntary payment doctrine. They allege that Kenmore Club did not have access to the Section 22.1 documents, and that Kenmore Club did not have the ability to generate them in any event. They have alleged, in other words, that their options were either to pay Defendant the asking price for the documents, or go without. Given the importance of Section 22.1 disclosures in the course of a condominium sale transaction, trying to go without is not a reasonable alternative. Plaintiffs' allegations are sufficient to plead the duress exception to the voluntary payment doctrine.

III. Orders

Defendant's Motion to Dismiss is denied. Defendant is directed to Answer within 28 days.

Plaintiffs' Motion for Class Certification is entered and continued generally.

This matter is set for status on **Thursday, December 3, 2020, at 10:00 a.m.**

ENTERED:

Judge Anna M. Loftus
OCT 27 2020
Circuit Court- 2102

/s/ Anna M. Loftus
Judge Anna M. Loftus, No. 2102

[8] Defendant alleges the application of the voluntary payment doctrine to both Counts, though because it fits more logically in the ICFA context, the Court has only discussed it here. The Court's conclusion is applicable to both claims.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Franklin P. Friedman,	)	
	)	
Plaintiffs,	)	Case No. 2016 CH 15920
v.	)	Hon. Caroline Kate Moreland
	)	Judge Presiding
Lieberman Management Services, Inc.,	)	Cal. 10
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION AND ORDER

Defendant Lieberman Management Services, Inc. filed a motion to dismiss Counts I, II and IV of Plaintiff's second amended complaint (the "Complaint")[1] pursuant to 735 ILCS 5/2-615.

I. Background

Plaintiff's complaint stems from the sale of his condominium unit in the Mission Hills development in October 2016. Prior to the closing for the sale of the property, Plaintiff, through his attorneys, on September 27, 2016, agreed to provide to the buyer items of disclosure regarding the condominium and the condominium association pursuant to § 22.1 of the Condominium Property Act. Plaintiff also agreed to a closing date of October 4, 2016. Plaintiff made the requests for the documents and was able to obtain the requested documents for the October 4, 2016 closing date. Plaintiff was charged $450 dollars total for the documentation which included a rush fee. Plaintiff objects to the fees charged by the Defendant as unreasonable for the requested documents and services. Defendant was retained by the Mission Hills Condominium association to act as its agent in managing the development.

Count I of the Complaint alleges violation of § 22.1 (c) of the Condominium Property Act 765 ILCS 605/1 *et seq*. Section 22.1 (c) allows the association to charge "A reasonable fee covering the direct out-of-pocket cost" of complying with Section 22.1's disclosure requirements. Count II alleges that the fee charged by the Defendant constitutes a violation of Illinois Consumer Fraud and Deceptive Business Practices Act (CFDBPA) 815 ILCS 505/1 *et seq*. Count IV alleges violation of section 9.2 of the Condominium Property Act which also constitutes a separate violation of the CFDBPA.

II. Motion to Dismiss

"A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint." *Yoon Ja Kim v. Jh Song*, 2016 IL App (1st) 150614-B ¶ 41. Motions brought under Section 2-615 do not raise affirmative factual defenses. Id. Rather, "[a]ll well-pleaded facts and all

[1] Count III is included in the complaint solely to preserve the issue for future appeal.

reasonable inferences from those facts are taken as true. Where unsupported by allegations of fact, legal and factual conclusions may be disregarded." *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274 ¶ 29. "In determining whether the allegations of the complaint are sufficient to state a cause of action, the court views the allegations of the complaint in the light most favorable to the plaintiff. Unless it is clearly apparent that the plaintiff could prove no set of facts that would entitle him to relief, a complaint should not be dismissed." *Id.*

III. Section 22.1 (c) Private Right of Action

Section 22.1 (c) of the Condominium Property Act provides "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." 765 ILCS 605/22.1. Defendant argues that Count I should be dismissed because § 22.1(c) of the Condominium Property Act does not provide for a private right of action for a condominium association or its management company charging an allegedly unreasonable fee.

The Illinois Supreme Court has listed four factors that must be present for a statute to contain an implied private right of action: "(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. *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 460 (1999).

When looking at a statute the court must look at the statute as a whole and not isolated sections and provisions to determine if the plaintiff is amongst those protected by its provisions. *Metzger v. DaRosa*, 209 Ill. 2d 30, 37 (2004). Defendant cites numerous cases where courts have determined that § 22.1 of the Condominium Property Act is intended to protect purchasers of condominium units. *See e.g. Horist v. Sudler & Co.*, 941 F.3d 274, 278 (7th Cir. 2019); *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71 (1st Dist. 1993); *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶¶ 32-47 *Mikulecky v. Bart*, 355 Ill. App. 3d 1006, (1st Dist. 2004). In *Nikolopulos*, the court found that purchasers are afforded a private right of action under section 22.1 because:

> First, section 22.1 of the Act was clearly designed to protect prospective purchasers of condominium units; therefore, plaintiff falls within the intended protected class. Second, implying that plaintiff may terminate the contract, if unsatisfactory information is disclosed by the documents, is consistent with assuring that a prospective purchaser is fully informed and satisfied before he buys a condominium unit. Third, the statute was designed to prevent prospective purchasers from buying a unit without being fully informed and satisfied with the financial stability of the condominium as well as the management, rules and regulations which affect the unit he is seeking to purchase. Fourth, implying that

> if the information contained in the documents is unsatisfactory, a prospective purchaser may terminate the contract and demand return of his earnest money effectuates the purpose of the Act. *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71, 77 (1st Dist. 1993).

The cases cited by the Plaintiff do not support any private right of action or protection in § 22.1 (c) for sellers. *Mikulecky* references protection of purchasers and in no way supports the notion that sellers are protected by 22.1 (c). *See Mikulecky v. Bart*, 355 Ill. App. 3d 1006, 1013-14 (1st Dist. 2004). Any protection for condominium sellers like the plaintiff is incidental to the primary porpoises of § 22.1. *C.f.*, *Fisher v. Lexington Health Care*, 188 Ill. 2d 455 (1999).

In *Fisher,* the Illinois Supreme Court held that section 2-608 of the Nursing Home Care Act did not imply a private right of action for employees who reported violations of other provisions in the act. In reaching this conclusion the majority of the court found that "encouragement of honesty and candor among nursing home employees is certainly consistent with the underlying purpose of the Act, it is not necessary to imply a private right of action for employees in order to achieve that purpose." *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 464 (1999).

While the Court agrees that the condominium act as a whole does provide protections to condominium owners like plaintiff. Section 22.1 is special in providing protections to potential purchasers of condominium units. No other section of the Condominium Property Act is designed to protect prospective purchasers of a condominium. A private right of action is unnecessary to enforce the reasonableness requirements of § 22.1 (c).

Illinois' courts disfavor implying a cause of action while other enforcement mechanisms exist. *Fisher v. Lexington Health Care*, 188 Ill. 2d 455, 464-65 (1999). Courts have noted that a private right of action by condominium buyers is necessary to effectuate the purpose of § 22.1. *See D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 39. A private right of action is unnecessary to protect a seller from a condominium association, or by proxy the management company from overcharging for documents. A seller who believed the fees charged by a management company employed by a condominium association would already have an avenue of recovery. *C.f. Friedman v. Lieberman Management Services*, 2019 IL App (1st) 180059-U, ¶ 38 (Justice Walker *dissent*). The board members of the condominium association have a duty "comply with the procedures in the condominium's bylaws and the strictures of the [Condominium Property] Act. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 64. Here they have a duty to charge ***reasonable*** fees for the documents required to comply with § 22.1 (c). 765 ILCS 605/22.1 (c). If an owner of a condominium unit did not think the fees charged by the association or management company were reasonable they could raise the issue before the board or file suite for a breach of fiduciary duty.

Here the necessity of a private right of action fails on multiple grounds. Based on the Court's conclusion that 22.1 (c) does not give condominium sellers a private right of action the Court need not consider whether any action could be alleged solely against management companies acting as agents of the condominium association

Dismissing Count I does not violate any principal of law

Plaintiff argues that Judge Allen's prior decision declining to dismiss Count I of his complaint is binding on the Court's decision. When Plaintiff filed his Second Amended Complaint that complaint replaced the prior complaint. *See Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926 (1st Dist. 2007). Further, as far as the Court can determine from the record, the case relied on by Judge Allen in upholding the prior Count I has been ignored or superseded by implication. *Compare, Merrill Tenant Council v. United States Department of Housing & Urban Development (HUD)*, 638 F.2d 1086 (7th Cir. 1981) *with Horist v. Sudler & Co.*, 941 F.3d 274 (7th Cir. 2019).

Merrill, which Judge Allen relied on in making his ruling, asked whether The United States Department of Housing and Urban Development (HUD) and two private entities hired to manage HUD owned properties could be found liable for breach of residential lease under the Chicago Landlord Tenant Ordinance. *Merrill* has little bearing on the question presented in the motion to dismiss in this Case because it was asked to examine a different issue. *Horist*, which was published after Judge Allen ruled in this case, presented the seventh circuit with an identical issue to this case. In *Horist* the Seventh Circuit declined to provide a private right of action for condominium sellers under § 22.1 (c). While neither case is binding the newly decided *Horist* matter is far more relevant than *Merrill*.

Therefore, the motion to dismiss Count I is granted with prejudice.

IV. Consumer Fraud and Deceptive Business Practices Act

Count II of Plaintiff's complaint is brought pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act (the "CFDBPA") 815 ILCS 505/1 *et seq*. Plaintiff alleges that the Defendant violated the CFDBPA by charging sellers of condominiums unreasonable fees to obtain the documents required under section 22.1 of the Condominium Property Act. Under the CFDBPA conduct is unfair if: 1) the practice offends public policy; (2) it is immoral, unethical, oppressive, or unscrupulous; (3) it causes substantial injury to consumers. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002).

In moving to dismiss the Plaintiff's complaint, Defendant wrongly cites to *Brandt v. Time Ins. Co.*, 302 Ill. App. 3d 159 (1st Dist. 1998). *Brandt* is inapposite to the instant matter because the underlying cause of action was for fraud under the CFDBPA. *Id* at 163. A fraud claim has

different required elements. *Id.* Here, Defendant has not demonstrated how Plaintiff fails to plead the *Robinson* elements.

A cursory review of the allegations in the Complaint show that Plaintiff plead the required elements for an unfairness claim. Section 22.1 (c) of the Condominium Property Act requires that the condominium association charge *reasonable fees.* Plaintiff alleges that the fees charged by the defendant acting for the condominium association is unreasonable and that he is a captive customer pursuant to the disclosure requirements of Section 22.1 of the Condominium Property Act. Lastly, Plaintiff alleges an injury i.e., over paying for the required forms.

The motion to dismiss Count II is denied.

V. Count IV – Violation of section 9.2 of the Condominium Act

Plaintiff added a Count IV to their second amended complaint. Count IV alleges a violation of CFDBPA premised on a violation of § 9.2 of the Condominium Property Act. Section 9.2 provides:

> **(a)** In the event of any default by any unit owner, his tenant, invitee or guest in the performance of his obligations under this Act or under the declaration, bylaws, or the rules and regulations of the board of managers, the board of managers or its agents shall have such rights and remedies as provided in the Act or condominium instruments including the right to maintain an eviction action against such defaulting unit owner or his tenant for the benefit of all the other unit owners in the manner prescribed by Article IX of the Code of Civil Procedure [735 ILCS 5/9-101 et seq.].
>
> **(b)** Any attorneys' fees incurred by the Association arising out of a default by any unit owner, his tenant, invitee or guest in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense.
>
> **(c)** Other than attorney's fees, no fees pertaining to the collection of a unit owner's financial obligation to the Association, including fees charged by a manager or managing agent, shall be added to and deemed a part of an owner's respective share of the common expenses unless: (i) the managing agent fees relate to the costs to collect common expenses for the Association; (ii) the fees are set forth in a contract between the managing agent and the Association; and (iii) the authority to add the management fees to an owner's respective share of the common expenses is specifically stated in the declaration or bylaws of the Association. 765 ILCS 605/9.2.

Plaintiff argues in their Count IV that the fees charged by the Defendant for issuing the required documents under § 22.1 of the Condominium Property Act are fraudulent because they were "unauthorized."

FAILURE TO STATE A CLAIM

Defendant argues that Count IV fails to state a claim under the CFDBPA because section 9.2 of the Condominium Property Act only applies to forcible detainer actions filed by a condominium association for unpaid assessments. This argument is supported by the existing juris prudence surrounding § 9.2. *See* e.g., *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 456 (2002); *Board of Directors of the Warren Boulevard Condominium Ass'n v. Milton*, 399 Ill. App. 3d 922, 924-25 (1st Dist. 2010); *North Spaulding Condominium Ass'n v. Cavanaugh*, 2017 IL App (1st) 160870; *Blackstone Condominium Ass'n v. Speights-Carnegie*, 2017 IL App (1st) 153516; *State Place Condominium Ass'n v. Magpayo*, 2016 IL App (1st) 140426. Simply put the Court finds that section 9.2 of the Condominium Act does not support a claim under the CFDBPA for fees charged to provide the documentation required by § 22.1.

TIMELINESS

Defendant also argues that this count should be dismissed because it was brought outside the three year statute of limitations for claims brought under the CFDBPA. 815 ILCS 505/10a (e). Plaintiff argues that: 1) the statute of limitations was tolled during the pendency of the appeal in this matter; and 2) that the allegations in Count IV relate back to the same facts alleged in the earlier complaints. However, the Court need not address this argument since the Court has previously found that Count IV fails to state a claim.

The motion to dismiss Count IV is granted with prejudice.

VI. Voluntary Payment Doctrine

Lastly Defendant argues that all counts should be dismissed under the voluntary payment doctrine. Under the voluntary payment doctrine a party who paid money to another party in the absence of fraud, misrepresentation, or mistake of fact money voluntarily paid under a claim of right to the payment, with full knowledge of the facts by the person making the payment, cannot be recovered unless the payment was made under circumstances amounting to compulsion. *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 497 (1994).

In this instance, the Court thinks the case of *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389 (1989), is instructive. In *Geary* the plaintiffs paid sales taxes on feminine hygiene products which should have been taxed at a lower rate. *Id* at 392. The plaintiffs paid the higher sales tax on these products at the time of purchase. *Id.* The Illinois Supreme Court found that the voluntary payment doctrine did not apply because:

Tampons and sanitary napkins are necessities of life for a vast number of post-pubescent women. These products are virtually the only ones available to and used by women during menstruation. No reasonable alternative product exists. The invention of telephones and electricity generated a reliance on those services. Likewise, the invention of tampons and sanitary napkins generated a reliance on those products. Certainly if telephones and electricity are necessities, tampons and sanitary napkins, which were created to absorb the consequences which flow from a natural biological process, are necessities.

Moreover, plaintiffs could not obtain the tampons and sanitary napkins unless they first paid the taxes. As with the retail purchase of any product, a purchaser cannot receive the product unless he or she pays for it. Plaintiffs had to pay the taxes or do without the tampons and sanitary napkins. *Geary v. Dominick's Finer Foods*, 129 Ill. 2d 389, 398-99 (1989)

Here Plaintiff has plead that he was compelled to pay the Defendants fees in order to obtain the documents legally required to sell his condominium unit. Like the plaintiffs in *Geary*, at the time he wanted to sell his property he had no choice but to pay the fee. The Court does not find it reasonable to expect a seller of a condominium unit, which may be one of the largest financial transactions that person under takes, to forgo the ability to dispose of their property over a fee which amounts to a small portion of the value of the transaction.

Therefore, the motion to dismiss all of the counts on this basis is denied.

VII. Conclusion

1. Count I of Plaintiff's second amended complaint is dismissed with prejudice.
2. Count IV of Plaintiff's second amended complaint is dismissed with prejudice.
3. Defendant is to answer Count II of Plaintiff's second amended complaint within 28 days of the date of this order.
4. This matter is continued for status on April 30, 2021 at 10:30 am.

Judge Caroline Kate Moreland

APR 01 2021

Circuit Court - 2033

Entered: 2033

Judge Caroline Kate Moreland

Hearing Date: 8/15/2019 10:00 AM - 10:00 AM
Courtroom Number: 2410
Location: District 1 Court
Cook County, IL

12-Person Jury

FILED
4/16/2019 4:51 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH04869
4715595

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	
Plaintiffs,	No. 2019CH04869
v.	**JURY DEMAND**
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	
Defendant.	

CLASS ACTION COMPLAINT

Plaintiffs HARRY CHANNON and DAWN CHANNON (the "Channons" or "Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their counsel, Jeffrey C. Blumenthal Chartered and Greenswag & Associates, P.C., for this action against Defendant WESTWARD MANAGEMENT, INC., an Illinois Corporation ("Westward Management," "Westward" or "Defendant"), states as follows:

INTRODUCTION

1. Plaintiffs bring this suit on behalf of themselves and a similarly situated class of individuals who, when selling their condominium units, were effectively compelled to pay Westward Management's unreasonable and excessive fees to obtain copies of certain records that the Illinois Condominium Property Act (the "Condo Act" or "Act") requires condominium sellers to provide prospective buyers pursuant to Section 22.1 of the Act. 765 ILCS 605/1, *et seq.*

2. Condominium sellers are statutorily required to obtain disclosure documents from their Condo Association Board of Managers or its managing agent, which, in this case is Westward, by paying them a reasonable fee for the actual costs of providing the documents. Condo sellers must then provide the documents to the prospective buyer.

3. Condo sellers are thus beholden to property management companies who have complete control over disclosure documents by virtue of their management contracts or agreements with Condo Associations.

4. Westward allegedly uses its position of entrustment with disclosure documents as leverage to abuse condo sellers who are often involved in time-sensitive real estate transactions and have no other reasonable option but to pay whatever fee Westward chooses to charge, or risk their own potential liability under the Condo Act by not providing the documents to prospective buyers at all, or providing deficient disclosure documents.

5. Disclosure documents under Section 22.1 of the Illinois Condominium Property Act (the "Act") are financial statements setting forth various aspects of the Association's financial condition and other statements related to the unit, which include: (1) current and anticipated capital expenditures of the association, (2) amount of assets held in the association's reserve fund, (3) insurance coverage requirements, (4) liens on the unit, (5) improvements or alterations made to the unit, (6) amounts of unpaid assessment fees and other charges due, (7) statement of the status of any pending lawsuit or judgments to which the association is a party. (8) governing documents of the association such as the declaration, bylaws, and rules and regulations, and (9) the identity and mailing address of the association's agent specifically designated to receive notices.

6. Westward is the property management agent for the Kenmore Club Condominium Association ("Kenmore Club" or "the Association").

7. Westward is Kenmore Club's agent in connection with the financial management and record keeping of documents described in Section 22.1 of the Act. Westward is also the Association's designated agent in connection with the resale and transfer of ownership of a condominium unit within the Association's Property, which includes the process, procedures, and

documents described under Section 22.1 "Resales; disclosures; fees."

8. Like many other Condo Associations in Illinois, Kenmore Club's resale process requires condo sellers, such as Plaintiffs, to notify the Association's managing agent, in this case Westward Management, of the intent to sell their condo unit. The seller is then required to request directly, and must obtain disclosure documents, from their Association's "other officer as is specifically designated [to] furnish [Section 22.1 disclosure documents] when requested to do so in writing and within 30 days of the request." 765 ILCS 605/22/1(b).

9. The Association is not able to provide the disclosure documents to the condo seller. The Association's designated agent, Westward, manages disclosure documents as part of the agent's professional financial management services to the Association. (A copy of Westward's website detailing financial management services it offers to Condo Associations is attached as Exhibit A).

10. Section 22.1 is not only about providing documents; it is about the *management* of disclosure documents. Such management involves an ongoing process and professional expertise in the requirements of the Condo Act and the financial management, record keeping, stability, and security of the Condominium Association.

11. Condo owners are not required to be CPA's, lawyers, maintenance repair persons, landscapers, or real estate sales experts to be a Board Manager. The lack of knowledge, ability, and/or expertise in the various duties, such as financial management of the documents described in Section 22.1(a)(1)-(9) of the Act, does not preclude a condo owner from serving on the Board because he or she can still comply with their duties under the Act by retaining professionals, such as Westward, who do have the skills, knowledge, and expertise necessary to assist the Board in complying with their duties under the Condo Act. 765 ILCS 605/18(a)(5).

12. For example, the Association and its Board of Managers have the duty to physically maintain the common areas of the property. 765 ILCS 605/18.4(a). If the Board Manager was elderly or disabled and could not physically comply with the duty to repair, he or she be would not be excluded from consideration as a Board Member due to his limitations because the Association can contract with professional services to satisfy that duty, such as Kenmore Club did here when it retained Westward to manage and provide disclosure documents to condo sellers who so demand.

13. When an agent, such as Westward, does not comply with the duties of his principal-Association, it does not automatically infer that the Association Board of Managers is second in line to carry out the obligation. The Kenmore Club Board of Managers still has no knowledge or *ability* to carry out this duty. It is not reasonable to expect that if the Association's designated agent for maintenance services refuses to fix the leaky roof in the common area of the Property, Board Managers must then become professional roofers to comply with their duties under the Condo Act.

14. In this case, the Association contracted with Westward to comply with the duties set out under Section 22.1, but Westward has not complied with the duty to charge only a reasonable fee for out-of-pocket costs for providing disclosure documents under Section 22.1(c). 765 ILCS 605/22.1(c). Just because Westward does not want to comply with the reasonable fee requirement, does not mean that the Association Board Managers are any more equipped to manage Section 22.1 documents than they were when Westward was first retained. Without the ability to *manage* the documents, the Board Managers are unable to provide them to condo sellers with any degree of accuracy.

15. Custom and practice in the condo industry is to contact the management agent of the Association, not the Board of Managers. Even if the seller were to first request the documents directly from the Association, the Association would direct the seller to Westward to obtain disclosure documents. Requiring the seller to first request disclosure documents from the Association, only to be directed to Westward, creates an unnecessary step and exchange of hands at the tail-end of a time-sensitive real estate transaction, and may cause sellers to risk losing a sale if a potential buyer pulls out of a deal while waiting for disclosure documents.

16. Further, it is a question of statutory interpretation whether under Section 22.1(a) the Association is able to demand disclosure documents from Westward on the seller's behalf. Section 22.1 of the Condo Act only mentions the unit owner as having a duty to *demand* and *obtain* disclosure documents on behalf of the prospective buyer. Whereas the Board of Managers' duty under Sections 22.1 (a) and (b) is to *provide* the documents to the unit owner. 765 ILCS 605/22.1(a), (b).

17. Requiring the Association to demand documents on the seller's (or prospective buyer's) behalf opens the Association to potential liability to the prospective buyer, whereas Section 22.1 has been interpreted to limit liability between the seller and prospective buyer regarding the accuracy, completeness, and providing of disclosure documents.

18. There is little value to retaining management companies that expose the Association, such as Kenmore Club and its Board of Managers, to liability because of non-compliance and unscrupulous business decisions regarding the very law regulating the principal Association and its Board of Managers. The value of management companies, such as Westward, *is* their compliance services with the Condo Act, and necessarily requires strict adherence to the

duties, obligations, and limitations governing Condo Associations, such as Kenmore Club and their Board Managers, under Section 22.1 of the Act.

19. Alternatively, the seller may complain to the Association about the excessive and unreasonable fees charged by Westward prior to closing, yet the Association is still in no position to provide the documents to the seller without first obtaining them from Westward. Assuming the Association is even able to demand the documents from Westward on the seller's behalf (and assuming Westward would comply with the Association's demand), the fee Westward would charge the Association is the same fee it charges condo sellers—unreasonable and beyond "direct out-of-pocket costs." The Association is therefore forced to either potentially violate Section 22.1's "reasonable fee" restriction by recouping Westward's unreasonable fee from the condo seller, or forced to waste the Association's assets, thus breaching their duty of care, by not recouping Westward's fee at all every time a condo owner sells their unit to comply with their statutory duty under the Condo Act to provide disclosure documents to the seller. 765 ILCS 605/22.1(b). In either scenario, the seller's transaction is threatened, the seller is harmed, and the Association is harmed either financially or through expanded potential liability from various parties.

20. Westward is compensated for assuming a number of duties—including managing and providing disclosure documents to condo sellers. The management contract is between the Association and Westward—not between individual condo owners and Westward. Westward is using its' assumed duty to manage and provide documents to sellers as an opportunity to "shake down" individual condo sellers for profit rather than bargaining for its benefits with the Association's Board of Managers during the formation stage of the management contract or agreement.

21. The Association does not manage or provide Section 22.1 disclosure documents to condo sellers. Westward assumed the duty and obligation, among others, to manage documents identified in Section 22.1 as the Agent for the Association. Westward is the Association's "other officer as is specifically designated" under Section 22.1(b) and charged with the statutory responsibility to both *manage* and *provide* disclosure documents to condo sellers upon demand.

22. Although Section 22.1(c) of the Act provides only that "[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," Westward charges condo sellers excessive and unreasonable fees to obtain disclosure documents under the guise that it has authority to do so via its contract or management agreement with the Association and/or under Section 22.1(c) of the Act.

23. At most, the Association permits Westward to collect its reasonable fee for providing the documents to condo sellers—not impose their own fee. This is because agents, like Westward, are only able to charge unit owners a fee if it is on behalf of the Association and with authorization either from the Association Board of Managers and/or the Condo Act.

24. On information and belief, the only fees Westward is authorized to charge and receive from condo owners are those in connection with their services to the Association under the terms of their contract or management agreement with the Association.

25. On information and belief, the Association did not authorize Westward to charge condo sellers excessive and unreasonable fees to provide condo sellers disclosure documents held in their care and custody.

26. Section 22.1(c) does not authorize management agents, such as Westward, to charge a fee for providing disclosure documents to condo sellers. Section 22.1(b) only permits the

designated agent to provide the documents, but does not state that the designated agent may charge any fee whatsoever. 765 ILCS 605/22.1(c). If Westward is not providing these documents and charging on behalf of the Association (not giving the Association any of the fees it collected from unit sellers), Westward is then abusing the Association's property (the documents) to make a profit outside of the management contract or agreement, and in violation of Section 22.1(c).

27. By virtue of its management contract or agreements with the Association, Westward exercises dominion and control over the Association's disclosure documents and does not disclose their "actual cost" of providing the documents to condo sellers. Thus, on information and belief, Westward is only able to provide disclosure documents to condo sellers precisely because it is an Agent of the Association. Westward assumed the duty to manage the documents identified in Sections 22.1(a)(1)-(9) under its contract or agreement with the Association, and therefore, possess and controls the Association's disclosure documents.

28. For the most part, Westward can provide disclosure documents immediately to the unit seller because they are stored in an electronic database managed and controlled by Westward.

29. Westward sets pre-determined fees for "each" 22.1 disclosure item—regardless of the length of the document or method of delivery.

30. Westward does not itemize its charges, or otherwise state the basis for how it determined the amount charged for these documents.

31. Plaintiffs bring this action against Westward to recover the unreasonable fees paid which Westward unlawfully charged Plaintiffs and other similarly situated sellers in violation of the Section 22.1(c) of the Condo Act. Plaintiffs seek interest, attorney's fees and costs owed to them and other similarly situated persons.

32. As set forth below, Westward's predatory practice of price gouging captive condo sellers with unreasonable fees to obtain access to disclosure documents they are required by statute to provide prospective buyers to close on the sale of their unit or risk legal liability for noncompliance with their duty under the statute, gives rise to Plaintiff and the Class' claims alleged herein.

JURISDICTION AND VENUE

33. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within the State) and 735 ILCS 5/2-209(b)(3) (corporation organized under the laws of this State).

34. Venue is proper in this Court pursuant to 735 ILCS 5/2-101, because the transaction(s), or a substantial part thereof, occurred in Cook County and Defendant an Illinois corporation doing business in Cook County. 735 ILCS 5/2-102(a).

PARTIES

35. Plaintiffs are natural persons and citizens of the State of Illinois at all times relevant to the events detailed herein.

36. Defendant is a corporation organized in and existing under the laws of the State of Illinois, with its principal place of business located at 4311 N. Ravenswood, Suite 201 in Chicago, Illinois, 60613.

SUBSTANTIVE ALLEGATIONS

37. Harry and Dawn Channon were the owners of a condominium unit located at 5109 N. Kenmore Avenue, Unit 1E, in Chicago Illinois, 60640, which was part of the Kenmore Club Condominium Association for several years until April 18, 2016, when the Unit was sold.

38. On or about February 20, 2016, Cahontas and Elizabeth Vincent (the "Vincents"), as prospective purchasers of the Channons' condominium unit, entered into a real estate contract

(the "Real Estate Contract") with the Channons. (A copy of the Real Estate Contract is attached hereto as **Exhibit B**).

39. Pursuant to paragraph 9 of the Real Estate Contract, and according to Section 22.1 of the Act, as sellers, the Channons were required to provide the Vincents, as prospective purchasers, with the disclosure information and documents required by 765 ILCS 605/22.1(a). Failure to provide disclosure documents to a prospective buyer with disclosure documents and/or deficient documents subjects the condo seller to potential liability under Section 22.1 of the Condo Act. (A copy of Section 22.1 of the Condo Act is attached hereto as **Exhibit C**).

40. The Board of Managers, on behalf of the Association, is required by statute to provide the Section 22.1 disclosure documents to a requesting unit owner. 765 ILCS 605/22.1(a). The Board of Managers commonly designates this duty to a property management company, if one is retained, which is what happened here when the Association retained Westward. 765 ILCS 605/18(a)(5).

41. On information and belief, Westward has the ability to negotiate its compensation during the bargaining phase of its contractual or management agreement with the Association. As a professional property management business, Westward is a sophisticated party. As such, on information and belief, Westward had an opportunity to bargain for the specific duties it was to assume, and the services it was to provide to Kenmore Club. Westward was aware, or should have been aware, of all the duties it was assuming from the Association because Westward's professional obligations under the Condo Act and the Condo Manager Act include the duties to be knowledgeable of: (i) the Condo Act, (ii) the Illinois Not-for-Profit Corporation Act, (iii) its principal's bylaws, and (iv) any other laws pertaining to community association management. 765 ILCS 605/18.3; 605/18.7(c)(3).

42. Upon information and belief, throughout the entire duration of the events set forth herein, Westward was (and still is) the management Agent for Kenmore Club.

43. At all relevant times, Westward was the agent specifically designated under Sections 22.1 (b) and (c) for the Association in connection with the service of providing disclosure documents to unit sellers upon demand as part of its management duties for the Association, and charging only a reasonable fee for the cost of providing such information to unit sellers. 765 ILCS 605/22.1 (b), (c).

44. Property management companies, like Westward, are agents of the Association by virtue of their management contracts or agreements with them. 765 ILCS 605/18.7(b). On information and belief, as Agent of Kenmore Club, Westward provides financial management and record keeping services, and is thereby authorized to, and in fact does, manage and control the Association's financial documents and records identified under Section 22.1(a)(1)-(9) (*i.e.*, disclosure documents).

45. The resale process for Kenmore Club requires condo sellers to notify their Association's managing agent, in this case Westward, of the intent to sell their condo unit. The seller is then required to request directly, and must obtain disclosure documents, from their Association's designated agent, Westward—the party who has assumed the specific statutory duty to provide the seller with Section 22.1 disclosure documents. 765 ILCS 605/22.1(b).

46. On information and belief, Westward exclusively manages and controls Section 22.1 disclosure documents on behalf of the Association in an electronic database, most of which are only accessible to Westward and its employees.[1]

[1] On information and belief, Westward makes the Association's Governing Documents (*i.e.*, Declaration, Bylaws, Articles of Incorporation, Rules & Regulations) available in "real time to all

47. The Channons, and similarly situated condo sellers, rely on Westward to provide them with accurate and comprehensive disclosure documents that comply with the mandates of Sections 22.1(a)(1)-(9) of the Condo Act because Westward is the only party authorized by the Association to manage and provide these documents to them.

48. On information and belief, the Association is not equipped with the expertise or knowledge of the relevant legal requirements and financial management to adequately provide disclosure documents to sellers—hence, the statutory duty is delegated to Westward, a professional Association Management company. 765 ILCS 605/18(a)(5); (*See* **Exhibit A**). Even if Plaintiffs were able to obtain disclosure documents from their Association to avoid excessive fees of Westward, Plaintiffs run the risk of receiving deficient disclosure documents. Plaintiffs would then be subject to potential liability, because it is the *seller* that has a statutory obligation to provide such documents to potential buyers.

49. As this statutory duty was delegated to, and assumed by Westward, condo sellers, such as the Plaintiffs herein, would not reasonably request these documents from their Association.

50. Westward provided the Channons with a document entitled "Escrow Document Request Form." (A copy of the Escrow Document Request Form is attached as **Group Exhibit D**). The document is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association. The Escrow Request Form states in pertinent part:

> If this request is to obtain a **PAID ASSESSMENT LETTER** for a **SALE/TRANSFER of OWNERSHIP**, please fax/email: Cover Sheet, Document Request Form, Credit Authorization Form, Notice of Intent to Sell, Homeowner Information Sheet and Governing Documents Rider (entire package).

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homeowners via [its] online portal." However, it is unclear if Westward charges condo owners a fee (separate from Association fees) to access and download these documents in the online portal.

Also, please provide estimated closing date: 4/18/16 (emphasis in the original) (*See* **Group Exhibit D**).

51. The Channons directly notified Westward, the designated Agent for their Association, of their intent to sell by submitting a standard form document entitled "Notice Of Intent To Sell." (*See* **Group Exhibit D**). The document is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Condo Association. The Notice stated an "Anticipated Closing Date" of April 18, 2016. (A copy of the Notice of Intent to Sell is attached as **Group Exhibit D**).

52. As part and parcel of the above referenced "package," Westward provided the Channons with a standard form document to complete entitled "Document Request Form" (*i.e.*, Order Form) for, among other things, Section 22.1 Disclosure Documents. (A copy of the "Documents Request Form" is attached as **Group Exhibit D**). The Order Form is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association.

53. Westward also provided the Channons, as part of the "package," a standard form document to complete entitled "Credit Card Authorization Form." (A copy of the "Credit Card Authorization Form" is attached hereto as **Group Exhibit D**). The Authorization Form is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association.

54. Specifically, Westward charged the Channons $75.00 for a "Condo Questionnaire/Disclosure Statement/22.1" that included providing some, but not all, Section 22.1 disclosure information. Additionally, Westward charged the Channons $150.00 for a "Paid Assessment Letter," and $20.00 for a "Year to Date Income Statement & Budget." In total,

Westward charged the Channons Two-Hundred and Forty-Five dollars ($245.00) to provide them with information they had a statutory duty to provide the Vincents, the prospective purchasers of the condominium unit.

55. Westward, as Agent for and on behalf of the Association, provided the Channons with a "Condominium/Townhouse Disclosure Statement," and attached some, but not all, of the Section 22.1 disclosure documents. Alex Wiseman of Westward Management, Inc. signed the Disclosure Statement as Agent for the Association. (A copy of the "Condominium/Townhouse Disclosure Statement" is attached as **Exhibit E**).

56. Plaintiffs' statutory obligation under Section 22.1(a) continued up through the date of closing to provide the prospective buyer with the required disclosure documents. In this case, the closing occurred on April 18, 2016.

57. On or about July 28, 2017, the Channons sent a letter to Westward, wherein they demanded that Westward provide information and/or documentation supporting: (a) "out-of-pocket" costs for providing disclosure documents, (b) a basis for how it determined the amount to charge for these documents, and (c) supporting documentation for the $150.00 charge for the Paid Assessment Letter and/or basis for how it determined the fee. Westward did not respond to the Channons' demand. (A copy of the "Demand Letter" is attached as **Exhibit F**).

58. Unit sellers, such as Plaintiffs, have a statutory duty to provide prospective purchasers all disclosure documents and statements listed in Section 22.1 of the Act. Nonetheless, Westward prices these documents separately and misleads the unit seller to believe they can cherry pick and choose among a list of disclosure documents to provide prospective purchasers. (*See* **Group Exhibit D**).

59. Although the statute provides only that "[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 the information," Westward's "Document Request Form" has pre-set charges for "each" 22.1 disclosure item—regardless of the length of the document or method of delivery. (*See* Group Exhibit D).

60. The management of disclosure documents occurs, or should occur, on an ongoing basis and well before a condo owner submits a request to Westward. Thus, Section 22.1(c)'s fee restrictions only apply to the cost associated with making those documents *available* to condo owners—for example, the cost of printing or delivery through expedited mail. 765 ILCS 605/22.1(c).

61. Westward's fee of Two-Hundred and Forty-Five dollar ($245.00) for providing the statutorily required Section 22.1 documentation is not a "reasonable fee" covering direct out-of-pocket costs for providing such information. 765 ILCS 605/22.1(c).

62. On information and belief, Westward does not itemize its charges, or otherwise state the basis for how it determines the amount charged for these documents.

63. The Channons and other similarly situated Class members cannot reasonably obtain the necessary documents to sell their unit from any other source but from Westward, and only if they provide Westward their credit card information in the Authorization Form. Plaintiffs are thus beholden to Westward and have no reasonable choice but to pay its excessive and unreasonable fees to obtain the necessary disclosure documents to sell their condominium unit and comply with their own statutory duty under the Condo Act.

64. Westward is essentially using the cost-shifting provision of 765 ILCS 605/22.1(c) to make an unlawful profit. In so doing, Westward has effectively compelled the Channons, and

other similarly situated Class members, to pay this excessive and unreasonable fee to sell their condominium units, in violation of the statute and public policy of the State of Illinois.

CLASS ALLEGATIONS

65. **Class Definition**: Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a Class of similarly situated individuals, defined as follows:

> All persons who sold or attempted to sell a condominium unit in a condominium association managed by Defendant where the purchaser(s) demanded that seller(s) provide the legally required disclosure information listed in 765 ILCS 605/22.1, compelling the seller(s) to pay Defendant what is supposed to be a "reasonable fee" to obtain this information from Defendant.
>
> Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

66. **Numerosity**: The exact number of Class members is unknown and is not available to Plaintiffs at this time, but individual joinder in this case is impracticable. The Class is likely to consist of hundreds, if not thousands, of individuals due to Defendant's management of a number of condominium associations in the Chicago metropolitan area.[7] Class members can be easily identified through Defendant's records or by other means.

[7] *See* one of Westward's websites at https://westward360.com/ which "[o]ffers community association management in Chicago for homeowners, condos, townhomes and co-op associations..." and also "offer[s] management for local Chicago single-unit condos, multi-family properties, and apartment buildings with up to 400 units."

67. **Commonality and Predominance**: There are several questions of law and fact common to the claims of Plaintiffs and the Class members, and those questions predominate over any questions that may affect individual class members. The common questions of law and fact for Plaintiffs and all Class members include, but are not limited to, whether Defendant's charges of amounts in excess of its "direct out-of-pocket cost[s]" for providing the disclosure information that Plaintiffs were legally obligated to obtain under 765 ILCS 605/22.1 constitutes an unreasonable and statutorily improper fee under Section 22.1 of the Illinois Condominium Property Act:

A. In violation of the Illinois Condominium Property Act; and/or

B. In violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

68. **Adequacy of Representation**: Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class action litigation. Plaintiffs have no interest antagonistic to those of the Class, and Defendants has no defenses unique to Plaintiffs.

69. **Appropriateness**: Class proceedings are also superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because the damages suffered by individual Class members are likely to be relatively small, especially given the burden and cost of individually conducting the complex litigation necessitated by Defendant's actions. Even if Class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Class Action Complaint. A class action,

on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

COUNT I

(Violation of the Illinois Condominium Property Act)

70. Plaintiffs restates and incorporates by reference paragraphs 1 through 69 of this Class Action Complaint as paragraph 70 as if fully set forth herein.

71. Section 22.1 of the Illinois Condominium Property Act provides,

> (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand . . .
>
> (b) The principal officer of the unit owner's association ***or such other officer as is specifically designated*** shall furnish the above information when requested to do so in writing and within 30 days of the request. 765 ILCS 605/22.1(a), (b).[3]

72. Section 22.1 (c) further provides,

> (c) 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." 765 ILCS 605/22.1(c).

73. Kenmore Club specifically designated Westward as its Agent to provide Section 22.1 Disclosure Documents under Section 22.1(b) to the Channons and similarly situated Class members. (*See* **Exhibit E**).

74. Property management agents, such as Westward, exercise dominion and control over the Association's disclosure documents and do not disclose their "actual cost" of providing the documents to condo sellers. Therefore, this imbalance of control over disclosure documents provides a basis to find an implied cause of action to protect condo sellers from managing agents that can easily take advantage of sellers under this structure.

[3] Emphasis added unless otherwise noted.

75. To protect condo sellers and buyers involved in the sale and purchase of condo units, in 1972 the legislature added Section 22, "Full disclosure before sale," to the Condo Act. Subsequently, in 1980 the legislature added Section 22.1, "Resales; disclosures; fees." 765 ILCS 605/22; 605/22.1.

76. Under Section 22.1(c), Kenmore or its Board of Managers are restricted to charging only a "reasonable fee" covering the direct out-of-pocket costs for providing disclosure documents to condo sellers such as Plaintiffs. 765 ILCS 605/22.1(c). The restriction has the effect of protecting both condo sellers and prospective buyers, by ensuring that sellers are not price gouged and by removing cost-prohibitive barriers to providing potential buyers with the documents to make an informed decision regarding the purchase.

77. The purpose of the Condo Act is to govern the affairs of Illinois Condo Associations, and establish procedures for the creation, ***sale***, and operation of condominiums. 765 ILCS 605/18, *et seq*. The spirit of the Act is to protect the public ("so they know exactly what they're getting into"). (A copy of the Senate Proceedings of 77th Ill. Gen. Assem., Senate Proceedings, June 21, 1972, at 91 is attached as **Exhibit G**).

78. The Illinois legislative record states that the Condo Act was intended to provide "the ultimate amount of consumer protection." (A copy of the House Proceedings of 83rd Ill. Gen. Assem., House Proceedings, May 26, 1983, at 157 is attached as **Exhibit H**). Speaker Madigan states, "The essence of the Bill [the proposed amendment overhauling the Condo Act] is to provide that regulation of condominiums statewide shall be uniform at the same time that we provide the ***ultimate amount of consumer protection***." (*See* **Exhibit H**).

79. Section 22.1 was enacted on January 1, 1980, to address the resale of condo units. While it is undisputed that disclosure requirements imposed by Section 22 and 22.1 protects

potential buyers, the legislative record demonstrates that it was also intended to protect sellers (*i.e.*, condo owners). (A copy of the 83rd Ill. Gen. Assem., House Proceedings, Jul. 2, 1983, at 4 amending the Condo Act to "strengthen[] the rights of unit owners" is attached as **Exhibit I**).

80. Disclosure requirements necessarily protect both sellers and buyers. The prospective buyer is protected from potentially making a bad investment, whereas the condo seller's compliance with the disclosure requirements protects him or her from liability.

81. A plain reading of Section 22.1(c) demonstrates that it was intended to protect sellers, because the fee for obtaining disclosure documents is imposed only on them. 765 ILCS 605/22.1(c). Therefore, the statutory provision to charge only "a reasonable fee" covering the actual cost of producing disclosure documents directly impacts the seller who is statutorily charged with demanding and obtaining the documents for a cost, and may be liable for failing to make them available to potential buyers, or providing deficient disclosure documents.

82. The overarching objective of the Condo Act is uniformity in regulation, while providing the ultimate amount of consumer protection. (*See* **Exhibit H**, at 157). An implied private right of action against property management companies, such as Westward, who are the designated agents of condo associations, by condo sellers can be inferred because the legislative record confirms that Section 22.1 was intended to protect *both* sellers and potential buyers.

83. The Channons are within the Class of persons the Illinois Condominium Act is designed to protect. Plaintiffs are condominium unit sellers who have a statutory duty to provide disclosure documents to prospective buyers pursuant to Section 22.1 of the Condo Act upon selling their units. 765 ILCS 605/22.1(a). Section 22.1(c), when read in conjunction with the Act's legislative history, clearly demonstrates that the legislature was well aware that property management agents may charge excessive fees for their services. As a measure of protection for

the seller from unscrupulous managing agents, and to ensure that the condo seller can fulfill his statutory duty to potential buyers, the legislature imposed a fee restriction for disclosure documents in Section 22.1. Therefore, the Channons are members of the particular class of individuals for which the statute was designed to protect.

84. Implying a cause of action in favor of condominium sellers against condominium management companies, such as Westward, who are agents of the Association, is consistent with the underlying purpose of Section 22.1: to ensure that the seller can satisfy their statutory obligation to demand and provide prospective buyers with disclosure documents.

85. Failing to find an implied cause of action against Westward would render the Condo Act useless for all parties involved in the condo resale transaction, as it would preclude both the seller from protection against price gouging, and prevent the prospective buyer from obtaining the information held within the disclosure documents. In addition to harming the seller through price gouging, Westward forces the seller to choose between paying an exorbitant fee and failing to provide the necessary disclosure documents to potential buyers, thus opening themselves to potential liability. This is no real choice at all.

86. In refusing to abide by Section 22.1(c), Westward is acting contrary to the purpose of the Act. Westward degrades consumer protection for members of the public, specifically condo sellers and prospective buyers, by disrupting the established procedures regulating the sale of condominiums in Illinois that were intended to ensure the fair dispensation of disclosure documents.

87. Plaintiffs' injury of being the captive victim of Westward's price gouging is precisely the kind of injury that Section 22.1(c) was designed to prevent. The legislative history of the Condo Act demonstrates that the Act was intended to provide the "ultimate consumer

protection"—which necessarily includes condo sellers in this protection. Ultimate consumer protection encompasses sellers precisely because Section 22.1 imposes a duty on sellers to obtain disclosure documents from designated managing agents for a cost. If the court were not to find an implied cause of action, Westward could conceivably continue charging the public higher and higher fees without limit. Rather than limiting fees to the direct out-of-pocket cost covering the electronic transmission and/or printing of documents, as the statute demands, Westward is charging $245.00 for this service with no distinction between the actual cost for the method of delivery.

88. Implying a private cause of action is necessary to effectuate the purpose of the statute because by failing to do so, the public—particularly condo sellers—would be left open to harm and have no recourse to enforce the "reasonable fee" provision in Section 22.1.

89. Westward's allegedly exorbitant fees for disclosure documents violates public policy of the State of Illinois because condo sellers in Illinois are being forced to pay excessive and unreasonable fees to obtain disclosure documents they have a legal obligation to provide prospective buyers.

90. The duty to provide disclosure documents is ascribed to the Association and managing agent, interchangeably. The Condo Act does not make a distinction between the duties of the Association and those assumed by its agent because the statute assumes that the duties of the Association are co-extensive with those of its agent.

91. Section 18(a)(5) of the Condo Act expressly permits professional property management companies, like Westward, to assume the fiduciary and statutory duties of the Association Board of Managers. 765 ILCS 605/18(a)(5) ("the board may engage the services of a manager or a managing agent").

92. Westward chose to assume the statutory duty to *manage* and *provide* disclosure documents to condo sellers, as prescribed under Sections 22.1(a) and (b) of the Condo Act.

93. The duties of the Principal-Condo Association and that of its Agent-property management company are one and the same. Section 18(g) of the Condo Act defines a "property management company" as,

> [A] person, partnership, ***corporation***, or other legal entity ***entitled to transact business on behalf of others***, action on behalf of or ***as an agent for*** a unit owner, unit owners or ***association of unit owners*** for the ***purpose of carrying out the duties, responsibilities, and other obligations*** necessary for the day to day operation and management of any property subject to this Act. 765 ILCS 605/18(g).

94. Conversely, Section 18.3 of the Condo Act states the following,

> The unit owners ***association*** is responsible for the ***overall administration*** of the property through its duty elected board of managers . . . The ***association*** shall have and exercise all powers necessary or convenient to effect any or all of the ***purposes for which the association is organized*** and to do ***every other act not inconsistent with law*** which may be appropriate to promote and attain the purposes set forth in this Act or in the condominium instruments. 765 ILCS 605/18.3.

95. While the Condo Act explicitly authorizes the Association Board of Managers to hire a management agent, such as Westward, and does not place a limit on bargained for benefits under the contract or management agreement, as long as the requirements of the Condo Act are followed, the Board may impose additional rules in its declaration or bylaws. However, the Board of Managers may not take any action that is beyond the authority granted it under the condominium instruments and the Condominium Property Act. 765 ILCS 605/18.4.

96. Westward's "duties, responsibilities, and obligations" are that of its principal Association—which includes complying with the Condo Act, and any other applicable laws "which may be appropriate to promote and attain the purposes set forth in this Act." 765 ILCS 605/18.3; 605/18(g).

97. Property management agents are assuming the very duties that the Condo Act was created to regulate. By providing the disclosure documents to the Channons, it is evident that Westward has understood from Section 18 that this duty can be assumed by managing agents (presumably as the "such other officer as is specifically designated"). It follows then that, Westward, as Agent of the Association, which has been permitted to assume the statutory duty of the Association, and which has in fact done so, must be held to the same statutory limitations as that of the Association or Board of Managers of charging only a "reasonable fee" covering the "direct out-pocket-cost" for providing the disclosure documents.

98. Westward is presumed to have prior knowledge of all statutory duties that it assumed by virtue of its contract or agreement with the Kenmore Club and its professional responsibilities under the Condo Act. 765 ILCS 605/18.7(c)(3), 605/18.4. As Westward's business effectively *is* assuming the duties of the Condo Act, there is no conflict between an implied cause of action under Section 22.1(c) and any other statutes.

99. At all relevant times, Westward was, or should have been, aware at the time it charged Plaintiffs an unreasonable fee to obtain disclosure documents that the Kenmore Club Board of Managers did not have authority to charge more than a "reasonable fee of the direct out-of-pocket costs" for providing disclosure documents to condo sellers.

100. In Illinois, an agent is liable where he or she takes an active part in violation of some duty the principal owes to a third person.

101. Westward is an agent of Kenmore Club pursuant to a contract or agreement wherein it assumed the Association's statutory duties under Sections 22.1 (a), (b), and (c) of the Act, and therefore can be held liable for taking an active part in breaching statutory duties owed by its principal (Kenmore Club) to third-party condo sellers.

102. By failing to perform their statutory duty to charge only a "reasonable fee covering the direct out-of-pocket costs" of providing disclosure documents to condo sellers, Westward has taken an active part in violating the duty to charge only a reasonable fee which their principal, the Association, owes to the Plaintiffs.

WHEREFORE, Plaintiffs, individually, and on behalf of all others similarly situated, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;

B. Designating the Channons as representative of the Class, and their undersigned counsel as Class Counsel;

C. Entering Judgment in favor of the Channons and the Class and against Defendant Westward Management, Inc.

D. Awarding the Channons and the Class all equitable and monetary relief in an amount to be determined at trial, including pre-judgment and post-judgment interest;

E. Awarding the Channons and the Class any and all actual damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further relief and other relief as the Court deems just and appropriate.

COUNT II
(Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act)

103. Plaintiffs restate and incorporate by reference paragraphs 1 – 102 of this Class Action Complaint as paragraph 103 as if fully set forth herein.

104. The Illinois Consumer Fraud and Deceptive Business Practices Act prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment,

suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act." 815 ILCS § 505/2.

105. The Illinois Consumer Fraud and Deceptive Business Practices Act applies to Defendant's unfair acts as described herein because Defendant's unfair acts occurred in the course of trade and commerce, *i.e.* transactions involving the sale of goods or services to consumers.

106. Westward is a "person" as defined by Section 505/1(c) of the Illinois Consumer Fraud and Deceptive Business Practices Act.

107. The Channons and each Class member are "consumers" as defined by section 505/1(e) of the Illinois Consumer Fraud and Deceptive Business Practices Act.

108. Westward's acts of charging the Channons and similarly situated Class members an unreasonable and excessive fee to produce the necessary Section 22.1 disclosure documents violates the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*) because: (1) Westward's acts are unfair, (2) Westward intended that the Channons and each Class member rely on its unfair acts, (3) Westward's unfair acts occurred in the course of trade or commerce, and (4) Westward's unfair acts proximately caused the Channons' and each Class member's actual damages.

109. Westward's act of charging the Channons and each Class member an unreasonable and excessive fee to produce the necessary section 22.1 disclosure documents is unfair because it (1) offends public policy, (2) is immoral, unethical, oppressive, and/or unscrupulous, and (3) causes substantial injury to the Channons and each Class member.

110. Westward's acts offend Illinois' statutorily-defined public policy because they violate the Illinois Condominium Property 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." 765 ILCS 605/22.1(c).

111. Westward's acts also offend Illinois' public policy because the Channons and each Class member have no reasonable choice but to obtain the documents from Westward in order to sell their individual condominium units, in exchange for an excessive and unreasonable fee.

112. Westward's acts are immoral, unethical, oppressive and/or unscrupulous because the Channons and each Class member have no reasonable alternative but to pay Westward's excessive and unreasonable fee to obtain the necessary 22.1 disclosure documents.

113. Pursuant to the Illinois Condominium Property Act, the Channons and similarly situated Class members are required by law to obtain and disclose the 22.1 disclosure documents to a prospective condominium purchaser to sell their individual condominium units. 765 ILCS 605/22.1(a).

114. Westward's acts are so oppressive as to leave the Channons and each Class member with no reasonable alternative but to pay Westwards' excessive and unreasonable fees to obtain the necessary Section 22.1 disclosure documents, because the Channons and the Class cannot reasonably obtain the necessary Section 22.1 disclosure documents from any other source but from Westward.

115. The Channons and each Class member are required to use Westward to obtain the necessary Section 22.1 disclosure documents, and thus have no meaningful choice except to pay Westward's excessive and unreasonable fees. Westward forces the seller to choose between paying an exorbitant fee and failing to provide the necessary disclosure documents to potential buyers, thus opening themselves to potential liability. This is no real choice at all.

116. The Channons and each Class member cannot obtain the necessary Section 22.1 disclosure documents from Westward without first paying Westward's excessive and unreasonable fees.

117. Westward's acts cause substantial injury to consumers because the Channons and each Class member are forced to pay Westward's excessive and unreasonable fees that is not the "direct out-of-pocket costs of providing such information and copying." 765 ILCS 605/22.1(c).

118. The Channons and each Class member paid Westward's excessive and unreasonable fees under the assumption and in reliance that Westward's fees for producing the necessary Section 22.1 disclosure documents covered and was no greater than Westward's actual "direct out-of-pocket expenses for providing such information and copying." 765 ILCS 605/22.1(c).

119. Westward intended that the Channons and each Class member rely on its unfair acts of charging excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents because the Principal-Association (Kenmore Club) is required by statute to, and Westward as designated Agent, therefore knew it may only charge a "reasonable fee" covering and not greater than the direct out-of-pocket cost for providing the necessary Section 22.1 disclosure documents to condo sellers. 765 ILCS 605/22.1(c).

120. Westward's unfair acts of charging the Channons and each Class member excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents occurred in the course of trade and commerce because the production of condominium records in exchange for a fee constitutes trade and commerce.

121. Westward's unfair acts of charging the Channons and each Class member excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents are the actual

and proximate cause of the Channons' and each Class member's injuries because but for the Westward's unfair acts, the Channons and each Class member would not have had to pay excess and unreasonable fees to obtain the necessary Section 22.1 disclosure documents. 765 ILCS 605/22.1(c).

122. The Channons and each Class member sustained actual damages due to the Westward's unfair acts because the Channons and each Class member were forced to pay excessive and unreasonable fees to obtain disclosure documents necessary to comply with their statutory duty under Section 22.1 to provide to prospective buyers. 765 ILCS 605/22.1(c).

123. As a result of Westward's wrongful and unfair conduct in charging an unreasonable and excessive fee to produce Section 22.1 disclosure documents which the Channons and each Class member is effectively compelled by law to obtain for a prospective condominium purchasers, Westward has committed, and continues to commit, unfair acts in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*).

WHEREFORE, Plaintiffs, individually, and on behalf of all others similarly situated, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;

B. Designating the Channons as representative of the Class, and their undersigned counsel as Class Counsel;

C. Entering Judgment in favor of the Channons and the Class and against Defendant Westward Management;

D. Enjoining Defendant's illegal conduct alleged herein and ordering disgorgement of any of its ill-gotten gains;

E. Awarding the Channons and the Class any and all actual, compensatory, and punitive damages to the extent permitted under the Illinois Consumer Fraud and

Deceptive Business Practices Act, in addition to their reasonable attorney's fees and costs; and

F. Granting all such further relief and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand trial by Jury on any issues triable by a Jury.

Dated: April 16, 2019

Respectfully submitted,

Plaintiffs, Harry Channon and Dawn Channon, individually, and on behalf of all others similarly situated

By: */s/ Terrie C. Sullivan*
Counsel for the Plaintiffs and the Putative Class

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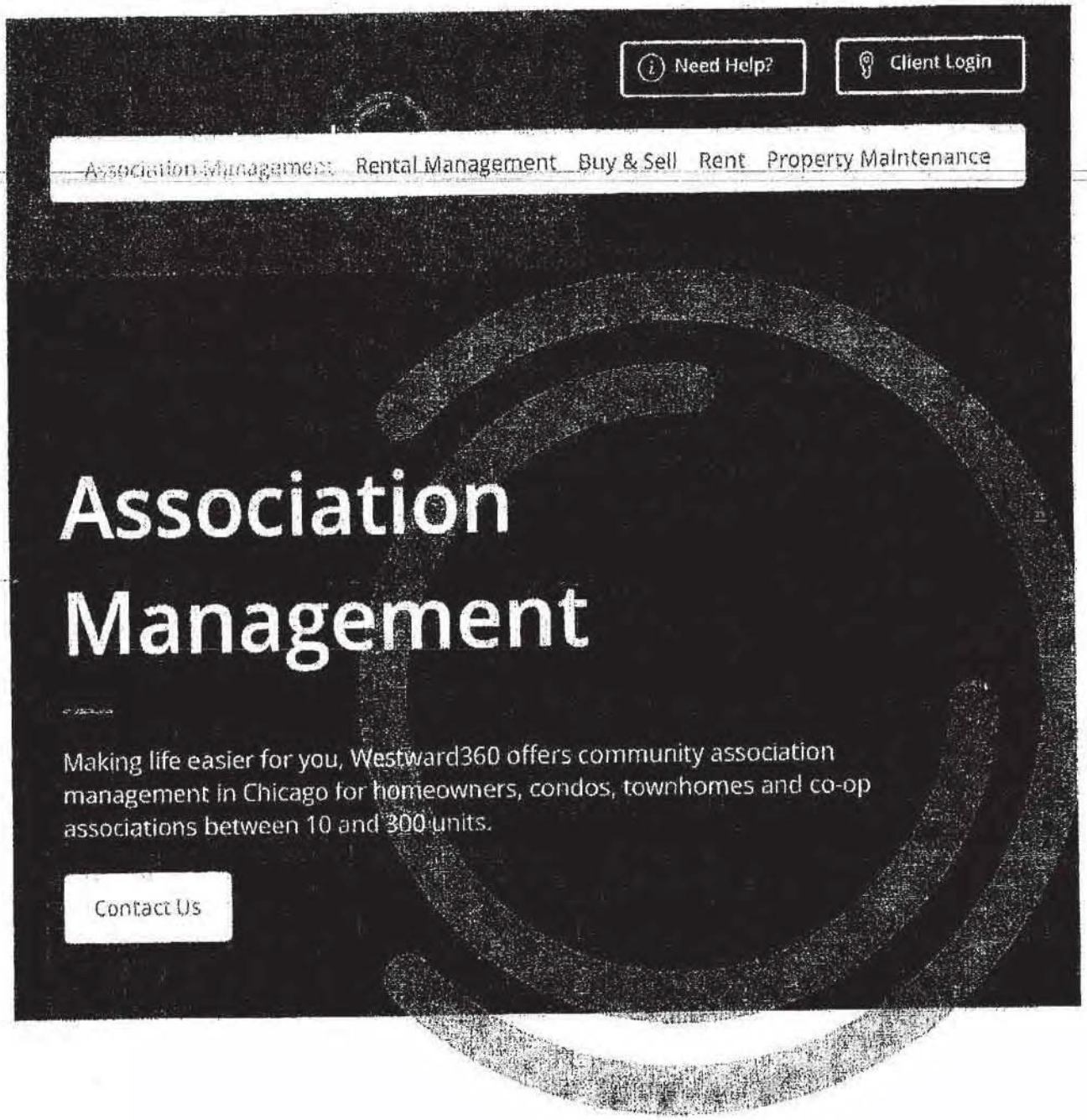
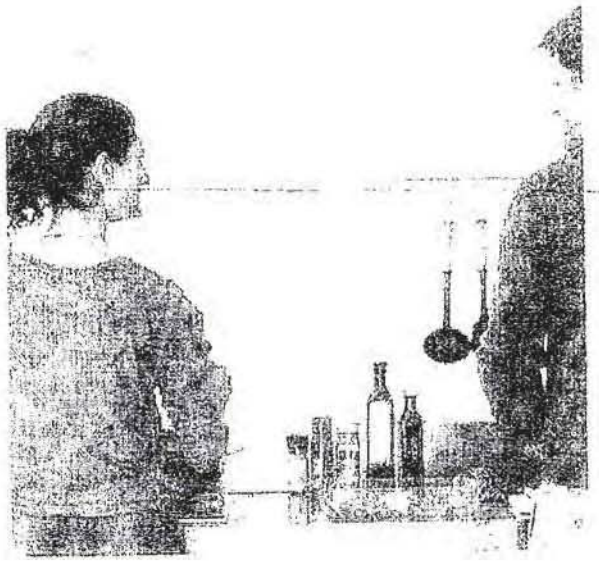
EXHIBIT A



Our advantage.

Saving time & protecting your investment.

As a property owner, you want to protect and enhance your investment. As a resident, you want your day-to-day to be easy. We get it. Our services can manage every side of your association, without missing a beat.



Our association management packages.

Financial Management

Let us pay the bills, keep the books, and collect assessments while you call the shots on the day-to-day. Our financial services include:

- Real-time financial reporting
- Bill pay and collections
- Help with budgeting
- Access to maintenance support

Recurring Maintenance & On-Call Support

When you're dealing with a maintenance issue, you want fast and reliable service. We employ a full suite of Chicago's best service professionals to make it easy to manage your home, rental or association.

- Property inspection and report
- Recurring maintenance calendar
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Full-Service Management

Get our full range of property management services at a great value.

- Full financial management
- Property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager with a team of assistant property managers and operations specialists
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Premium Full-Service Management

Get a dedicated, day-to-day property management partner.

- Full financial management
- Full property inspection and report
- Recurring maintenance calendar and pricing
- A dedicated property manager
- Full-service operations and maintenance support
- Association/board meetings as needed
- Access to entire staff of service experts
- Emergency on-call services

available 24/7

Custom Onsite Management

Get the convenience of an onsite property manager.

- Full or part-time onsite manager
- Full property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Get started.

Let's get started! Tell us about your property.

Contact Us

Property Perks

Hey residents, did you know Westward360 offers exclusive maintenance deals? Sign up for Property Perks and get our monthly newsletter featuring deals on services, such as painting, HVAC, general handyman work and more!

Sign up today! Submit

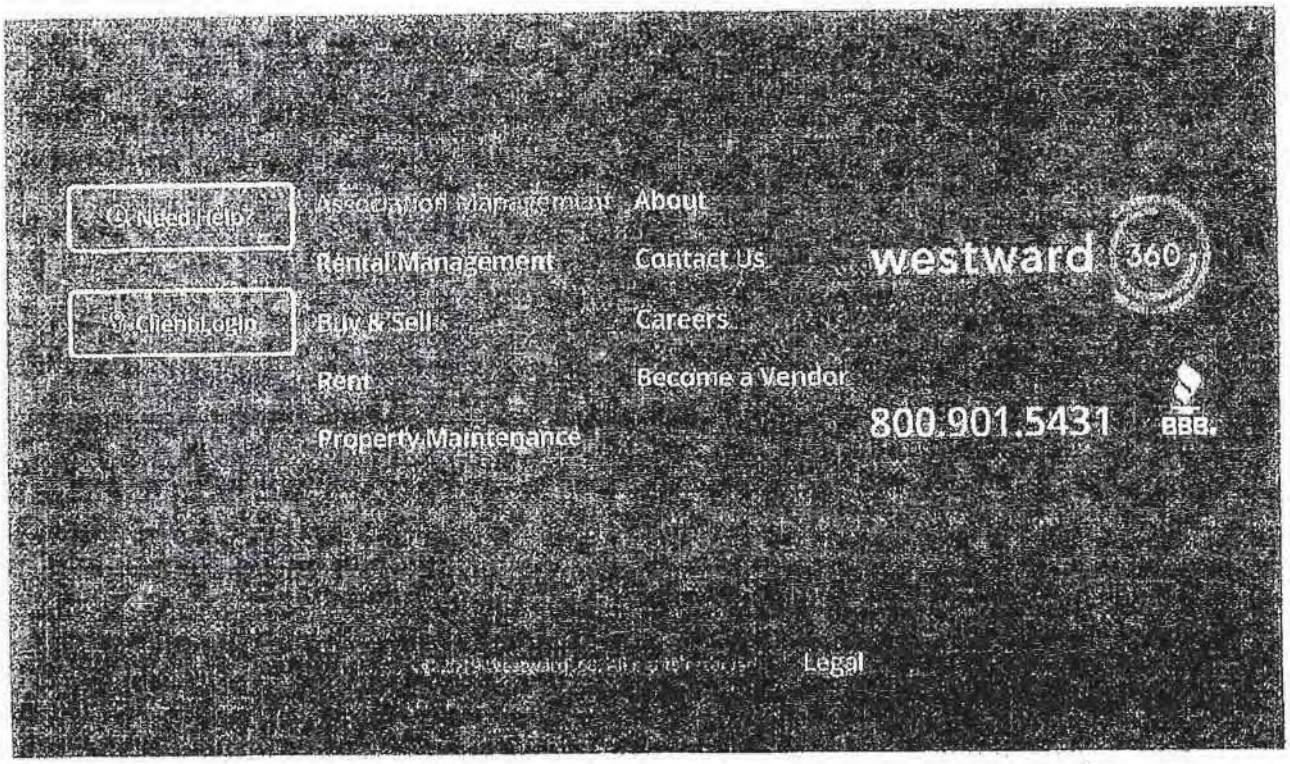


EXHIBIT B

14-08-402-016-1004

REALTOR

MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1

1. THE PARTIES: Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s) *[please print]* Cahontas Vincent and Elizabeth Vincent

Seller Name(s) *[please print]* Harry & Dawn Channon

If Dual Agency Applies, Complete Optional Paragraph 31.

2. THE REAL ESTATE: Real Estate shall be defined as the property, all improvements, the fixtures and Personal Property included therein. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate with approximate lot size or acreage of Common commonly known as:

5109 N Kenmore Ave, 1E, Chicago, IL 60640			
Address	City	State	Zip

Cook	1E	14084020161004
County	Unit # (If applicable)	Permanent Index Number(s) of Real Estate

If Condo/Coop/Townhome Parking is Included: # of spaces(s)_______; identified as Space(s) #_________;
[check type] ☐ deeded space, PIN: ____________ ☐ limited common element ☐ assigned space.

3. PURCHASE PRICE: The Purchase Price shall be $197,000. After the payment of Earnest Money as provided below, the balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing in "Good Funds" as defined by law.

4. EARNEST MONEY: Earnest Money shall be held in trust for the mutual benefit of the Parties by *[check one]*:
☑ Seller's Brokerage; ☐ Buyer's Brokerage; ☐ As otherwise agreed by the Parties, as "Escrowee".
Initial Earnest Money of $1,000 shall be tendered to Escrowee on or before 3 day(s) after Date of Acceptance. Additional Earnest Money of $2,000 shall be tendered by 03/04/2016.

5. FIXTURES AND PERSONAL PROPERTY AT NO ADDITIONAL COST: All of the fixtures and included Personal Property are owned by Seller and to Seller's knowledge are in operating condition on the Date of Acceptance, unless otherwise stated herein. Seller agrees to transfer to Buyer all fixtures, all heating, electrical, plumbing, and well systems together with the following items of Personal Property at no additional cost by Bill of Sale at Closing *[Check or enumerate applicable items]*:

☑ Refrigerator	☑ Central Air Conditioning	☐ Central Humidifier	☑ Light Fixtures, as they exist
☑ Oven/Range/Stove	☐ Window Air Conditioner(s)	☐ Water Softener (owned)	☑ Built-in or attached shelving
☑ Microwave	X ☐ Ceiling Fan(s)	☐ Sump Pump(s)	☑ All Window Treatments & Hardware
☑ Dishwasher	☑ Intercom System	☐ Electronic or Media Air Filter(s)	☑ Existing Storms and Screens
X ☐ Garbage Disposal	☐ Backup Generator System	☐ Central Vac & Equipment	☐ Fireplace Screens/Doors/Grates
☐ Trash Compactor	☐ Satellite Dish	☑ Security System(s) (owned)	☐ Fireplace Gas Log(s)
☐ Washer	☐ Outdoor Shed	☐ Garage Door Opener(s) with all Transmitters	☐ Invisible Fence System, Collar & Box
☐ Dryer	☑ Planted Vegetation		☑ Smoke Detectors
☐ Attached Gas Grill	☐ Outdoor Play Set(s)	☑ All Tacked Down Carpeting →	☑ Carbon Monoxide Detectors

Other Items Included at No Additional Cost: ________________

Items Not Included: ________________

Seller warrants to Buyer that all fixtures, systems and Personal Property included in this Contract shall be in operating condition at Possession except: ____________.
A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.
If Home Warranty will be provided, complete Optional Paragraph 34.

Buyer Initial CV 02/19/16 *Buyer Initial* EV 02/19/16 *Seller Initial* HC *Seller Initial* DC

4/11

6. **CLOSING:** Closing shall be on 06/25/2016 or at such time as mutually agreed by the Parties in writing. Closing shall take place at the escrow office of the title company (or its issuing agent) that will issue the Owner's Policy of Title Insurance, situated nearest the Real Estate or as shall be agreed mutually by the Parties.

7. **POSSESSION:** Unless otherwise provided in Paragraph 40, Seller shall deliver possession to Buyer at Closing. Possession shall be deemed to have been delivered when Seller has vacated the Real Estate and delivered keys to the Real Estate to Buyer or to the office of the Seller's Brokerage.

8. **MORTGAGE CONTINGENCY:** If this transaction is NOT CONTINGENT ON FINANCING, Optional Paragraph 36 a) OR Paragraph 36 b) MUST BE USED. If any portion of Paragraph 36 is used, the provisions of this Paragraph 8 are NOT APPLICABLE.
This Contract is contingent upon Buyer obtaining a *[check one]* ☐ fixed; ☐ adjustable; *[check one]* ☑ conventional; ☐ FHA/VA (if FHA/VA is chosen, complete Paragraph 37); ☐ other _____ loan for 95 % of the Purchase Price, plus private mortgage insurance (PMI), if required, with an interest rate (initial rate if an adjustable rate mortgage used) not to exceed 4 % per annum, amortized over not less than 30 years. Buyer shall pay loan origination fee and/or discount points not to exceed 0 % of the loan amount. Buyer shall pay usual and customary processing fees and closing costs charged by lender. (Complete Paragraph 35 if closing cost credits apply).

Buyer shall make written loan application within five (5) Business Days after the Date of Acceptance; **failure to do so shall constitute an act of Default under this Contract.** ***[Complete both a) and b)]:***

a) Not later than 03/21/2016, (if no date is inserted, the date shall be twenty-one (21) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has provided to such lending institution an "Intent to Proceed" as that term is defined in the rules of the Consumer Financial Protection Bureau and has paid all lender application and appraisal fees. If Buyer is unable to provide such written evidence, Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

b) Not later than 04/15/2016, (if no date is inserted, the date shall be sixty (60) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has received a written mortgage commitment for the loan referred to above. If Buyer is unable to provide such written evidence either Buyer or Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

A Party causing delay in the loan approval process shall not have the right to terminate under either of the preceding paragraphs. In the event neither Party elects to declare this Contract terminated as of the latter of the dates specified above (as may be amended from time to time), then this Contract shall continue in full force and effect without any loan contingencies.

Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate. Buyer shall be deemed to have satisfied the financing conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is conditioned on the sale and/or closing of Buyer's existing real estate.

9. **STATUTORY DISCLOSURES:** If applicable, prior to signing this Contract, Buyer:
[check one] ☑ has ☐ has not received a completed Illinois Residential Real Property Disclosure;
[check one] ☑ has ☐ has not received the EPA Pamphlet, "Protect Your Family From Lead In Your Home";
[check one] ☑ has ☐ has not received a Lead-Based Paint Disclosure;
[check one] ☑ has ☐ has not received the IEMA, "Radon Testing Guidelines for Real Estate Transactions."

new carpet/paint in hallways common area
special assessment assessed will be paid in full prior to closing

87 *[check one]* ☑ has ☐ has not received the Disclosure of Information on Radon Hazards.

88 **10. PRORATIONS:** Proratable items shall include without limitation, rents and deposits (if any) from tenants;
89 Special Service Area or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and
90 Homeowner or Condominium Association fees (and Master/Umbrella Association fees, if applicable).
91 Accumulated reserves of a Homeowner/Condominium Association(s) are not a proratable item. Seller
92 represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are $254.00
93 per month (and, if applicable Master/Umbrella Association fees are $0 per 0).
94 Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity)
95 confirmed prior to the Date of Acceptance. Special Assessment Area or Special Service Area installments due
96 after the year of Closing shall not be proratable items and shall be paid by Buyer. The general Real Estate taxes
97 shall be prorated as of the date of Closing based on 105 % of the most recent ascertainable full year tax bill. All
98 prorations shall be final as of Closing, except as provided in Paragraph 22. If the amount of the most recent
99 ascertainable full year tax bill reflects a homeowner, senior citizen or other exemption, a senior freeze or senior
100 deferral, then Seller has submitted or will submit in a timely manner all necessary documentation to the
101 appropriate governmental entity, before or after Closing, to preserve said exemption(s). The requirements of
102 this Paragraph shall survive the Closing.

103 **11. ATTORNEY REVIEW:** Within five (5) Business Days after Date of Acceptance, the attorneys for the respective
104 Parties, by Notice, may:
105 a) Approve this Contract; or
106 b) Disapprove this Contract, which disapproval shall not be based solely upon the Purchase Price; or
107 c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of
108 Acceptance written agreement is not reached by the Parties with respect to resolution of the proposed
109 modifications, then either Party may terminate this Contract by serving Notice, whereupon this Contract
110 shall be null and void; or
111 d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may
112 declare this Contract null and void and this Contract shall remain in full force and effect.
113 **Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 11 c). If Notice is not**
114 **served within the time specified herein, the provisions of this paragraph shall be deemed waived by the**
115 **Parties and this Contract shall remain in full force and effect.**

116 **12. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES:** Buyer may conduct at Buyer's expense (unless
117 otherwise provided by governmental regulations) any or all of the following inspections of the Real Estate by
118 one or more licensed or certified inspection services: home, radon, environmental, lead-based paint, lead-based
119 paint hazards or wood-destroying insect infestation.
120 a) Buyer agrees that minor repairs and routine maintenance items of the Real Estate do not constitute defects
121 and are not a part of this contingency. **The fact that a functioning major component may be at the end of**
122 **its useful life shall not render such component defective for purposes of this paragraph.** Buyer shall
123 indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of
124 negligence of Buyer or any person performing any inspection. The home inspection shall cover only the
125 major components of the Real Estate, including but not limited to central heating system(s), central cooling
126 system(s), plumbing and well system, electrical system, roof, walls, windows, doors, ceilings, floors,
127 appliances and foundation. A major component shall be deemed to be in operating condition if it performs
128 the function for which it is intended, regardless of age, and does not constitute a threat to health or safety. If
129 radon mitigation is performed, Seller shall pay for any retest.

b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within five (5) Business Days ten (10) calendar days for a lead-based paint or lead-based paint hazard inspection) after the Date of Acceptance. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of all inspection issues, then either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.

c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.

d) **Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 12 and this Contract shall remain in full force and effect.**

13. **HOMEOWNER INSURANCE:** This Contract is contingent upon Buyer obtaining evidence of insurability for an Insurance Service Organization HO-3 or equivalent policy at standard premium rates within ten (10) Business Days after the Date of Acceptance. **If Buyer is unable to obtain evidence of insurability and serves Notice with proof of same to Seller within time specified, this Contract shall be null and void. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency and this Contract shall remain in full force and effect.**

14. **FLOOD INSURANCE:** Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special flood hazard area. **If Notice of the option to declare contract null and void is not given to Seller within ten (10) Business Days after the Date of Acceptance or by the time specified in Paragraph 8 b), whichever is later, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and effect.** Nothing herein shall be deemed to affect any rights afforded by the Residential Real Property Disclosure Act.

15. **CONDOMINIUM/COMMON INTEREST ASSOCIATIONS:** (If applicable) The Parties agree that the terms contained in this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the Declaration of Condominium/Covenants, Conditions and Restrictions ("Declaration/CCRs") and all amendments; public and utility easements including any easements established by or implied from the Declaration/CCRs or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the Declaration/CCRs.

b) Seller shall be responsible for payment of all regular assessments due and levied prior to Closing and for all special assessments confirmed prior to the Date of Acceptance.

c) Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. The Parties shall have three (3) Business Days to reach agreement relative to payment thereof. Absent such agreement either Party may declare the Contract null and void.

d) Seller shall, within five (5) Business Days from the Date of Acceptance, 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. This Contract is subject to the condition that Seller be able

agreed upon VC

to procure and provide to Buyer a release or waiver of any right of first refusal or other pre-emptive rights to purchase created by the Declaration/CCRs. In the event the Condominium Association requires the personal appearance of Buyer or additional documentation, Buyer agrees to comply with same.

e) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller Notice within five (5) Business Days after the receipt of the documents and information required by this Paragraph, listing those deficiencies which are unacceptable to Buyer. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall remain in full force and effect.

f) Seller shall not be obligated to provide a condominium survey.

g) Seller shall provide a certificate of insurance showing Buyer and Buyer's mortgagee, if any, as an insured.

16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's Designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when conveyed will be good and merchantable, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

17. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:

a) The Parties are cautioned that the Real Estate may be situated in a municipality that has adopted a pre-closing inspection requirement, municipal Transfer Tax or other similar ordinances. Transfer taxes required by municipal ordinance shall be paid by the Party designated in such ordinance.

b) The Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. TITLE: At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 16. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Seller will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Survey shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price prior encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

19. PLAT OF SURVEY: Not less than one (1) Business Day prior to Closing, except where the Real Estate is a condominium (see Paragraph 15) Seller shall, at Seller's expense, furnish to Buyer or Buyer's attorney a Plat of

Survey that conforms to the current Minimum Standard of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

20. DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING: If prior to delivery of the deed the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

21. CONDITION OF REAL ESTATE AND INSPECTION: Seller agrees to leave the Real Estate in broom clean condition. All refuse and personal property that is not to be conveyed to Buyer shall be removed from the Real Estate at Seller's expense prior to delivery of Possession. Buyer shall have the right to inspect the Real Estate, fixtures and included Personal Property prior to Possession to verify that the Real Estate, improvements and included Personal Property are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

22. REAL ESTATE TAX ESCROW: In the event the Real Estate is improved, but has not been previously taxed for the entire year as currently improved, the sum of three percent (3%) of the Purchase Price shall be deposited in escrow with the title company with the cost of the escrow to be divided equally by Buyer and Seller and paid at Closing. When the exact amount of the taxes to be prorated under this Contract can be ascertained, the taxes shall be prorated by Seller's attorney at the request of either Party and Seller's share of such tax liability after proration shall be paid to Buyer from the escrow funds and the balance, if any, shall be paid to Seller. If Seller's obligation after such proration exceeds the amount of the escrow funds, Seller agrees to pay such excess promptly upon demand.

23. SELLER REPRESENTATIONS: Seller's representations contained in this paragraph shall survive the Closing. Seller represents that with respect to the Real Estate Seller has no knowledge of nor has Seller received any written notice from any association or governmental entity regarding:

a) zoning, building, fire or health code violations that have not been corrected;
b) any pending rezoning;
c) boundary line disputes;
d) any pending condemnation or Eminent Domain proceeding;
e) easements or claims of easements not shown on the public records;
f) any hazardous waste on the Real Estate;
g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or
i) any improvements to the Real Estate which are eligible for the home improvement tax exemption.

Seller further represents that:

(Initials) There *[check one]* ☐ is ☑ is not a pending or unconfirmed special assessment affecting the Real Estate by any association or governmental entity payable by Buyer after the date of Closing. The Real Estate *[check one]* ☐ is ☑ is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of Seller after the year in which the Closing occurs. All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 23, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

24. **BUSINESS DAYS/HOURS:** Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

25. **FACSIMILE OR DIGITAL SIGNATURES:** Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF ("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

26. **DIRECTION TO ESCROWEE:** In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon an entry of an order by a court of competent jurisdiction."

In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee may elect to proceed as follows:

a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. If any Party objects in writing to the intended disbursement of Earnest Money then Earnest Money shall be held until receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional costs and fees incurred in filing the Interpleader action.

27. **NOTICE:** Except as provided in Paragraph 32 c) 2) regarding the manner of service for "kick-out" Notices, all Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

a) By personal delivery; or

b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c) By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or

e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

28. PERFORMANCE: Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity and the prevailing party in litigation shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

29. CHOICE OF LAW AND GOOD FAITH: All terms and provisions of this Contract including but not limited to the Attorney Review and Professional Inspection paragraphs shall be governed by the laws of the State of Illinois and are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

30. OTHER PROVISIONS: This Contract is also subject to those OPTIONAL PROVISIONS initialed by the Parties and the following additional attachments, if any: _____.

OPTIONAL PROVISIONS (Applicable ONLY if initialed by all Parties)

(Initials) [ ] [ ] [ ] [ ] **31. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to _____ (Licensee) acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent with regard to the transaction referred to in this Contract.

[ ] [ ] [ ] [ ] **32. SALE OF BUYER'S REAL ESTATE:**

a) **REPRESENTATIONS ABOUT BUYER'S REAL ESTATE:** Buyer represents to Seller as follows:

1) Buyer owns real estate (hereinafter referred to as "Buyer's real estate") with the address of:

_____.
Address City State Zip

2) Buyer *[check one]* ☐ has ☐ has not entered into a contract to sell Buyer's real estate.
If Buyer has entered into a contract to sell Buyer's real estate, that contract:
a) *[check one]* ☐ is ☐ is not subject to a mortgage contingency.
b) *[check one]* ☐ is ☐ is not subject to a real estate sale contingency.
c) *[check one]* ☐ is ☐ is not subject to a real estate closing contingency.

3) Buyer *[check one]* ☐ has ☐ has not listed Buyer's real estate for sale with a licensed real estate broker and in a local multiple listing service.

4) If Buyer's real estate is not listed for sale with a licensed real estate broker and in a local multiple listing service, Buyer *[check one]*:

a) ☐ Shall list real estate for sale with a licensed real estate broker who will place it in a local multiple listing service within five (5) Business Days after Date of Acceptance.
[For information only] Broker:_____
Broker's Address:_____ Phone:_____

b) ☐ Does not intend to list said real estate for sale.

b) CONTINGENCIES BASED UPON SALE AND/OR CLOSING OF REAL ESTATE:

1) This Contract is contingent upon Buyer having entered into a contract for the sale of Buyer's real estate that is in full force and effect as of_____. Such contract should provide for a closing date not later than the Closing Date set forth in this Contract. **If Notice is served on or before the date set forth in this subparagraph that Buyer has not procured a contract for the sale of Buyer's real estate, this Contract shall be null and void. If Notice that Buyer has not procured a contract for the sale of Buyer's real estate is not served on or before the close of business on the date set forth in this subparagraph, Buyer shall be deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.** (If this paragraph is used, then the following paragraph must be completed.)

2) In the event Buyer has entered into a contract for the sale of Buyer's real estate as set forth in Paragraph 32 b) 1) and that contract is in full force and effect, or has entered into a contract for the sale of Buyer's real estate prior to the execution of this Contract, this Contract is contingent upon Buyer closing the sale of Buyer's real estate on or before_____. **If Notice that Buyer has not closed the sale of Buyer's real estate is served before the close of business on the next Business Day after the date set forth in the preceding sentence, this Contract shall be null and void. If Notice is not served as described in the preceding sentence, Buyer shall have deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.**

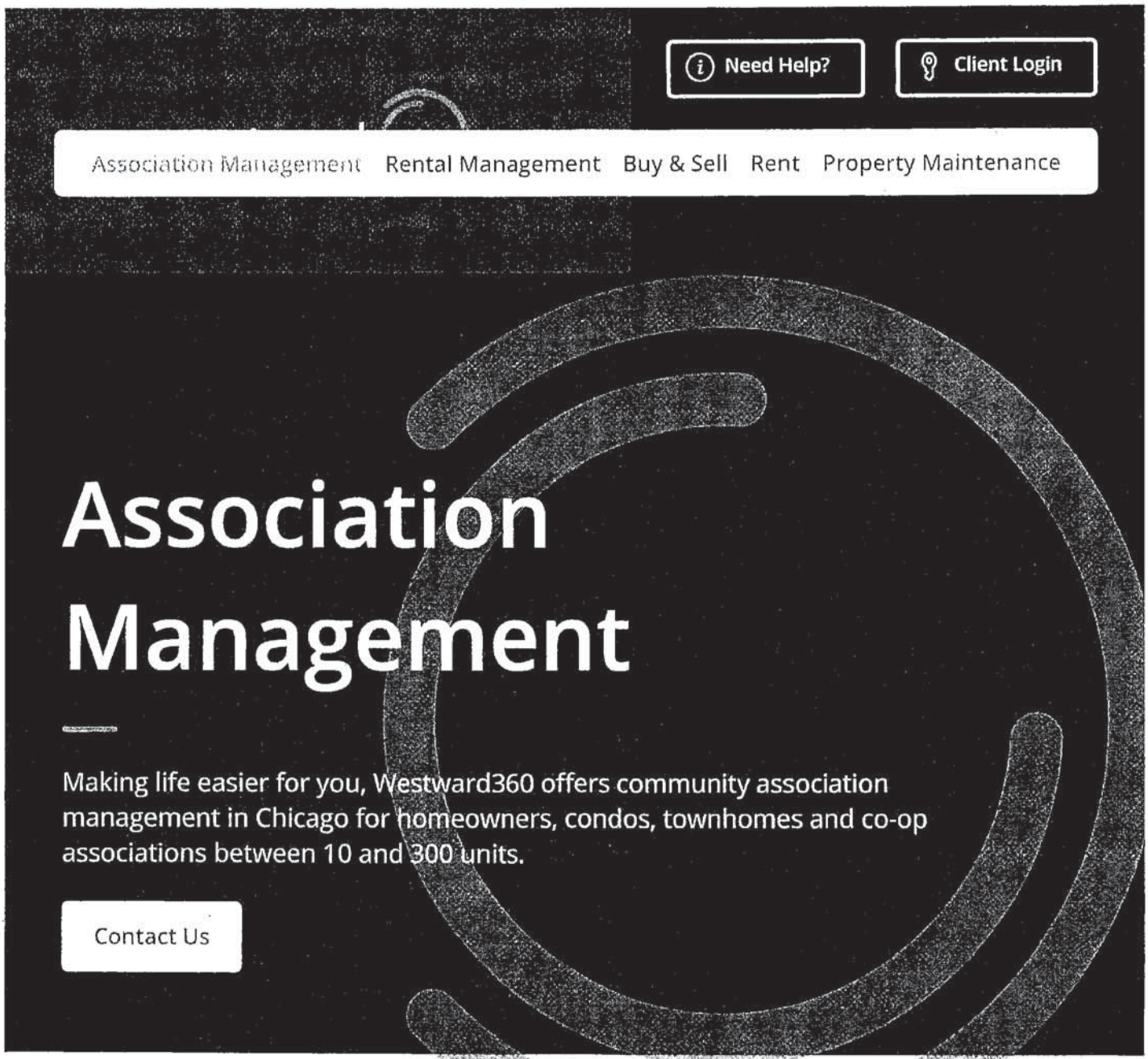
3) If the contract for the sale of Buyer's real estate is terminated for any reason after the date set forth in Paragraph 32 b) 1) (or after the date of this Contract if no date is set forth in Paragraph 32 b) 1)), Buyer shall, within three (3) Business Days of such termination, notify Seller of said termination. **Unless Buyer, as part of said Notice, waives all contingencies in Paragraph 32 and complies with Paragraph 32 d), this Contract shall be null and void as of the date of Notice. If Notice as required by this subparagraph is not served within the time specified, Buyer shall be in default under the terms of this Contract.**

c) SELLER'S RIGHT TO CONTINUE TO OFFER REAL ESTATE FOR SALE: During the time of this contingency, Seller has the right to continue to show the Real Estate and offer it for sale subject to the following:

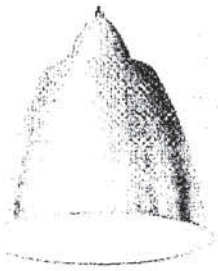
1) If Seller accepts another bona fide offer to purchase the Real Estate while contingencies expressed in Paragraph 32 b) are in effect, Seller shall notify Buyer in writing of same. Buyer shall then have_____ hours after Seller gives such Notice to waive the contingencies set forth in Paragraph 32 b), subject to Paragraph 32 d).

2) Seller's Notice to Buyer (commonly referred to as a 'kick-out' Notice) shall be in writing and shall be served on Buyer, not Buyer's attorney or Buyer's real estate agent. Courtesy copies of such 'kick-out' Notice should be sent to Buyer's attorney and Buyer's real estate agent, if known. Failure to provide such courtesy copies shall not render Notice invalid. Notice to any one of a multiple-person Buyer shall be sufficient Notice to all Buyers. Notice for the purpose of this subparagraph only shall be served upon Buyer in the following manner:
   a) By personal delivery effective at the time and date of personal delivery; or
   b) By mailing to the address recited herein for Buyer by regular mail and by certified mail. Notice shall be effective at 10:00 A.M. on the morning of the second day following deposit of Notice in the U.S. Mail; or

EXHIBIT A



Our advantage.



Saving time & protecting your investment.

As a property owner, you want to protect and enhance your investment. As a resident, you want your day-to-day to be easy. We get it. Our services can manage every side of your association, without missing a beat.

Our association management packages.

Financial Management

Let us pay the bills, keep the books, and collect assessments while you call the shots on the day-to-day. Our financial services include:

- Real-time financial reporting
- Bill pay and collections
- Help with budgeting
- Access to maintenance support

Recurring Maintenance & On-Call Support

When you're dealing with a maintenance issue, you want fast and reliable service. We employ a full suite of Chicago's best service professionals to make it easy to manage your home, rental or association.

- Property inspection and report
- Recurring maintenance calendar
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Full-Service Management

Get our full range of property management services at a great value.

- Full financial management
- Property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager with a team of assistant property managers and operations specialists
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Premium Full-Service Management

Get a dedicated, day-to-day property management partner.

- Full financial management
- Full property inspection and report
- Recurring maintenance calendar and pricing
- A dedicated property manager
- Full-service operations and maintenance support
- Association/board meetings as needed
- Access to entire staff of service experts
- Emergency on-call services

available 24/7

Custom Onsite Management

Get the convenience of an onsite property manager.

- Full or part-time onsite manager
- Full property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Get started.

Let's get started! Tell us about your property.

Contact Us

Property Perks

Hey residents, did you know Westward360 offers exclusive maintenance deals? Sign up for Property Perks and get our monthly newsletter featuring deals on services, such as painting, HVAC, general handyman work and more!

Sign up today! Submit

EXHIBIT B

14-08-402-016-1004

MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1

1. THE PARTIES: Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s) *[please print]* Cahontas Vincent and Elizabeth Vincent

Seller Name(s) *[please print]* Harry & Dawn Channon

If Dual Agency Applies, Complete Optional Paragraph 31.

2. THE REAL ESTATE: Real Estate shall be defined as the property, all improvements, the fixtures and Personal Property included therein. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate with approximate lot size or acreage of Common commonly known as:

5109 N Kenmore Ave, 1E, Chicago, IL 60640
Address City State Zip

Cook 1E 14084020161004
County Unit # (If applicable) Permanent Index Number(s) of Real Estate

If Condo/Coop/Townhome Parking is Included: # of spaces(s)_____; identified as Space(s) #_____;
[check type] ☐ deeded space, PIN:_____ ☐ limited common element ☐ assigned space.

3. PURCHASE PRICE: The Purchase Price shall be $197,000. After the payment of Earnest Money as provided below, the balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing in "Good Funds" as defined by law.

4. EARNEST MONEY: Earnest Money shall be held in trust for the mutual benefit of the Parties by *[check one]*:
☑ Seller's Brokerage; ☐ Buyer's Brokerage; ☐ As otherwise agreed by the Parties, as "Escrowee".
Initial Earnest Money of $1,000 shall be tendered to Escrowee on or before 3 day(s) after Date of Acceptance. Additional Earnest Money of $2,000 shall be tendered by 03/04/2016.

5. FIXTURES AND PERSONAL PROPERTY AT NO ADDITIONAL COST: All of the fixtures and included Personal Property are owned by Seller and to Seller's knowledge are in operating condition on the Date of Acceptance, unless otherwise stated herein. Seller agrees to transfer to Buyer all fixtures, all heating, electrical, plumbing, and well systems together with the following items of Personal Property at no additional cost by Bill of Sale at Closing *[Check or enumerate applicable items]*:

☑ Refrigerator	☑ Central Air Conditioning	☐ Central Humidifier	☑ Light Fixtures, as they exist
☑ Oven/Range/Stove	☐ Window Air Conditioner(s)	☐ Water Softener (owned)	☑ Built-in or attached shelving
☑ Microwave	☐ Ceiling Fan(s)	☐ Sump Pump(s)	☑ All Window Treatments & Hardware
☑ Dishwasher	☑ Intercom System	☐ Electronic or Media Air Filter(s)	☑ Existing Storms and Screens
☐ Garbage Disposal	☐ Backup Generator System	☐ Central Vac & Equipment	☐ Fireplace Screens/Doors/Grates
☐ Trash Compactor	☐ Satellite Dish	☑ Security System(s) (owned)	☐ Fireplace Gas Log(s)
☐ Washer	☐ Outdoor Shed	☐ Garage Door Opener(s) with all Transmitters	☐ Invisible Fence System, Collar & Box
☐ Dryer	☑ Planted Vegetation		☑ Smoke Detectors
☐ Attached Gas Grill	☐ Outdoor Play Set(s)	☑ All Tacked Down Carpeting	☑ Carbon Monoxide Detectors

Other Items Included at No Additional Cost:_____

Items Not Included:_____

Seller warrants to Buyer that all fixtures, systems and Personal Property included in this Contract shall be in operating condition at Possession except:_____.
A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.
If Home Warranty will be provided, complete Optional Paragraph 34.

Buyer Initial CV 02/19/16 *Buyer Initial* ZV 02/19/16 *Seller Initial* HC DS *Seller Initial* VC DS

4/11

6. CLOSING: Closing shall be on 04/25/2016 ________ or at such time as mutually agreed by the Parties in writing. Closing shall take place at the escrow office of the title company (or its issuing agent) that will issue the Owner's Policy of Title Insurance, situated nearest the Real Estate or as shall be agreed mutually by the Parties.

7. POSSESSION: Unless otherwise provided in Paragraph 40, Seller shall deliver possession to Buyer at Closing. Possession shall be deemed to have been delivered when Seller has vacated the Real Estate and delivered keys to the Real Estate to Buyer or to the office of the Seller's Brokerage.

8. MORTGAGE CONTINGENCY: If this transaction is NOT CONTINGENT ON FINANCING, Optional Paragraph 36 a) OR Paragraph 36 b) MUST BE USED. If any portion of Paragraph 36 is used, the provisions of this Paragraph 8 are NOT APPLICABLE.

This Contract is contingent upon Buyer obtaining a *[check one]* ☐ fixed; ☐ adjustable; *[check one]* ☑ conventional; ☐ FHA/VA (if FHA/VA is chosen, complete Paragraph 37); ☐ other ________ loan for 95 % of the Purchase Price, plus private mortgage insurance (PMI), if required, with an interest rate (initial rate if an adjustable rate mortgage used) not to exceed 4 % per annum, amortized over not less than 30 years. Buyer shall pay loan origination fee and/or discount points not to exceed 0 % of the loan amount. Buyer shall pay usual and customary processing fees and closing costs charged by lender. (Complete Paragraph 35 if closing cost credits apply).

Buyer shall make written loan application within five (5) Business Days after the Date of Acceptance; **failure to do so shall constitute an act of Default under this Contract.** ***[Complete both a) and b)]*:**

a) Not later than 03/21/2016 ________, (if no date is inserted, the date shall be twenty-one (21) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has provided to such lending institution an "Intent to Proceed" as that term is defined in the rules of the Consumer Financial Protection Bureau and has paid all lender application and appraisal fees. If Buyer is unable to provide such written evidence, Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

b) Not later than 04/15/2016 ________, (if no date is inserted, the date shall be sixty (60) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has received a written mortgage commitment for the loan referred to above. If Buyer is unable to provide such written evidence either Buyer or Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

A Party causing delay in the loan approval process shall not have the right to terminate under either of the preceding paragraphs. In the event neither Party elects to declare this Contract terminated as of the latter of the dates specified above (as may be amended from time to time), then this Contract shall continue in full force and effect without any loan contingencies.

Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate. Buyer shall be deemed to have satisfied the financing conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is conditioned on the sale and/or closing of Buyer's existing real estate.

9. STATUTORY DISCLOSURES: If applicable, prior to signing this Contract, Buyer:

[check one] ☑ has ☐ has not received a completed Illinois Residential Real Property Disclosure;

[check one] ☑ has ☐ has not received the EPA Pamphlet, "Protect Your Family From Lead In Your Home";

[check one] ☑ has ☐ has not received a Lead-Based Paint Disclosure;

[check one] ☑ has ☐ has not received the IEMA, "Radon Testing Guidelines for Real Estate Transactions";

Buyer Initial CV 02/19/16 *Buyer Initial* EV 02/19/16 *Seller Initial* AC *Seller Initial* DC

Address: 5109 N Kenmore Ave, 1E, Chicago, IL 60640 *v6.1*

new carpet/paint in hallways
special assessment ~~common~~ area
associated with be paid in full prior to closing

87 *[check one]* ☑ has ☐ has not received the Disclosure of Information on Radon Hazards.

88 **10. PRORATIONS:** Proratable items shall include without limitation, rents and deposits (if any) from tenants;
89 Special Service Area or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and
90 Homeowner or Condominium Association fees (and Master/Umbrella Association fees, if applicable).
91 Accumulated reserves of a Homeowner/Condominium Association(s) are not a proratable item. Seller
92 represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are $254.00
93 per month (and, if applicable Master/Umbrella Association fees are $0 per 0).
94 Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity)
95 confirmed prior to the Date of Acceptance. Special Assessment Area or Special Service Area installments due
96 after the year of Closing shall not be proratable items and shall be paid by Buyer. The general Real Estate taxes
97 shall be prorated as of the date of Closing based on 105 % of the most recent ascertainable full year tax bill. All
98 prorations shall be final as of Closing, except as provided in Paragraph 22. If the amount of the most recent
99 ascertainable full year tax bill reflects a homeowner, senior citizen or other exemption, a senior freeze or senior
100 deferral, then Seller has submitted or will submit in a timely manner all necessary documentation to the
101 appropriate governmental entity, before or after Closing, to preserve said exemption(s). The requirements of
102 this Paragraph shall survive the Closing.

103 **11. ATTORNEY REVIEW:** Within five (5) Business Days after Date of Acceptance, the attorneys for the respective
104 Parties, by Notice, may:

105 a) Approve this Contract; or
106 b) Disapprove this Contract, which disapproval shall not be based solely upon the Purchase Price; or
107 c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of
108 Acceptance written agreement is not reached by the Parties with respect to resolution of the proposed
109 modifications, then either Party may terminate this Contract by serving Notice, whereupon this Contract
110 shall be null and void; or
111 d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may
112 declare this Contract null and void and this Contract shall remain in full force and effect.

113 **Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 11 c). If Notice is not**
114 **served within the time specified herein, the provisions of this paragraph shall be deemed waived by the**
115 **Parties and this Contract shall remain in full force and effect.**

116 **12. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES:** Buyer may conduct at Buyer's expense (unless
117 otherwise provided by governmental regulations) any or all of the following inspections of the Real Estate by
118 one or more licensed or certified inspection services: home, radon, environmental, lead-based paint, lead-based
119 paint hazards or wood-destroying insect infestation.

120 a) Buyer agrees that minor repairs and routine maintenance items of the Real Estate do not constitute defects
121 and are not a part of this contingency. **The fact that a functioning major component may be at the end of**
122 **its useful life shall not render such component defective for purposes of this paragraph.** Buyer shall
123 indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of
124 negligence of Buyer or any person performing any inspection. The home inspection shall cover only the
125 major components of the Real Estate, including but not limited to central heating system(s), central cooling
126 system(s), plumbing and well system, electrical system, roof, walls, windows, doors, ceilings, floors,
127 appliances and foundation. A major component shall be deemed to be in operating condition if it performs
128 the function for which it is intended, regardless of age, and does not constitute a threat to health or safety. If
129 radon mitigation is performed, Seller shall pay for any retest.

b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within five (5) Business Days ten (10) calendar days for a lead-based paint or lead-based paint hazard inspection) after the Date of Acceptance. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of all inspection issues, then either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.

c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.

d) Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 12 and this Contract shall remain in full force and effect.

13. HOMEOWNER INSURANCE: This Contract is contingent upon Buyer obtaining evidence of insurability for an Insurance Service Organization HO-3 or equivalent policy at standard premium rates within ten (10) Business Days after the Date of Acceptance. **If Buyer is unable to obtain evidence of insurability and serves Notice with proof of same to Seller within time specified, this Contract shall be null and void. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency and this Contract shall remain in full force and effect.**

14. FLOOD INSURANCE: Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special flood hazard area. **If Notice of the option to declare contract null and void is not given to Seller within ten (10) Business Days after the Date of Acceptance or by the time specified in Paragraph 8 b), whichever is later, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and effect.** Nothing herein shall be deemed to affect any rights afforded by the Residential Real Property Disclosure Act.

15. CONDOMINIUM/COMMON INTEREST ASSOCIATIONS: (If applicable) The Parties agree that the terms contained in this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the Declaration of Condominium/Covenants, Conditions and Restrictions ("Declaration/CCRs") and all amendments; public and utility easements including any easements established by or implied from the Declaration/CCRs or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the Declaration/CCRs.

b) Seller shall be responsible for payment of all regular assessments due and levied prior to Closing and for all special assessments confirmed prior to the Date of Acceptance.

c) Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. The Parties shall have three (3) Business Days to reach agreement relative to payment thereof. Absent such agreement either Party may declare the Contract null and void.

d) Seller shall, within five (5) Business Days from the Date of Acceptance, 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. This Contract is subject to the condition that Seller be able

agreed upon VC

to procure and provide to Buyer a release or waiver of any right of first refusal or other pre-emptive rights to purchase created by the Declaration/CCRs. In the event the Condominium Association requires the personal appearance of Buyer or additional documentation, Buyer agrees to comply with same.

e) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller Notice within five (5) Business Days after the receipt of the documents and information required by this Paragraph, listing those deficiencies which are unacceptable to Buyer. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall remain in full force and effect.

f) Seller shall not be obligated to provide a condominium survey.

g) Seller shall provide a certificate of insurance showing Buyer and Buyer's mortgagee, if any, as an insured.

16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's Designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when conveyed will be good and merchantable, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

17. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:

a) The Parties are cautioned that the Real Estate may be situated in a municipality that has adopted a pre-closing inspection requirement, municipal Transfer Tax or other similar ordinances. Transfer taxes required by municipal ordinance shall be paid by the Party designated in such ordinance.

b) The Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. TITLE: At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 16. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Seller will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Survey shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price prior encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

19. PLAT OF SURVEY: Not less than one (1) Business Day prior to Closing, except where the Real Estate is a condominium (see Paragraph 15) Seller shall, at Seller's expense, furnish to Buyer or Buyer's attorney a Plat of

Survey that conforms to the current Minimum Standard of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

20. DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING: If prior to delivery of the deed the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

21. CONDITION OF REAL ESTATE AND INSPECTION: Seller agrees to leave the Real Estate in broom clean condition. All refuse and personal property that is not to be conveyed to Buyer shall be removed from the Real Estate at Seller's expense prior to delivery of Possession. Buyer shall have the right to inspect the Real Estate, fixtures and included Personal Property prior to Possession to verify that the Real Estate, improvements and included Personal Property are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

22. REAL ESTATE TAX ESCROW: In the event the Real Estate is improved, but has not been previously taxed for the entire year as currently improved, the sum of three percent (3%) of the Purchase Price shall be deposited in escrow with the title company with the cost of the escrow to be divided equally by Buyer and Seller and paid at Closing. When the exact amount of the taxes to be prorated under this Contract can be ascertained, the taxes shall be prorated by Seller's attorney at the request of either Party and Seller's share of such tax liability after proration shall be paid to Buyer from the escrow funds and the balance, if any, shall be paid to Seller. If Seller's obligation after such proration exceeds the amount of the escrow funds, Seller agrees to pay such excess promptly upon demand.

23. SELLER REPRESENTATIONS: Seller's representations contained in this paragraph shall survive the Closing. Seller represents that with respect to the Real Estate Seller has no knowledge of nor has Seller received any written notice from any association or governmental entity regarding:

a) zoning, building, fire or health code violations that have not been corrected;
b) any pending rezoning;
c) boundary line disputes;
d) any pending condemnation or Eminent Domain proceeding;
e) easements or claims of easements not shown on the public records;
f) any hazardous waste on the Real Estate;
g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or
i) any improvements to the Real Estate which are eligible for the home improvement tax exemption.

Seller further represents that:

[Initials] There *[check one]* ☐ is ☑ is not a pending or unconfirmed special assessment affecting the Real Estate by any association or governmental entity payable by Buyer after the date of Closing. The Real Estate *[check one]* ☐ is ☑ is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of Seller after the year in which the Closing occurs. All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 23, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

24. BUSINESS DAYS/HOURS: Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

25. FACSIMILE OR DIGITAL SIGNATURES: Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF ("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

26. DIRECTION TO ESCROWEE: In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon an entry of an order by a court of competent jurisdiction."

In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee may elect to proceed as follows:

a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. **If any Party objects in writing** to the intended disbursement of Earnest Money then Earnest Money shall be held until receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional costs and fees incurred in filing the Interpleader action.

27. NOTICE: Except as provided in Paragraph 32 c) 2) regarding the manner of service for "kick-out" Notices, all Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

a) By personal delivery; or

b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c) By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or

e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

28. PERFORMANCE: Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity and the prevailing party in litigation shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

29. CHOICE OF LAW AND GOOD FAITH: All terms and provisions of this Contract including but not limited to the Attorney Review and Professional Inspection paragraphs shall be governed by the laws of the State of Illinois and are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

30. OTHER PROVISIONS: This Contract is also subject to those OPTIONAL PROVISIONS initialed by the Parties and the following additional attachments, if any: ____

____.

OPTIONAL PROVISIONS (Applicable ONLY if initialed by all Parties)

[Initials] [ ] [ ] [ ] [ ] **31. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to ______________________________(Licensee) acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent with regard to the transaction referred to in this Contract.

[ ] [ ] [ ] [ ] **32. SALE OF BUYER'S REAL ESTATE:**

a) REPRESENTATIONS ABOUT BUYER'S REAL ESTATE: Buyer represents to Seller as follows:

1) Buyer owns real estate (hereinafter referred to as "Buyer's real estate") with the address of:

____.
Address City State Zip

2) Buyer *[check one]* ☐ has ☐ has not entered into a contract to sell Buyer's real estate.
If Buyer has entered into a contract to sell Buyer's real estate, that contract:
a) *[check one]* ☐ is ☐ is not subject to a mortgage contingency.
b) *[check one]* ☐ is ☐ is not subject to a real estate sale contingency.
c) *[check one]* ☐ is ☐ is not subject to a real estate closing contingency.

3) Buyer *[check one]* ☐ has ☐ has not listed Buyer's real estate for sale with a licensed real estate broker and in a local multiple listing service.

4) If Buyer's real estate is not listed for sale with a licensed real estate broker and in a local multiple listing service, Buyer *[check one]*:

Buyer Initial CY 02/19/16 *Buyer Initial* ZY 02/19/16 *Seller Initial* HC *Seller Initial* DC

a) ☐ Shall list real estate for sale with a licensed real estate broker who will place it in a local multiple listing service within five (5) Business Days after Date of Acceptance.
[For information only] Broker:_____
Broker's Address:_____ Phone:_____

b) ☐ Does not intend to list said real estate for sale.

b) CONTINGENCIES BASED UPON SALE AND/OR CLOSING OF REAL ESTATE:

1) This Contract is contingent upon Buyer having entered into a contract for the sale of Buyer's real estate that is in full force and effect as of_____. Such contract should provide for a closing date not later than the Closing Date set forth in this Contract. **If Notice is served on or before the date set forth in this subparagraph that Buyer has not procured a contract for the sale of Buyer's real estate, this Contract shall be null and void. If Notice that Buyer has not procured a contract for the sale of Buyer's real estate is not served on or before the close of business on the date set forth in this subparagraph, Buyer shall be deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.** (If this paragraph is used, then the following paragraph **must** be completed.)

2) In the event Buyer has entered into a contract for the sale of Buyer's real estate as set forth in Paragraph 32 b) 1) and that contract is in full force and effect, or has entered into a contract for the sale of Buyer's real estate prior to the execution of this Contract, this Contract is contingent upon Buyer closing the sale of Buyer's real estate on or before_____. **If Notice that Buyer has not closed the sale of Buyer's real estate is served before the close of business on the next Business Day after the date set forth in the preceding sentence, this Contract shall be null and void. If Notice is not served as described in the preceding sentence, Buyer shall have deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.**

3) If the contract for the sale of Buyer's real estate is terminated for any reason after the date set forth in Paragraph 32 b) 1) (or after the date of this Contract if no date is set forth in Paragraph 32 b) 1)), Buyer shall, within three (3) Business Days of such termination, notify Seller of said termination. **Unless Buyer, as part of said Notice, waives all contingencies in Paragraph 32 and complies with Paragraph 32 d), this Contract shall be null and void as of the date of Notice. If Notice as required by this subparagraph is not served within the time specified, Buyer shall be in default under the terms of this Contract.**

c) SELLER'S RIGHT TO CONTINUE TO OFFER REAL ESTATE FOR SALE: During the time of this contingency, Seller has the right to continue to show the Real Estate and offer it for sale subject to the following:

1) If Seller accepts another bona fide offer to purchase the Real Estate while contingencies expressed in Paragraph 32 b) are in effect, Seller shall notify Buyer in writing of same. Buyer shall then have_____ hours after Seller gives such Notice to waive the contingencies set forth in Paragraph 32 b), subject to Paragraph 32 d).

2) Seller's Notice to Buyer (commonly referred to as a 'kick-out' Notice) shall be in writing and shall be served on Buyer, not Buyer's attorney or Buyer's real estate agent. Courtesy copies of such 'kick-out' Notice should be sent to Buyer's attorney and Buyer's real estate agent, if known. Failure to provide such courtesy copies shall not render Notice invalid. Notice to any one of a multiple-person Buyer shall be sufficient Notice to all Buyers. Notice for the purpose of this subparagraph only shall be served upon Buyer in the following manner:
   a) By personal delivery effective at the time and date of personal delivery; or
   b) By mailing to the address recited herein for Buyer by regular mail and by certified mail. Notice shall be effective at 10:00 A.M. on the morning of the second day following deposit of Notice in the U.S. Mail; or

c) By commercial delivery overnight (e.g., FedEx). Notice shall be effective upon delivery or at 4:00 P.M. Chicago time on the next delivery day following deposit with the overnight delivery company, whichever first occurs.

3) If Buyer complies with the provisions of Paragraph 32 d) then this Contract shall remain in full force and effect.

4) If the contingencies set forth in Paragraph 32 b) are NOT waived in writing, within said time period by Buyer, this Contract shall be null and void.

5) Except as provided in Paragraph 32 c) 2) above, all Notices shall be made in the manner provided by Paragraph 27 of this Contract.

6) Buyer waives any ethical objection to the delivery of Notice under this paragraph by Seller's attorney or representative.

d) **WAIVER OF PARAGRAPH 32 CONTINGENCIES:** Buyer shall be deemed to have waived the contingencies in Paragraph 32 b) when Buyer has delivered written waiver and deposited with the Escrowee additional earnest money in the amount of $_____ in the form of a cashier's or certified check within the time specified. **If Buyer fails to deposit the additional earnest money within the time specified, the waiver shall be deemed ineffective and this Contract shall be null and void.**

e) **BUYER COOPERATION REQUIRED:** Buyer authorizes Seller or Seller's agent to verify representations contained in Paragraph 32 at any time, and Buyer agrees to cooperate in providing relevant information.

[ ][ ][ ][ ] **33. CANCELLATION OF PRIOR REAL ESTATE CONTRACT:** In the event either Party has entered into a prior real estate contract, this Contract shall be subject to written cancellation of the prior contract on or before _____. **In the event the prior contract is not cancelled within the time specified, this Contract shall be null and void. Seller's notice to the purchaser under the prior contract should not be served until after Attorney Review and Professional Inspections provisions of this Contract have expired, been satisfied or waived.**

[ ][ ][ ][ ] **34. HOME WARRANTY:** Seller shall provide at no expense to Buyer a Home Warranty at a cost of $_____. Evidence of a fully pre-paid policy shall be delivered at Closing.

DS DS

[ ][ ][ ][ ] **35. CREDIT AT CLOSING:** Provided Buyer's lender permits such credit to show on the HUD-1 Settlement Statement or Closing Disclosure, **and if not, such lesser amount as the lender permits,** Seller agrees to credit $ 4,000 to Buyer at Closing to be applied to prepaid expenses, closing costs or both.

[ ][ ][ ][ ] **36. TRANSACTIONS NOT CONTINGENT ON FINANCING: IF EITHER OF THE FOLLOWING ALTERNATIVE OPTIONS IS SELECTED, THE PROVISIONS OF THE MORTGAGE CONTINGENCY PARAGRAPH 8 SHALL NOT APPLY [*CHOOSE ONLY ONE*]:**

a) [ ][ ][ ][ ] **Transaction With No Mortgage (All Cash):** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at closing, shall constitute a material breach of this Contract by Buyer. The Parties shall share the title company escrow closing fee equally. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

b) [ ] [ ] [ ] [ ] **Transaction, Mortgage Allowed:** If this selection is made, Buyer will pay at closing, in the form of "Good Funds" the difference (plus or minus prorations) between the Purchase Price and the amount of the Earnest Money deposited pursuant to Paragraph 4 above. Buyer represents to Seller, as of the Date of Offer, that Buyer has sufficient funds available to satisfy the provisions of this paragraph. Buyer agrees to verify the above representation upon the reasonable request of Seller and to authorize the disclosure of such financial information to Seller, Seller's attorney or Seller's broker that may be reasonably necessary to prove the availability of sufficient funds to close. Notwithstanding such representation, Seller agrees to reasonably and promptly cooperate with Buyer so that Buyer may apply for and obtain a mortgage loan or loans including but not limited to providing access to the Real Estate to satisfy Buyer's obligations to pay the balance due (plus or minus prorations) to close this transaction. Such cooperation shall include the performance in a timely manner of all of Seller's pre-closing obligations under this Contract. **This Contract shall NOT be contingent upon Buyer obtaining financing.** Buyer understands and agrees that, so long as Seller has fully complied with Seller's obligations under this Contract, any act or omission outside of the control of Seller, whether intentional or not, that prevents Buyer from satisfying the balance due from Buyer at Closing shall constitute a material breach of this Contract by Buyer. Buyer shall pay the title company escrow closing fee. **Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate.**

[ ] [ ] [ ] [ ] **37. VA OR FHA FINANCING:** If Buyer is seeking VA or FHA financing, **required FHA or VA amendments and disclosures shall be attached to this Contract.** If VA, the Funding Fee, or if FHA, the Mortgage Insurance Premium (MIP) shall be paid by Buyer and *[check one]* ☐ shall ☐ shall not be added to the mortgage loan amount.

[ ] [ ] [ ] [ ] **38. WELL OR SANITARY SYSTEM INSPECTIONS:** Seller shall obtain at Seller's expense a well water test stating that the well delivers not less than five (5) gallons of water per minute and including a bacteria and nitrate test and/or a septic report from the applicable County Health Department, a Licensed Environmental Health Practitioner, or a licensed well and septic inspector, each dated not more than ninety (90) days prior to Closing, stating that the well and water supply and the private sanitary system are in operating condition with no defects noted. Seller shall remedy any defect or deficiency disclosed by said report(s) prior to Closing, provided that if the cost of remedying a defect or deficiency and the cost of landscaping together exceed $3,000.00, and if the Parties cannot reach agreement regarding payment of such additional cost, this Contract may be terminated by either Party. Additional testing recommended by the report shall be obtained at the Seller's expense. If the report recommends additional testing after Closing, the Parties shall have the option of establishing an escrow with a mutual cost allocation for necessary repairs or replacements, or either Party may terminate this Contract prior to Closing. Seller shall deliver a copy of such evaluation(s) to Buyer not less than ten (10) Business Days prior to Closing.

[ ] [ ] [ ] [ ] **39. WOOD DESTROYING INFESTATION:** Notwithstanding the provisions of Paragraph 12, within ten (10) Business Days after the Date of Acceptance, Seller at Seller's expense shall deliver to Buyer a written report, dated not more than six (6) months prior to the Date of Closing, by a licensed inspector certified by the appropriate state regulatory authority in the subcategory of termites, stating that there is no visible evidence of active infestation by termites or other wood destroying insects. Unless otherwise agreed between the Parties, if the report discloses evidence of active infestation or structural damage, Buyer has the option within five (5) Business Days of receipt of the report to proceed with the purchase or to declare this Contract null and void.

[ ] [ ] [ ] [ ] **40. POST CLOSING POSSESSION:** Possession shall be delivered no later than 11:59 P.M. on the date that is _____ days after the date of Closing ("the Possession Date"). Seller shall be responsible for all utilities, contents and liability insurance, and home maintenance expenses until delivery of possession. Seller shall

deposit in escrow at Closing with _____, *[check one]* ☐ one percent (1%) of the Purchase Price or ☐ the sum of $_____ to be paid by Escrowee as follows:

a) The sum of $_____ per day for use and occupancy from and including the day after Closing to and including the day of delivery of Possession, if on or before the Possession Date;

b) The amount per day equal to three (3) times the daily amount set forth herein shall be paid for each day after the Possession Date specified in this paragraph that Seller remains in possession of the Real Estate; and

c) The balance, if any, to Seller after delivery of Possession and provided that the terms of Paragraph 21 have been satisfied. Seller's liability under this paragraph shall not be limited to the amount of the possession escrow deposit referred to above. Nothing herein shall be deemed to create a Landlord/Tenant relationship between the Parties.

☐☐☐☐ **41. "AS IS" CONDITION:** This Contract is for the sale and purchase of the Real Estate in its "As Is" condition as of the Date of Offer. Buyer acknowledges that no representations, warranties or guarantees with respect to the condition of the Real Estate have been made by Seller or Seller's Designated Agent other than those known defects, if any, disclosed by Seller. Buyer may conduct an inspection at Buyer's expense. In that event, Seller shall make the Real Estate available to Buyer's inspector at reasonable times. Buyer shall indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of negligence of Buyer or any person performing any inspection. **In the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer so notifies Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Buyer's notice SHALL NOT include a copy of the inspection report, and Buyer shall not be obligated to send the inspection report to Seller absent Seller's written request for same. Failure of Buyer to notify Seller or to conduct said inspection operates as a waiver of Buyer's right to terminate this Contract under this paragraph and this Contract shall remain in full force and effect.** Buyer acknowledges that the provisions of Paragraph 12 and the warranty provisions of Paragraph 5 do not apply to this Contract.

☐☐☐☐ **42. SPECIFIED PARTY APPROVAL:** This Contract is contingent upon the approval of the Real Estate by _____ Buyer's Specified Party, within five (5) Business Days after the Date of Acceptance. In the event Buyer's Specified Party does not approve of the Real Estate and Notice is given to Seller within the time specified, this Contract shall be null and void. If Notice is not served within the time specified, this provision shall be deemed waived by the Parties and this Contract shall remain in full force and effect.

☐☐☐☐ **43. INTEREST BEARING ACCOUNT:** Earnest money (with a completed W-9 and other required forms), shall be held in a federally insured interest bearing account at a financial institution designated by Escrowee. All interest earned on the earnest money shall accrue to the benefit of and be paid to Buyer. **Buyer shall be responsible for any administrative fee (not to exceed $100) charged for setting up the account.** In anticipation of Closing, the Parties direct Escrowee to close the account no sooner than ten (10) Business Days prior to the anticipated Closing date.

☐☐☐☐ **44. MISCELLANEOUS PROVISIONS:** Buyer's and Seller's obligations are contingent upon the Parties entering into a separate written agreement consistent with the terms and conditions set forth herein, and with such additional terms as either Party may deem necessary, providing for one or more of the following *[check applicable boxes]*:

☐ Articles of Agreement for Deed or Purchase Money Mortgage	☐ Assumption of Seller's Mortgage	☐ Commercial/Investment
☐ Short Sale	☐ Cooperative Apartment	☐ New Construction
	☐ Tax-Deferred Exchange	☐ Vacant Land

THIS DOCUMENT WILL BECOME A LEGALLY BINDING CONTRACT WHEN SIGNED BY ALL PARTIES AND DELIVERED TO THE PARTIES OR THEIR AGENTS.

THE PARTIES REPRESENT THAT THE TEXT OF THIS COPYRIGHTED FORM HAS NOT BEEN ALTERED AND IS IDENTICAL TO THE OFFICIAL MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1.

02/19/2016		DATE OF ACCEPTANCE	
Date of Offer			2/20/2016
Cahontas Vincent (dotloop verified 02/19/16 10:06PM EST ODDU-US13-CRDP-H74D)		Harry Channon	
Buyer Signature		Seller Signature (DocuSigned by: ...)	2/20/2016
Elizabeth Vincent (dotloop verified 02/19/16 10:03PM EST)		Dawn Channon	
Buyer Signature		Seller Signature (...A170FE18B447E...)	
Cahontas Vincent and Elizabeth Vincent		Harry & Dawn Channon	
Print Buyer(s) Name(s) *[Required]*		Print Seller(s) Name(s) *[Required]*	
		5109 N Kenmore 1E	
Address		Address	
		Chicago IL 60640	
City State Zip		City State Zip	
cl-vincent@hotmail.com, eaheaton13@gmail.com			
Phone E-mail		Phone E-mail	

FOR INFORMATION ONLY

Coldwell Banker Honig-Bell		477.010143	Conlon: A Real Estate Company		
Buyer's Brokerage	MLS #	State License #	Seller's Brokerage	MLS #	State License #
14851 Founders Crossing, Homer Glen, IL 60491					
Address	City	Zip	Address	City	Zip
Greg Mucha		471.002365	Andrew Perkins		114693
Buyer's Designated Agent	MLS #	State License #	Seller's Designated Agent	MLS #	State License #
708-301-4700			3127337201		
Phone		Fax	Phone		Fax
Greg@GregMucha.com			andrew.perkins@conlonrealestate.com		
E-mail			E-mail		
Tracy Duval		traceyduval@newellduval.com			
Buyer's Attorney		E-mail	Seller's Attorney		E-mail
Address	City	State Zip	Address	City	State Zip
Phone		Fax	Phone		Fax
Mortgage Company		Phone	Homeowner's/Condo Association (if any)		Phone
Matt Paradis					
Loan Officer		Phone/Fax	Management Co./Other Contact		Phone
MParadis@guaranteedrate.com					
Loan Officer E-mail			Management Co./Other Contact E-mail		

Illinois Real Estate License Law requires all offers be presented in a timely manner; Buyer requests verification that this offer was presented.

Seller rejection: This offer was presented to Seller on _____ at _____ ☐ A.M./☐ P.M. and rejected on _____ at _____ ☐ A.M./☐ P.M. ☐☐ *[Seller Initials]*

EXHIBIT C

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 765. Property
Condominiums
Act 605. Condominium Property Act (Refs & Annos)

765 ILCS 605/22.1
Formerly cited as IL ST CH 30 ¶ 322.1

605/22.1. Resales; disclosures; fees

Currentness

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

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

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

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

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

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

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

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

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

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

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

(c) Within 15 days of the recording of a mortgage or trust deed against a unit ownership given by the owner of that unit to secure a debt, the owner shall inform the Board of Managers of the unit owner's association of the identity of the lender together with a mailing address at which the lender can receive notices from the association. If a unit owner fails or refuses to inform the Board as required under subsection (c) then that unit owner shall be liable to the association for all costs, expenses and reasonable attorneys fees and such other damages, if any, incurred by the association as a result of such failure or refusal.

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.

Credits

Laws 1963, p. 1120, § 22.1, added by P.A. 81-897, § 1, eff. Jan. 1, 1980. Amended by P.A. 83-1271, § 1, eff. Aug. 30, 1984; P.A. 87-692, § 1, eff. Jan. 1, 1992.

Formerly Ill.Rev.Stat.1991, ch. 30, ¶ 322.1.

765 I.L.C.S. 605/22.1, IL ST CH 765 § 605/22.1
Current through P.A. 100-1190 of the 2018 Reg. Sess., and P.A. 101-1 of the 2019 Reg. Sess.

End of Document

EXHIBIT D

WESTWARD
PROPERTY MANAGEMENT

Escrow Document Request Form

COVER SHEET

Date: 3/16/16

To: Westward Management

Email: transitions@westwardmanagement.com

From: Name:
HARRY CHANNON

Address:
5109 N. KENMORE AVE, 1E

Phone:
708.217.1838

Fax: 501-5390
(847) [redacted]

Email:
hchannon@charlesfranklinlaw.com

PLEASE NOTE:

If this is a request to obtain a **LOAN** for a **PURCHASE/REFINANCE TRANSACTION**, please fax/email: Cover Sheet, Document Request Form and Credit Card Authorization Form.

If this request is to obtain a **PAID ASSESSMENT LETTER** for a **SALE/TRANSFER of OWNERSHIP**, please fax/email: Cover Sheet, Document Request Form, Credit Authorization Form, Notice of Intent to Sell, Homeowner Information Sheet and Governing Documents Rider (entire package).

Also, please provide estimated closing date: 4/18/16

WESTWARD
PROPERTY MANAGEMENT

DOCUMENT REQUEST FORM

Your request will be processed within five (5) business days of receipt of this request AND payment of fees.

Association Name: Kenmore Club

Property Address: 5109 N. Kenmore Ave, 1E

Seller/Current Owner Name: Harry Channon + Dawn Channon

(X) SALE ( ) REFINANCE

PLEASE CHECK THE APPROPRIATE BOX BELOW FOR ITEMS THAT YOU REQUIRE. PLEASE NOTE THAT AN ACCOUNT STATEMENT FOR THE UNIT IS AUTOMATICALLY INCLUDED WITH YOUR REQUEST AND DOES NOT NEED TO BE REQUESTED SEPARATELY.

We Require This Item:	Description	Amount Due
[✓]	Paid Assessment Letter	150.00
[ ]	Declaration	30.00
[ ]	Bylaws	20.00
[ ]	Articles of Incorporation	10.00
[ ]	Rules & Regulations	15.00
[✓]	Year to Date Income Statement & Budget	20.00
[ ]	**Minutes (per quarter)	5.00
[✓]	Condo Questionnaire/Disclosure Statement/22.1 (each)	75.00
[✓]	Insurance Contact Information	0.00
[ ]	Super Rush (turnaround of one business day)	200.00
[ ]	Rush (turnaround of 3 business days)	150.00

**Please indicate how many sets of minutes you require here: 0

WESTWARD
PROPERTY MANAGEMENT

CREDIT CARD AUTHORIZATION FORM

1. Complete this form and send WITH your request for information.
2. A signature of the credit card holder is required on the line where indicated.

Completion of the Credit Card Authorization Form helps us to protect you, our valued clients, from credit card fraud. All information entered on this form will be kept strictly confidential by Westward Property Management, Inc. We do not share your information with any third party vendor.

Fax all required documents to: 773-897-0690
OR
Email to: transitions@westwardmanagement.com

I, HARRY CHANNON hereby authorize Westward Property Management to charge my credit card account in the amount of $ 245.00

Type of Credit Card (circle one):

(VISA) MASTERCARD AMERICAN EXPRESS DINER'S CLUB DISCOVER

Card Number [4] [0] [0] [3]~[4] [4] [7] [8]~[4] [4] [0] [9]~[9] [2] [3] [6]

Expiration Date: [1] [0]~[1] [8] CVC Code (last 3 digits on the back): [0] [0] [2]

Signature: HCh

Printed Name: HARRY CHANNON

Credit Card Billing Address: 5109 N. KENMORE AVE 1E

City: Chicago,

State: IL

Zip: 60640

Telephone: 708-217-1838

WESTWARD
PROPERTY MANAGEMENT

NOTICE OF INTENT TO SELL

Homeowner Association Name: Kenmore Club

C/O Westward Management
4311 N Ravenswood Ave #201
Chicago, IL 60613
Phone: (800) 901-5431

Attention: Property Manager

In compliance with the established procedures of the above referenced homeowner association, the undersigned owner(s) of unit number 5109, 1E hereby serve notice that I (we) have offered said unit for (sale)/lease to: Cahoutas + Elizabeth Vincent

Enclosed please find:

1. One copy of the Notice of Intent to Sell Form filled out and signed by the seller;
2. One copy of the sales contract, signed by both seller and purchaser;
3. One copy of the Incoming Homeowner Information Sheet filled out by the purchaser;
4. Governing Documents Rider to be signed by the purchaser.
5. Anticipated Closing Date: 4/18/16
6. Deposit (if applicable) made payable to the homeowner association as per Rules and Regulation. All payments must be made by money order or cashier check. All payments made otherwise will be returned. For information on the moving deposits please contact your Property Manager.

Incomplete packets will be returned to the seller or their representative. A Paid Assessment Letter will not be issued without the complete packet (all applicable forms, deposits, and fees).

Although State law allows thirty (30) days for the processing of this information, normal processing occurs within 5 business days once the COMPLETED PACKET has been received. Services provided within 72 hours are considered RUSH and are billed at a premium rate of $150.00. Any documents requested for the NEXT BUSINESS DAY will be billed the SUPER RUSH rate of an additional $200.00. If the association has the RIGHT OF FIRST REFUSAL, the processing of the documents are dependent on the Board of Directors and priority and express options are not available.

Owner Signature: [signature]
Print Name: HAley CHANNON
Date: 3-16-16

WESTWARD

GOVERNING DOCUMENTS FORM

Veterans Club Association

By my signature below, I attest that I have both received and read the Rules & Regulations [if applicable], and the Declaration/Bylaws of the Association. I have understood them and I will fully comply with these rules.

A community can be thought of as a small town. The Board President is the equivalent of the Mayor, the Association is equivalent of the law enforcement agency, and the Assessments can be thought of as taxes to pay for the maintenance, repairs and improvements in the community.

In a well-run community, it is necessary to have Rules and Regulations to protect the quality of life of the residents. Without clear guidelines for the behavior of its residents, a community is likely to deteriorate in safety, appearance and property value.

The Rules and Regulations have been designed to insure that your community will continue to be safe, beautiful and enjoyable place to live as well as a solid investment for each property owner.

Elizabeth Vincent & CaHontas Vincent
Owner/Tenant Name

Elizabeth Vincent
Owner/Tenant Signature

3.21.2016
Date

April 19, 2016
Prospective Move-In Date

Westward Management, 4201 N. Ravenswood Ave, Suite J, Chicago, IL 60613

MAR/21/2016/MON 06:38 AM FAX No. P. 003

FORM WM HIF 125013

WESTWARD

HOMEOWNER INFORMATION FORM

(PLEASE PRINT)

Community Name: Kenmare Club				Unit Number: 1E
OWNER INFORMATION				
Vincent	Elizabeth	A	Mr. ☐ Mrs. ☑ Ms. ☐	☑ Yes ☐ No
Vincent	CaHontas	L	Mr. ☐ Mrs. ☑ Ms. ☐	
N/A			708.829.7744	708.829.7744
			X	X
eaheaton13@gmail.com			cl-vincent@hotmail.com	
TENANT INFORMATION				
N/A				
PET INFORMATION				
N/A				
VEHICLE INFORMATION				
N/A				
INSURANCE INFORMATION				
MVP Insurance Agency	Grant Thompson		708-460-6183	
118122959	April 18, 2016		4/18/2017	
EMERGENCY				
Marybeth Kaczmarek	Mother		708.906.2687	708.906.2687
Jeff Heaton	Brother		708.508.3746	—

Please return to:
Westward Management Inc.
[illegible]
Chicago, IL [illegible]
[illegible]

EXHIBIT E

CONDOMINIUM/TOWNHOUSE DISCLOSURE STATEMENT

The following statements are provided by the Board of Managers of the Kenmore Club Condominium Association as required by 765 ILCS 605/22.1 (Illinois Condominium Act), a copy of which is attached hereto.

1. Governing documents are available in real time to all homeowners via Westward Management's online portal. Pursuant to statue, a seller must forward these documents to the perspective purchaser.

2. The monthly assessment for Unit 5109-1E is $ 253.86 . As of the date of this disclosure and through the end of the current month, the Association is owed and asserts a lien on the subject unit for any unpaid common expense assessments and related charges. Any amount due will be noted in the Paid Assessment Letter. The Association has no other liens on the unit in question.

3. Other than as set forth in the current year's budget, the Association's Board of Managers has not authorized any capital expenditures in the current fiscal year, and the Board has not authorized any capital expenditures in the next two succeeding fiscal years. However, the Association's building was first constructed in 2002 , and significant capital expenditures for maintenance, repair, restoration and replacement of deteriorated common element facilities may be required in the coming years. Whether any capital expenditures will be made within the next three years is unknown at this time, as is the amount of any such capital expenditures.

4. A) Amount of reserve for replacement fund: $ 23,004.80

   B) A statement for such fund earmarked for any specified project by the Board of Managers.
   None

5. See statement of financial condition for fiscal year 2016.

6. There are no pending judgments against the Association. From time to time, the Association is a defendant in mortgage foreclosure lawsuits against unit owners and or a plaintiff in assessment collection lawsuits against unit owners. The Association is not a party to any other lawsuits.

7. A certificate evidencing all insurance maintained by the Association on the common elements and related appurtenances may be obtained by contacting IRC at 847.498.6600.

8. The Association does not inspect individual units and takes no responsibility for improvements or alterations made by individual unit owners within individual units or to limited common elements. The Association has no knowledge or any improvements or alterations made to the subject unit (or to the limited common elements that serve that unit) that are not in compliance with the Association's Declaration and Rules.

Kenmore Club — NAME OF THE ASSOCIATION

Alex Wiseman — NAME OF AGENT

4311 N. Ravenswood, Ste. 201, Chicago, IL 60613 — ADDRESS OF AGENT

3/31/2016 — DATE

alex Wis — SIGNATURE OF AGENT

EXHIBIT F

Harry and Dawn Channon
3626 North Damen Ave. #1
Chicago, IL 60618

July, 28, 2017

Via Certified Mail, Return Receipt Requested
Westward Management, Inc.
4311 N. Ravenswood Ave., Suite 201
Chicago, IL 60613
Attn: Gwen Kaminskas

RE: **$245.00 charge by Westward Management, Inc. for processing and copying in connection with the sale of Condominium Unit # 1E 5109 N. Kenmore Ave., Chicago, Illinois 60640- Harry and Dawn Channon to Elizabeth & Cahontas Vincent, as Purchasers**

Dear Ms. Kaminskas:

On April 18, 2016, my wife and I closed on the sale of condominium unit #1E at 5109 N. Kenmore Ave, Chicago, Illinois, 60640 which is part of the Kenmore Club Condominium Association. Prior to the sale, I submitted a preprinted form titled Document Request Form to Westward Management, Inc., for me to obtain the documents and information that a non-developer seller is required to provide a prospective purchaser upon the resale of a condominium unit pursuant to Section 22.1 of the Illinois Condominium Property Act (760 ILCS 605/22.1).

We were charged $245 for the information and documents that we needed in order to consummate the closing of our condominium unit. I am attaching a copy of the preprinted Document Request Form that was submitted.

Please consider this letter as my **demand, that within fourteen (14) days, you provide me with the following information and/or documentation:**

(a) What Section 22.1 documents and/or information were provided as part of Document Request and the direct out of pocket cost to Westward for providing those documents and/or information and the back-up supporting documentation for Westward's out of pocket costs.
(b) Please also provide the basis for how Westword determined the amount we would be charged for those documents.

(c) If different from (a) above, the back-up supporting documentation for the $150.00 charge for the "Paid Assessment Letter" and/or the basis indicating how Westword determined that I should be charged $150.00 for the Paid Assessment Letter.

I thank you in advance for your courtesy and prompt attention to this letter.

Very Truly Yours,

Harry O. Channon

Enclosure

WESTWARD
PROPERTY MANAGEMENT

DOCUMENT REQUEST FORM

Your request will be processed within five (5) business days of receipt of this request AND payment of fees.

Association Name: Kenmore Club

Property Address: 5109 N. Kenmore Ave, 1E

Seller/Current Owner Name: Harry Channon + Dawn Channon

(X) SALE ( ) REFINANCE

PLEASE CHECK THE APPROPRIATE BOX BELOW FOR ITEMS THAT YOU REQUIRE. PLEASE NOTE THAT AN ACCOUNT STATEMENT FOR THE UNIT IS AUTOMATICALLY INCLUDED WITH YOUR REQUEST AND DOES NOT NEED TO BE REQUESTED SEPARATELY.

We Require This Item:	Description	Amount Due
[✓]	Paid Assessment Letter	150.00
[ ]	Declaration	30.00
[ ]	Bylaws	20.00
[ ]	Articles of Incorporation	10.00
[ ]	Rules & Regulations	15.00
[✓]	Year to Date Income Statement & Budget	20.00
[ ]	**Minutes (per quarter)	5.00
[✓]	Condo Questionnaire/Disclosure Statement/22.1 (each)	75.00
[✓]	Insurance Contact Information	0.00
[ ]	Super Rush (turnaround of one business day)	200.00
[ ]	Rush (turnaround of 3 business days)	150.00

**Please indicate how many sets of minutes you require here: 0

EXHIBIT G

June 21, 1972
HB 3779

3779, Senator Graham. Senator Graham.

SENATOR GRAHAM:

Yes, I am ready. Mr. President and members of the Senate, House Bill 3779, introduced by Representative Regner, had quite a bit of publicity and quite a bit of acceptance and is considered the truth-in-selling bill of condominium property. When it came over to the Senate, I talked to Senator Neistein and there was some discussion as to the homebuilders' version of this particular bill. We adopted a rather comprehensive amendment that satisfies them. And in effect what this does, this bill will indicate that those...in many cases the elderly people who are purchasing condominiums with the intent of spending the rest of their life in the condominiums that they have offered to them by the condominium owners a comprehensive outline of operation of the condominium unit, operating budget spelling out what maintenance fees are and why they are, a floor plan of the apartment purchase so they know exactly what they're getting into, I think this is an admirable piece of legislation. I ask for a favorable roll call.

PRESIDENT:

Is there any discussion? Secretary will call the roll.

PRESIDING SECRETARY: (Mr. Fernandes)

Arrington, Baltz, Berning, Bidwill, Bruce, Carpentier, Carroll, Cherry, Chew, Clarke, Collins, Coulson, Course, Davidson, Donnewald, Dougherty, Egan, Fawell, Gilbert, Graham, Groen, Hall, Harris, Horsley, Hynes, Johns, Knuepfer, Knuppel, Kosinski, Kusibab, Latherow, Laughlin, Lyons, McBroom, McCarthy, Merritt, Mitchler, Mohr, Neistein, Newhouse, Nihill, O'Brien, Ozinga, Palmer, Partee, Rock, Romano, Rosander, Saperstein, Savickas, Smith, Soper, Sours, Swinarski, Vadalabene, Walker, Weaver.

PRESIDENT:

Donnewald, aye. Hynes, aye. On that question, the yeas are

6-21-72

PRESIDENT:

The Senate will come to order. Prayer by the Reverend Joseph Ferriera. Pastor of the Zenobia Baptist Church at Pawnee. Pastor Ferriera.

PASTOR FERRIERA:

(Prayer)

PRESIDENT:

Reading of the Journal. Moved by Senator Kosinski that the reading of the Journal be dispensed with. All in favor signify by saying aye. Contrary minded. Motion prevails. Committee reports.

SECRETARY:

Senator Donnewald, Chairman of Assignment of Bills, assigns the following to committee: Appropriations, House Bill 4133 and 4685. Revenue, House Bills 3801, 4408 and 4621. Senator Lyons, Chairman of the Appropriations Division reports out the following bills: House Bills No. 4211, 4215, 4294, 4374, 4468 and 4463 with the recommendation Do Pass. House Bills 4102, 4159, 4210, 4293, 4452 and 4457 with the recommendation Do Pass as Amended.

PRESIDENT:

Messages from the House.

SECRETARY:

Message from the House by Mr. Selcke, Clerk.

Mr. President, I am directed to inform the Senate that the House of Representatives has passed bills of the following titles and the passage of which I am instructed to ask the concurrence of the Senate, to wit: and there's about ten bills.

PRESIDENT:

All right. Further messages.

SECRETARY:

Message from the House by Mr. Selcke, Clerk.

Mr. President, I am directed to inform the Senate that the House of Representatives has adopted the following preamble and joint resolution and the adoption of which I am instructed

EXHIBIT H

the Order on page 2, the Order of Special Order of Business, Subject Matter - State and Local Government Administration. House Bill on Third Reading, House Bill 1666. Read the Bill. Out of the record. House Bill 1862. Read the Bill, Mr. Clerk."

Clerk O'Brien: "House Bill 1862, a Bill for an Act to provide for the uniform regulation of condominiums. Third Reading of the Bill."

Speaker Yourell: "Speaker Madigan."

Madigan: "Mr. Speaker, Ladies and Gentlemen of the House, I will speak to this Bill and then Mr. Vinson will also speak to the Bill in support of its passage. This Bill would provide for a uniform system of condominium regulation in Illinois. The essence of the Bill is to provide that regulation of condominiums statewide shall be uniform at the same time that we provide the ultimate amount of consumer protection. The Bill has been drafted in cooperation with the Commission on uniform laws. It has the full support of the Illinois Board of Realtors, the Illinois State Bar Association and the Chicago Bar Association. I think that given the breadth and depth of support for this legislation, that we have come forward with a Bill which would adequately answer the problems that have developed in the area of condominium regulation over these past years and I would recommend an 'aye' vote."

Speaker Yourell: "Is there discussion? The Gentleman from DeWitt, Representative Vinson."

Vinson: "Thank you, Mr. Speaker. I, too, would request an 'aye' vote on House Bill 1862 which does, as the Speaker said, rewrite the Illinois Condominium Law. It affects the creation, management, and protection of purchasers' rights in the condominium statute. The Bill is supported by the Illinois Realtors' Association. It deals in a very

balanced fashion with the critically important preemption question. Essentially, the core of how it deals with the preemption question is that, in essence, new condominium units will be exclusively regulated by this statute. However, existing condominium units which have been regulated in the past by local ordinance will continue to be regulated by those local ordinances. There are some exceptions in the exclusive preemption, the exclusive regulation by the state on this field and they are important exceptions which create the appropriate balance between state and local interests. The home rule unit may regulate in the effect of additional disclosure for condominium conversion. As everyone knows conversions are a major issue in certain portions of the state, and for that purpose, for that reason, home rules...home rule units will be permitted to regulate in that area. Escrow accounts for the purpose of protecting the purchasers in regard to common elements are also left to the home rule units. Existing codes will not apply to new units. I think finally, I would make the point that there is increased consumer protection under this...under this Bill in the area of warranties, in the area of protecting the purchaser in the right to cancel a contract, in the disclosure on conversions and in the termination of sweetheart contracts. With those introductory comments, I would ask for your support for this Bill. I believe it is a very balanced Bill, and I believe it will stimulate construction in this field."

Speaker Yourell: "Further discussion? Minority Leader Representative Daniels."

Daniels: "Mr. Speaker, Ladies and Gentlemen of the House, I join the previous two speakers in supporting this very fine Bill. It has been worked out over a number of months, and

as a matter of fact, a number of years, in very extensive review and negotiations. I think the legislation, as presented to you, contains the elements for a very fine condominium Act and condominium law in this state. I think it's progressive. I think it serves our constituency well with the consumer protection that's listed in the Bill. Upon further study, the Bill gets better and better, and I think you'll find that it's one that you'll readily accept and will be accepted by your constituency and I ask for your favorable support."

Speaker Yourell: "Representative Greiman."

Greiman: "Wonder if Mr. Vinson would yield for a question or two."

Speaker Yourell: "Gentleman indicates he'll yield."

Vinson: "For a question."

Speaker Yourell: "For a question."

Greiman: "Is there some question whether he'll yield?"

Speaker Yourell: "Yes, you...proceed."

Greiman: "Yes, there's a question?"

Speaker Yourell: "No, proceed. If you want to ask Mr. Vinson a question, proceed."

Greiman: "Oh, thank you, Sir. Okay, do I understand it that communities on conversion condominium declarations, in other words, the notice to the tenants and the public notice that a converter gives, that those communities still have a right to go beyond and add items that are not in the statute, is that correct?"

Vinson: "That is correct."

Greiman: "So that communities will be able to add on additional items. For example, the City of Chicago, just as an example, acquires or...or allows, or no, requires that a high rise condominium converter provide the information as to how much it will cost a...an owner to get into the

common elements. But, in any event, Mr...to the Bill. The purpose of the Bill is to bring uniformity to condominium development and conversion, and often I have heard them say on the floor of this House, 'Well, we need this because it's so difficult...we've a patchwork...a patchwork of...of laws, condominium laws, and we can't go from one place to another because Evanston has one law, Skokie has another, Park Ridge may have another,' and on and on and on. Well, the truth is that people who do taping of walls, electricians, carpenters, those communities have different building code requirements, and so what we are hearing is the lawyers are saying, 'We don't want to go from community to community.' Now, I think lawyers are almost as smart as people who do construction work, almost, and if the construction worker can go from community to community and look at their laws, then I bet you the lawyers could probably do it. I think this Bill is just a little short, a little short on consumer protection that I would like to see it...see. It's going to pass and I am going to try and amend it in the Senate, if it's possible, and I would...I would just commend to you, to this Body, that this could be in better shape for a condominium...for consumer...the benefit of consumers, and I would certainly...I think the Bill should be held, but I am...know that one should not fool around with the inevitable."

Speaker Yourell: "Representative Topinka, Topinka. Representative Ebbesen."

Ebbesen: "Mr. Speaker, I move the previous question."

Speaker Yourell: "Gentleman...the previous question has been moved. All in favor, say 'aye'. Opposed, 'no'. The 'ayes' have it. The previous question has been moved. Representative Vinson to close."

Vinson: "Mr. Speaker, I think we have had a thorough airing of

this issue. I would just make the one additional point, that building codes and housing codes, as long as they apply to all units of construction are not preempted by this, provide many of the...address many of the concerns that Mr. Greiman just mentioned and, in addition, there are a host of other remedies in this statute to protect the consumer in the area of warranties and his ability to cancel a contract for his protection. And for those reasons and because this is a most balanced Bill, I would ask for the passage of House Bill 1862."

Speaker Yourell: "Question is, 'Shall this Bill pass?' All those in favor will vote 'aye'. Those opposed will vote 'no'. The voting is open. To explain his vote, Representative Mautino."

Mautino: "I would like to explain my vote only if I can see Representative Vinson and maybe he could nod. I had my light on during the discussion and I'm looking for an answer. On Amendment #1 to the Bill, I believe that you implement double taxation both at the local, at the individual unit and the common property or the recreational unit. Is that still in the Bill? I'm sorry, Amendment #2. Is it still in the Bill where the taxpayer pays for their own unit and a percentage of the common recreational unit. Does that apply as well to the recreational areas, not only in condominium, but in...in, like the common elements for anywhere at all that they are paying both of them? Well, we have an interesting concept here with Amendment #2, one where the property owner not only pays their own taxation, but when they buy the property, that's what I'm asking. Just nod your head 'yes' or 'no' on the Amendment. Do they pay twice? With the common element supposedly in their taxation when they buy the unit? That's all I'm asking. Just nod 'yes' or 'no'. That is not the situation, there

EXHIBIT I

favor say 'aye', opposed 'nay', and the Motion prevails. And the House does not... moves that the House do not adopt the First Conference Committee Report on Senate Bill 310, and a Second Conference Committee is requested and will be appointed. Senate Bill 313, Slape. Out of the record. Senate Bill 434, Karpiel... or, Levin. Are you ready? Are you ready? Alright. The Gentleman from Cook, Representative Levin, on Senate Bill 434."

Levin: "Mr. Speaker, Ladies and Gentlemen of the House, I move that the House adopt the First Conference Committee Report on Senate Bill 434. This Conference Committee Report, which was adopted unanimously by the conferees, amends the Condominium Property Act to do basically four things. First of all, it clarifies various language in the Condominium Act that has been the subject of litiga... needless litigation. Secondly, it strengthens the rights of unit owners and clarifies the authority of condominium associations. Thirdly, it contains a double taxation provision. You may recall we passed House Bill 84 relating to double taxation. That Bill, unfortunately, does not cover condominiums. And fourthly, this condominium... this Report provides a mechanism for clearing up defective declarations. This proposal contains what was in a number of Bills which were considered in Committee and which, unfortunately, were just not called on the floor of the House which had been worked over at length by the Judiciary Committee. These include Senate Bills 418, 432, of course 434, 436 and 671. This package has been endorsed by the Illinois Realtors' Association, the Homebuilders', the condominium associations. It's also been reviewed and okayed by Chicago Title and Trust Company and the mortgage bankers. As somebody who does, in fact, represent condominium associations, I think the... what's included in

here are a number of reforms that are going to save money and are badly needed. I, at this point, urge the adoption of Conference Committee Report #1."

Speaker Matijevich: "A Calendar announcement."

Clerk O'Brien: "Supplemental Calendar #2 is being distributed."

Speaker Matijevich: "Representative Levin has moved the adoption that we do adopt the First Conference Committee Report on Senate Bill 434. The Gentleman from DeWitt, Representative Vinson... or, Representative Piel from Vinson's chair."

Piel: "Will the Gentleman yield?"

Speaker Matijevich: "Yes, he is... does. Proceed."

Piel: "Representative Levin, basically what the First Conference Committee Report is doing is taking the package of the five condominium Bills and putting them into the one Conference Committee. Correct?"

Levin: "That's correct. The Bills, as they were amended on the floor of the House."

Piel: "Is there anything else besides those five or six... the five Bills in question?"

Levin: "Absolutely not."

Piel: "Now, I know that the... the realtors, you know, had some questions in reference to some of the Bills. What is their position on the Conference Committee Report right now?"

Levin: "The realtors... The Illinois Realtors' Association supports the Conference Committee Report. They have endorsed, you know, the underlying Bills. In fact, I have a leaflet right here in which they expressly endorsed, you know, each of the Bills that now makes up this part of the package; 418, 432, 434, 436 and 671."

Piel: "Thank you very much."

Speaker Matijevich: "Representative Levin has moved that the House do adopt the First Conference Committee Report on Senate Bill 434. Those in favor signify by voting 'aye',

those opposed by voting 'no'. This is final passage, and this requires 60 votes. Board is open. Those in favor will signify by voting 'aye', opposed by voting 'no'. Have all voted? Have all voted who wish? Clerk will take the record. On this question, there are 107 'ayes', no 'nays', and the House does adopt the First Conference Committee Report on Senate Bill 434. Representative McPike. Representative McPike."

McPike: "Change the Speaker to 'present'."

Speaker Matijevich: "Record the Speaker as 'present'. Take the record. On this question, there are 109 'ayes', no 'nays', 1 answering 'present', and the House does adopt the First Conference Committee Report on Senate Bill 434. And this Bill, having a Constitutional Majority, is hereby declared passed. Senate Bill 599. The Gentleman from Cook, Representative Terzich."

Terzich: "Yes, Mr. Speaker. I move that we concur with the First Conference Committee on Senate Bill 599, with the Senate concurring in House Amendments 1 and 3. This Amendment provided that the State Fire Marshal's Office would continue the program for localities of less than 10,000, providing grants in case there was no federal money being provided to furnish fire equipment to communities that have been previously served by the Department of Conservation, and I would move that we concur with... "

Speaker Matijevich: "Representative Terzich has moved that the House do adopt the First Conference Committee Report on Senate Bill 599. The Gentleman from Adams, Representative Mays."

Mays: "Thank you. Will the Gentleman yield, please?"

Speaker Matijevich: "Indicates he will. Proceed."

Mays: "Who's this going to go through? Didn't we have a... some questions as far as the Department of Conservation versus

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	Cook County No. 2019CH04869
Defendant.	)	

DEFENDANT WESTWARD MANAGEMENT'S MOTION TO DISMISS COMPLAINT PURSUANT TO 735 ILCS 5/2-615

NOW COMES, Defendant WESTWARD MANAGEMENT, INC. ("Westward"), by and through its attorneys BRIAN J. RIORDAN, JAMES M. WECK and CLAUSEN MILLER P.C., and for its Motion to Dismiss Plaintiffs' Class Action Complaint at Law pursuant to 735 ILCS 5/2-615, states as follows:

I. INTRODUCTION

Plaintiffs Harry and Dawn Channon ("Plaintiffs"), sellers of a condominium, have sued Westward Management, Inc. ("Westward"), a third-party property management company hired by Plaintiffs' Condo Association Board of Managers ("CABM"), for charging Plaintiffs a total of two hundred and forty-five dollars ($245) for the production of various financial disclosure documents that are regulated by Section 22.1 of the Illinois Condominium Property Act ("Condo Act"). In Illinois, the sellers of a condominium unit are required by Section 22.1 of the Condo Act to provide to prospective purchasers certain financial disclosure documents.

In their class action complaint, Plaintiffs have asserted two causes of action against Westward: Count I alleges a violation of Section 22.1 of the Condo Act and Count II alleges a violation of the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA").[1] Illinois Courts and the United States Court of Appeals for the Seventh Circuit have repeatedly ruled that Illinois law precludes Plaintiffs' claims and that there is no implied private right of action for sellers of a condominium exists and that the ***Condo Act is intended to protect the interests of the purchaser of the condominium***.

In fact, two recent cases with nearly identical fact patterns the U.S.D.C. for the Northern District of Illinois the 7th Circuit Court of Appeals found that under Illinois law and the Condo Act, there is *no implied private right of action for condominium sellers exists.*[2] As a matter of law, the subject transaction did not violate the Condominium Property Act and there is no violation of the IFCA.

II. PLAINTIFF'S ALLEGATIONS

On or about February 20, 2016, Plaintiffs entered into a contract to sell their condominium. (Ex. A, ¶ 38). The contract required Plaintiffs to provide several documents related to the condominium association to the condominium purchasers. (Ex. 1A, ¶ 9). Plaintiffs' condominium association, Kenmore Club ("Kenmore"), utilized Westward to provide certain property management services, including financial management services. (Ex. A, ¶ 20).

Kenmore's Board of Managers hired Westward as its property management company, which is common-practice in the condominium industry. (Ex. A, ¶40). Plaintiffs filled out document request forms and selected four separate documents with explicit prices included for

[1] See attached Ex. A – Plaintiffs' Class Action Complaint at Law.

[2] *Horist v. Sudler & Co.,* 2018 U.S. Dist. LEXIS 68474 (N.D. Ill.); *Ahrendt v. Condocerts.com, Inc.*, 2018 U.S. Dist. LEXIS 80935 (N.D. Ill.).

each document. (Ex. C, p. 3). Plaintiffs then voluntarily submitted the request forms and payment information directly to Westward, and Westward provided the specific documents Plaintiffs requested for the price Plaintiffs agreed to pay. (Ex. A, ¶ 50-55).

Together, Plaintiffs paid a **total of $245.00** which consisted of $150.00 for a "Paid Assessment Letter," $75.00 for a "Condo Questionnaire/Disclosure Statement/22.1," $20.00 for a "Year to Date Income Statement & Budget," and $0.00 for an "Insurance Contact Information" document. (Ex. C, p. 3). Plaintiffs never requested financial disclosure documents from Kenmore prior to submitting their request to Westward. (*See* Ex. A and, specifically, ¶ 49).

III. LEGAL STANDARD

A pleading must allege ultimate facts sufficient to satisfy each element of the cause of action pled. *Richco Plastic Co. v. IMS Co.*, 288 Ill. App. 3d 782, 784-785 (1st Dist. 1997). A Section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Pooh-Bah Enters. v. County of Cook*, 232 Ill.2d 463, 473 (2009). When no set of facts can be proved that would entitle plaintiff to relief, dismissal should be granted. *Id.* Although a court is to accept all well pleaded facts and all reasonable inferences that may be drawn from those facts, a plaintiff may not rely on mere conclusions of law or facts unsupported by specific factual allegations. *Id.*, *citing Anderson v. Vanden Dorpel*, 172 Ill.2d 399, 408 (1996).

IV. ARGUMENT

A. Count I Should be Dismissed With Prejudice Because Plaintiffs Cannot Establish a Violation of the Condo Act.

Section 22.1 of the Condo Act was "clearly designed to protect prospective purchasers of condominium units." *Nikolopulos v. Balourdos*, 245 ill. App. 3d 71, 77 (1st Dist. 1993). "Section 22.1(a) of the Condo Act provides that when an individual unit owner resells the unit, the unit 'owner shall obtain from the Board of Managers and shall make available for inspection to the

prospective purchaser upon demand,' certain listed documents." *Horist*, LEXIS 68474 at 4. It further provides "the principal officer of [the association] or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within thirty days of the request." 765 ILCS 605/22.1(b). Finally, relevant to our purposes, it provides that "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." 765 ILCS 605/22.1(c). The Condo Act does not expressly provide a private right of action for its enforcement. *Horist,* 68474 at 7; *Ahrendt,* LEXIS 80935 at 5; *D'Attomo v. Baumbeck,* 2015 IL App (2d) 140485, ¶35 (2nd Dist. 2015).

1. An Implied Right of Action for Condominium Sellers Does Not Exist.

Under Illinois law, courts will imply a statutory private right of action if a plaintiff successfully satisfies a four-part test: (1) the plaintiff belongs to the class the statute is designed to protect; (2) implying a cause of action is consistent with the underlying purpose of the statute; (3) the plaintiff's injury is one the statute is designed to prevent; and (4) implying a cause of action is necessary to effectuate the purpose of the statute. *D'Attomo at ¶ 37, Nikolopulos at p. 77.* The appellate courts have found an implied private right of action exists ***by a buyer*** of a condominium ***against a seller*** of a condominium if the seller fails to provide an adequate Section 22.1 disclosure. *Id.* In reaching both decisions, the appellate courts highlighted the purpose of Section 22.1: **to protect prospective purchasers of condominium units**. *Id.*

Plaintiffs in this case are condominium sellers, not buyers. The *Nikolopulos* court unequivocally held Section 22.1 was designed and enacted to protect purchasers of condominium units. 245 Ill. App. 3d at 77. The section is designed to "to prevent prospective purchasers from buying a unit without being fully informed and satisfied with the financial stability of the condominium as well as the management, rules and regulations which affect the unit." *Id.*

Recently, in two separate matters with strikingly similar fact patters, the United States Court of Appeals for the 7th Circuit also held Section 22.1 was designed to protect purchasers and not sellers. *Horist,* LEXIS 68474 at 8*; Ahrendt,* LEXIS 80935 at 5.

In an attempt to justify the allegation Plaintiffs fall within the class Section 22.1 was designed to protect, Plaintiffs included two exhibits which relate to the legislative history of the Condo Act. (Ex. 1G; Ex. 1H). Neither of these legislative materials discuss any intended benefit for condominium sellers. To the contrary, they merely reinforce the determination the statute was enacted for the specific protection of condominium buyers. Condominium buyers are expressly mentioned throughout these documents.

The opinions of both the Illinois courts discussed above and the Federal Courts are consistent: Section 22.1 was intended and designed to protect condominium buyers. The clear, unambiguous language of the statute is consistent with this purpose. Accordingly, **Plaintiffs as sellers do not fall within the class of persons the statute is designed to protect**. Plaintiffs fail to meet part one of the test. Furthermore, implying a private right of action for sellers of condominiums would not be consistent with the underlying purpose of the statute which is to protect buyers and Plaintiffs' alleged injury of being charged "unreasonable" fees as sellers is not the type of harm the statute is designed to protect against. *Horist,* LEXIS 68474 at 9. Plaintiffs have thus failed to satisfy parts two and three of the test.

Lastly, as this Court stated in *Horist,* it is "simply not necessary" to find an implied right of action for condominium sellers in order to effectuate the statute's designed purpose of protecting condo buyers. *Id.* Plaintiffs' allegations fail to put forth a plausible claim under the Condo Act because they are sellers and not buyers and Count I should be dismissed pursuant 735 ILCS 5/2-615.

2. Section 22.1 Does Not Apply to Property Management Companies.

Section 22.1 applies to condominium sellers, associations, and associations' Boards of Managers, not third-party property management companies as Plaintiffs allege. The unambiguous language of the statute reads, in pertinent part, "[a] reasonable fee… may be charged by the ***association or its Board of Managers*** to the unit seller for providing such information." 765 ILCS 605/22.1(c) (emphasis added). Westward is clearly neither a condominium association nor is a member of Kenmore's Board of Managers. Instead, it is a third-party corporation hired to provide property management services, including financial services, to condominiums. Nothing in Section 22.1 states what third-party vendors can or cannot do. The Act does not apply to third-party corporations which merely provide services to condominiums and this is consistent with the language in the act itself which provides, "the provisions of this Act are applicable to all condominiums in this State." 765 ILCS 605/2.1.

3. Plaintiffs' Purported Agency Theory is Against Illinois Law.

Plaintiffs' Complaint repeatedly asserts that Westward is liable for a violation of the statute because it was the agent of Kenmore, the principal. Plaintiffs' allegations are misguided because an agent cannot be independently liable for a principal's failure to comply with the principal's duty. "It is a general principle of agency law that '[a]n agent's breach of a duty owed to the principal is not an independent basis for the agent's tort liability to a third party.'" *Bovan v. Am. Family Life Ins. Co.,* 386 Ill. App. 3d 933, 942 (1st Dist. 2008). An agent is only subject to tort liability to a third party harmed by the agent's conduct when the agent's conduct breaches a duty that the agent owes to the third party. *Id.* The Seventh Circuit interpreting Illinois law has also expressly rejected the argument that an agent is liable for taking an active part in the principal's violation of the principal's duty. *See Thomas D. Philipsborn Irrevocable Ins. Trust v. Avon Capital, LLC,* 699 Fed. Appx. 550, 552 (7th Cir. 2017). Plaintiffs do not allege Westward had any

independent duty outside the statutory duty imposed upon Kenmore and Kenmore's Board of Managers under the Condo Act. Rather, Plaintiffs repeatedly assert Westward is liable for the mere fact it was the agent of Kenmore. This argument necessarily fails under applicable law.

4. Plaintiffs' Condo Act Claim is Barred by the Voluntary Payment Doctrine.

As a general rule in Illinois, money which is voluntarily paid on a claim of right to the payment cannot be recovered on the ground that the claim was illegal. *Randazzo v. Harris Bank Palatine, N.A.*, 262 F.3d 663 (7th Cir. 2001) quoting *Smith v. Prime Cable of Chi.*, 276 Ill. App. 3d 843 (Ill. App. 1995)); see also *Harris v. ChartOne*, 362 Ill. App. 3d 878 (Ill. App. 2005). The voluntary payment doctrine applies to any cause of action which seeks to recover a payment on a claim of right, whether that claim is premised on a contractual relationship or a statutory obligation. *Id.*

Plaintiffs voluntarily paid $245.00 to Westward in this matter and should be precluded from now claiming any injury therefrom. While Illinois law allows an exception to the doctrine where the voluntary payment was coerced, Plaintiff has failed to allege facts indicating coercion here because Plaintiffs never took any action in an attempt to circumvent Westward to obtain the disclosure documents. Instead, Plaintiffs went straight to Westward and simply submitted their payment and request forms.

B. Count II Alleging Consumer Fraud Should Be Dismissed Because Plaintiff Fails to Plead a Prohibited Business Practice Occurred Under the ICFA.

Plaintiffs have failed to meet the requirements to plead a cause of action under the ICFA because the type of activity which transpired is simply not the type of conduct which falls within the purview of the ICFA. Plaintiffs – without merit – claim the $245 in fees Westward charged Plaintiffs were unfair under the ICFA.

To state an ICFA claim Plaintiffs must allege that: (1) a deceptive act or unfair practice occurred; (2) that defendants intended for plaintiff to rely on the deception; (3) the deception occurred in the course of conduct involving trade or commerce; (4) plaintiffs sustained actual damages; and (5) the damages were proximately caused by the defendants' deception. *De Bouse v. Bayer AG*, 235 Ill. 2d 544 (2009). The ICFA prohibits business practices of "deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact." 815 ILCS 505/2. Plaintiffs' Complaint details how Plaintiffs voluntarily filled out Westward's forms, individually selected the documents they desired from an itemized, priced list, and then voluntarily submitted the forms along with payment to Westward. There was no fraud, deception, or concealment of any kind alleged to have transpired by Westward.

To determine whether a practice is unfair under the ICFA, the court considers whether it (1) violates public policy; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) causes substantial injury to consumers. *Horist,* LEXIS 68474 at 10; quoting *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 417 (2002) (citing *Federal Trade Comm. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n.5, 92 S. Ct. 898 (1972). Conduct does not need to satisfy all three prongs to be deemed unfair. *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.*

Plaintiffs alleged Westward's fees offend public policy and are thus unfair under the ICFA because they violate the Condo Act. For the reasons discussed above, Plaintiffs have failed to allege a violation of the Condo Act and this argument cannot provide a basis for a claim under the ICFA. Alternatively, Plaintiffs argue Westward's fees were "immoral, unethical, oppressive, and/or unscrupulous" because Plaintiffs were essentially forced to use Westward's services and

pay the fees. Plaintiffs' own allegations defeat this claim because they failed to ever attempt to obtain any disclosure documents directly from Kenmore or Kenmore's Board of Managers.

Plaintiffs have failed to plead any facts to support the contention they had no choice but to pay Westward's fees. Plaintiffs had an array of other options to take including demanding disclosure documents under Section 22.1 directly from Kenmore or Kenmore's Board, complaining to Kenmore regarding Westward's price prior to obtaining the documents, or contracting with the purchasers of their unit to shift the cost of the documents away from the sellers and onto the buyers. Moreover, Plaintiffs have failed to even plead facts to show the fees charged were in any way unreasonable or oppressive as those terms are defined under the ICFA. *See Batson v. Live nation Entm't, Inc.,* 746 F.3d 827, 833 (7th Cir. 2014).

V. CONCLUSION

In summary, Plaintiffs as sellers of a condominium do not have a private right of action to assert against Westward under Illinois law and Count I should be dismissed with prejudice pursuant to 735 ILCS 5/2-615. Additionally, Count II alleging a violation of the Illinois Consumer Fraud and Deceptive Practices Act should be dismissed with prejudice because Plaintiffs have failed to plead facts that would allege an unfair act transpired. Westward respectfully requests that this Court dismiss Plaintiffs' Complaint in its entirety with prejudice pursuant to 735 ILCS 5/2-615.

WHEREFORE, Defendant WESTWARD MANAGEMENT, INC., moves this Court pursuant to 735 ILCS 5/2-615 to dismiss Count I and Count II of Plaintiffs' Class Action Complaint at Law in its entirety, with prejudice, and for any relief this Court deems reasonable and just.

Dated: July 31, 2020

Respectfully submitted,

James M. Weck

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CLAUSEN MILLER P.C.

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12-Person Jury

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	No. 2019CH04869
v.	)	JURY DEMAND
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

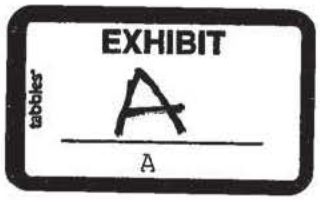
CLASS ACTION COMPLAINT

Plaintiffs HARRY CHANNON and DAWN CHANNON (the "Channons" or "Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their counsel, Jeffrey C. Blumenthal Chartered and Greenswag & Associates, P.C., for this action against Defendant WESTWARD MANAGEMENT, INC., an Illinois Corporation ("Westward Management," "Westward" or "Defendant"), states as follows:

INTRODUCTION

1. Plaintiffs bring this suit on behalf of themselves and a similarly situated class of individuals who, when selling their condominium units, were effectively compelled to pay Westward Management's unreasonable and excessive fees to obtain copies of certain records that the Illinois Condominium Property Act (the "Condo Act" or "Act") requires condominium sellers to provide prospective buyers pursuant to Section 22.1 of the Act. 765 ILCS 605/1, *et seq.*

2. Condominium sellers are statutorily required to obtain disclosure documents from their Condo Association Board of Managers or its managing agent, which, in this case is Westward, by paying them a reasonable fee for the actual costs of providing the documents. Condo sellers must then provide the documents to the prospective buyer.



3. Condo sellers are thus beholden to property management companies who have complete control over disclosure documents by virtue of their management contracts or agreements with Condo Associations.

4. Westward allegedly uses its position of entrustment with disclosure documents as leverage to abuse condo sellers who are often involved in time-sensitive real estate transactions and have no other reasonable option but to pay whatever fee Westward chooses to charge, or risk their own potential liability under the Condo Act by not providing the documents to prospective buyers at all, or providing deficient disclosure documents.

5. Disclosure documents under Section 22.1 of the Illinois Condominium Property Act (the "Act") are financial statements setting forth various aspects of the Association's financial condition and other statements related to the unit, which include: (1) current and anticipated capital expenditures of the association, (2) amount of assets held in the association's reserve fund, (3) insurance coverage requirements, (4) liens on the unit, (5) improvements or alterations made to the unit, (6) amounts of unpaid assessment fees and other charges due, (7) statement of the status of any pending lawsuit or judgments to which the association is a party, (8) governing documents of the association such as the declaration, bylaws, and rules and regulations, and (9) the identity and mailing address of the association's agent specifically designated to receive notices.

6. Westward is the property management agent for the Kenmore Club Condominium Association ("Kenmore Club" or "the Association").

7. Westward is Kenmore Club's agent in connection with the financial management and record keeping of documents described in Section 22.1 of the Act. Westward is also the Association's designated agent in connection with the resale and transfer of ownership of a condominium unit within the Association's Property, which includes the process, procedures, and

documents described under Section 22.1 "Resales; disclosures; fees."

8. Like many other Condo Associations in Illinois, Kenmore Club's resale process requires condo sellers, such as Plaintiffs, to notify the Association's managing agent, in this case Westward Management, of the intent to sell their condo unit. The seller is then required to request directly, and must obtain disclosure documents, from their Association's "other officer as is specifically designated [to] furnish [Section 22.1 disclosure documents] when requested to do so in writing and within 30 days of the request." 765 ILCS 605/22/1(b).

9. The Association is not able to provide the disclosure documents to the condo seller. The Association's designated agent, Westward, manages disclosure documents as part of the agent's professional financial management services to the Association. (A copy of Westward's website detailing financial management services it offers to Condo Associations is attached as Exhibit A).

10. Section 22.1 is not only about providing documents; it is about the *management* of disclosure documents. Such management involves an ongoing process and professional expertise in the requirements of the Condo Act and the financial management, record keeping, stability, and security of the Condominium Association.

11. Condo owners are not required to be CPA's, lawyers, maintenance repair persons, landscapers, or real estate sales experts to be a Board Manager. The lack of knowledge, ability, and/or expertise in the various duties, such as financial management of the documents described in Section 22.1(a)(1)-(9) of the Act, does not preclude a condo owner from serving on the Board because he or she can still comply with their duties under the Act by retaining professionals, such as Westward, who do have the skills, knowledge, and expertise necessary to assist the Board in complying with their duties under the Condo Act. 765 ILCS 605/18(a)(5).

12. For example, the Association and its Board of Managers have the duty to physically maintain the common areas of the property. 765 ILCS 605/18.4(a). If the Board Manager was elderly or disabled and could not physically comply with the duty to repair, he or she be would not be excluded from consideration as a Board Member due to his limitations because the Association can contract with professional services to satisfy that duty, such as Kenmore Club did here when it retained Westward to manage and provide disclosure documents to condo sellers who so demand.

13. When an agent, such as Westward, does not comply with the duties of his principal-Association, it does not automatically infer that the Association Board of Managers is second in line to carry out the obligation. The Kenmore Club Board of Managers still has no knowledge or *ability* to carry our this duty. It is not reasonable to expect that if the Association's designated agent for maintenance services refuses to fix the leaky roof in the common area of the Property, Board Managers must then become professional roofers to comply with their duties under the Condo Act.

14. In this case, the Association contracted with Westward to comply with the duties set out under Section 22.1, but Westward has not complied with the duty to charge only a reasonable fee for out-of-pocket costs for providing disclosure documents under Section 22.1(c). 765 ILCS 605/22.1(c). Just because Westward does not want to comply with the reasonable fee requirement, does not mean that the Association Board Managers are any more equipped to manage Section 22.1 documents than they were when Westward was first retained. Without the ability to *manage* the documents, the Board Managers are unable to provide them to condo sellers with any degree of accuracy.

15. Custom and practice in the condo industry is to contact the management agent of the Association, not the Board of Managers. Even if the seller were to first request the documents directly from the Association, the Association would direct the seller to Westward to obtain disclosure documents. Requiring the seller to first request disclosure documents from the Association, only to be directed to Westward, creates an unnecessary step and exchange of hands at the tail-end of a time-sensitive real estate transaction, and may cause sellers to risk losing a sale if a potential buyer pulls out of a deal while waiting for disclosure documents.

16. Further, it is a question of statutory interpretation whether under Section 22.1(a) the Association is able to demand disclosure documents from Westward on the seller's behalf. Section 22.1 of the Condo Act only mentions the unit owner as having a duty to *demand* and *obtain* disclosure documents on behalf of the prospective buyer. Whereas the Board of Managers' duty under Sections 22.1 (a) and (b) is to *provide* the documents to the unit owner. 765 ILCS 605/22.1(a), (b).

17. Requiring the Association to demand documents on the seller's (or prospective buyer's) behalf opens the Association to potential liability to the prospective buyer, whereas Section 22.1 has been interpreted to limit liability between the seller and prospective buyer regarding the accuracy, completeness, and providing of disclosure documents.

18. There is little value to retaining management companies that expose the Association, such as Kenmore Club and its Board of Managers, to liability because of non-compliance and unscrupulous business decisions regarding the very law regulating the principal Association and its Board of Managers. The value of management companies, such as Westward, *is* their compliance services with the Condo Act, and necessarily requires strict adherence to the

duties, obligations, and limitations governing Condo Associations, such as Kenmore Club and their Board Managers, under Section 22.1 of the Act.

19. Alternatively, the seller may complain to the Association about the excessive and unreasonable fees charged by Westward prior to closing, yet the Association is still in no position to provide the documents to the seller without first obtaining them from Westward. Assuming the Association is even able to demand the documents from Westward on the seller's behalf (and assuming Westward would comply with the Association's demand), the fee Westward would charge the Association is the same fee it charges condo sellers—unreasonable and beyond "direct out-of-pocket costs." The Association is therefore forced to either potentially violate Section 22.1's "reasonable fee" restriction by recouping Westward's unreasonable fee from the condo seller, or forced to waste the Association's assets, thus breaching their duty of care, by not recouping Westward's fee at all every time a condo owner sells their unit to comply with their statutory duty under the Condo Act to provide disclosure documents to the seller. 765 ILCS 605/22.1(b). In either scenario, the seller's transaction is threatened, the seller is harmed, and the Association is harmed either financially or through expanded potential liability from various parties.

20. Westward is compensated for assuming a number of duties—including managing and providing disclosure documents to condo sellers. The management contract is between the Association and Westward—not between individual condo owners and Westward. Westward is using its' assumed duty to manage and provide documents to sellers as an opportunity to "shake down" individual condo sellers for profit rather than bargaining for its benefits with the Association's Board of Managers during the formation stage of the management contract or agreement.

21. The Association does not manage or provide Section 22.1 disclosure documents to condo sellers. Westward assumed the duty and obligation, among others, to manage documents identified in Section 22.1 as the Agent for the Association. Westward is the Association's "other officer as is specifically designated" under Section 22.1(b) and charged with the statutory responsibility to both *manage* and *provide* disclosure documents to condo sellers upon demand.

22. Although Section 22.1(c) of the Act provides only that "[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," Westward charges condo sellers excessive and unreasonable fees to obtain disclosure documents under the guise that it has authority to do so via its contract or management agreement with the Association and/or under Section 22.1(c) of the Act.

23. At most, the Association permits Westward to collect its reasonable fee for providing the documents to condo sellers—not impose their own fee. This is because agents, like Westward, are only able to charge unit owners a fee if it is on behalf of the Association and with authorization either from the Association Board of Managers and/or the Condo Act.

24. On information and belief, the only fees Westward is authorized to charge and receive from condo owners are those in connection with their services to the Association under the terms of their contract or management agreement with the Association.

25. On information and belief, the Association did not authorize Westward to charge condo sellers excessive and unreasonable fees to provide condo sellers disclosure documents held in their care and custody.

26. Section 22.1(c) does not authorize management agents, such as Westward, to charge a fee for providing disclosure documents to condo sellers. Section 22.1(b) only permits the

designated agent to provide the documents, but does not state that the designated agent may charge any fee whatsoever. 765 ILCS 605/22.1(c). If Westward is not providing these documents and charging on behalf of the Association (not giving the Association any of the fees it collected from unit sellers), Westward is then abusing the Association's property (the documents) to make a profit outside of the management contract or agreement, and in violation of Section 22.1(c).

27. By virtue of its management contract or agreements with the Association, Westward exercises dominion and control over the Association's disclosure documents and does not disclose their "actual cost" of providing the documents to condo sellers. Thus, on information and belief, Westward is only able to provide disclosure documents to condo sellers precisely because it is an Agent of the Association. Westward assumed the duty to manage the documents identified in Sections 22.1(a)(1)-(9) under its contract or agreement with the Association, and therefore, possess and controls the Association's disclosure documents.

28. For the most part, Westward can provide disclosure documents immediately to the unit seller because they are stored in an electronic database managed and controlled by Westward.

29. Westward sets pre-determined fees for "each" 22.1 disclosure item—regardless of the length of the document or method of delivery.

30. Westward does not itemize its charges, or otherwise state the basis for how it determined the amount charged for these documents.

31. Plaintiffs bring this action against Westward to recover the unreasonable fees paid which Westward unlawfully charged Plaintiffs and other similarly situated sellers in violation of the Section 22.1(c) of the Condo Act. Plaintiffs seek interest, attorney's fees and costs owed to them and other similarly situated persons.

32. As set forth below, Westward's predatory practice of price gouging captive condo sellers with unreasonable fees to obtain access to disclosure documents they are required by statute to provide prospective buyers to close on the sale of their unit or risk legal liability for noncompliance with their duty under the statute, gives rise to Plaintiff and the Class' claims alleged herein.

JURISDICTION AND VENUE

33. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within the State) and 735 ILCS 5/2-209(b)(3) (corporation organized under the laws of this State).

34. Venue is proper in this Court pursuant to 735 ILCS 5/2-101, because the transaction(s), or a substantial part thereof, occurred in Cook County and Defendant an Illinois corporation doing business in Cook County. 735 ILCS 5/2-102(a).

PARTIES

35. Plaintiffs are natural persons and citizens of the State of Illinois at all times relevant to the events detailed herein.

36. Defendant is a corporation organized in and existing under the laws of the State of Illinois, with its principal place of business located at 4311 N. Ravenswood, Suite 201 in Chicago, Illinois, 60613.

SUBSTANTIVE ALLEGATIONS

37. Harry and Dawn Channon were the owners of a condominium unit located at 5109 N. Kenmore Avenue, Unit 1E, in Chicago Illinois, 60640, which was part of the Kenmore Club Condominium Association for several years until April 18, 2016, when the Unit was sold.

38. On or about February 20, 2016, Cahontas and Elizabeth Vincent (the "Vincents"), as prospective purchasers of the Channons' condominium unit, entered into a real estate contract

(the "Real Estate Contract") with the Channons. (A copy of the Real Estate Contract is attached hereto as **Exhibit B**).

39. Pursuant to paragraph 9 of the Real Estate Contract, and according to Section 22.1 of the Act, as sellers, the Channons were required to provide the Vincents, as prospective purchasers, with the disclosure information and documents required by 765 ILCS 605/22.1(a). Failure to provide disclosure documents to a prospective buyer with disclosure documents and/or deficient documents subjects the condo seller to potential liability under Section 22.1 of the Condo Act. (A copy of Section 22.1 of the Condo Act is attached hereto as **Exhibit C**).

40. The Board of Managers, on behalf of the Association, is required by statute to provide the Section 22.1 disclosure documents to a requesting unit owner. 765 ILCS 605/22.1(a). The Board of Managers commonly designates this duty to a property management company, if one is retained, which is what happened here when the Association retained Westward. 765 ILCS 605/18(a)(5).

41. On information and belief, Westward has the ability to negotiate its compensation during the bargaining phase of its contractual or management agreement with the Association. As a professional property management business, Westward is a sophisticated party. As such, on information and belief, Westward had an opportunity to bargain for the specific duties it was to assume, and the services it was to provide to Kenmore Club. Westward was aware, or should have been aware, of all the duties it was assuming from the Association because Westward's professional obligations under the Condo Act and the Condo Manager Act include the duties to be knowledgeable of: (i) the Condo Act, (ii) the Illinois Not-for-Profit Corporation Act, (iii) its principal's bylaws, and (iv) any other laws pertaining to community association management. 765 ILCS 605/18.3; 605/18.7(e)(3).

42. Upon information and belief, throughout the entire duration of the events set forth herein, Westward was (and still is) the management Agent for Kenmore Club.

43. At all relevant times, Westward was the agent specifically designated under Sections 22.1 (b) and (c) for the Association in connection with the service of providing disclosure documents to unit sellers upon demand as part of its management duties for the Association, and charging only a reasonable fee for the cost of providing such information to unit sellers. 765 ILCS 605/22.1 (b), (c).

44. Property management companies, like Westward, are agents of the Association by virtue of their management contracts or agreements with them. 765 ILCS 605/18.7(b). On information and belief, as Agent of Kenmore Club, Westward provides financial management and record keeping services, and is thereby authorized to, and in fact does, manage and control the Association's financial documents and records identified under Section 22.1(a)(1)-(9) (*i.e.*, disclosure documents).

45. The resale process for Kenmore Club requires condo sellers to notify their Association's managing agent, in this case Westward, of the intent to sell their condo unit. The seller is then required to request directly, and must obtain disclosure documents, from their Association's designated agent, Westward—the party who has assumed the specific statutory duty to provide the seller with Section 22.1 disclosure documents. 765 ILCS 605/22.1(b).

46. On information and belief, Westward exclusively manages and controls Section 22.1 disclosure documents on behalf of the Association in an electronic database, most of which are only accessible to Westward and its employees.[1]

[1] On information and belief, Westward makes the Association's Governing Documents (*i.e.*, Declaration, Bylaws, Articles of Incorporation, Rules & Regulations) available in "real time to all

47. The Channons, and similarly situated condo sellers, rely on Westward to provide them with accurate and comprehensive disclosure documents that comply with the mandates of Sections 22.1(a)(1)-(9) of the Condo Act because Westward is the only party authorized by the Association to manage and provide these documents to them.

48. On information and belief, the Association is not equipped with the expertise or knowledge of the relevant legal requirements and financial management to adequately provide disclosure documents to sellers—hence, the statutory duty is delegated to Westward, a professional Association Management company. 765 ILCS 605/18(a)(5); (*See* **Exhibit A**). Even if Plaintiffs were able to obtain disclosure documents from their Association to avoid excessive fees of Westward, Plaintiffs run the risk of receiving deficient disclosure documents. Plaintiffs would then be subject to potential liability, because it is the *seller* that has a statutory obligation to provide such documents to potential buyers.

49. As this statutory duty was delegated to, and assumed by Westward, condo sellers, such as the Plaintiffs herein, would not reasonably request these documents from their Association.

50. Westward provided the Channons with a document entitled "Escrow Document Request Form." (A copy of the Escrow Document Request Form is attached as **Group Exhibit D**). The document is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association. The Escrow Request Form states in pertinent part:

> If this request is to obtain a **PAID ASSESSMENT LETTER** for a **SALE/TRANSFER of OWNERSHIP**, please fax/email: Cover Sheet, Document Request Form, Credit Authorization Form, Notice of Intent to Sell, Homeowner Information Sheet and Governing Documents Rider (entire package).

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homeowners via [its] online portal." However, it is unclear if Westward charges condo owners a fee (separate from Association fees) to access and download these documents in the online portal.

Also, please provide estimated closing date: 4/18/16 (emphasis in the original) (*See* **Group Exhibit D**).

51. The Channons directly notified Westward, the designated Agent for their Association, of their intent to sell by submitting a standard form document entitled "Notice Of Intent To Sell." (*See* **Group Exhibit D**). The document is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Condo Association. The Notice stated an "Anticipated Closing Date" of April 18, 2016. (A copy of the Notice of Intent to Sell is attached as **Group Exhibit D**).

52. As part and parcel of the above referenced "package," Westward provided the Channons with a standard form document to complete entitled "Document Request Form" (*i.e.*, Order Form) for, among other things, Section 22.1 Disclosure Documents. (A copy of the "Documents Request Form" is attached as **Group Exhibit D**). The Order Form is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association.

53. Westward also provided the Channons, as part of the "package," a standard form document to complete entitled "Credit Card Authorization Form." (A copy of the "Credit Card Authorization Form" is attached hereto as **Group Exhibit D**). The Authorization Form is created by Westward and contains the company's name in the letterhead. Westward provided the Channons, and similarly situated condo unit sellers, this document on behalf of the Association.

54. Specifically, Westward charged the Channons $75.00 for a "Condo Questionnaire/Disclosure Statement/22.1" that included providing some, but not all, Section 22.1 disclosure information. Additionally, Westward charged the Channons $150.00 for a "Paid Assessment Letter," and $20.00 for a "Year to Date Income Statement & Budget." In total,

Westward charged the Channons Two-Hundred and Forty-Five dollars ($245.00) to provide them with information they had a statutory duty to provide the Vincents, the prospective purchasers of the condominium unit.

55. Westward, as Agent for and on behalf of the Association, provided the Channons with a "Condominium/Townhouse Disclosure Statement," and attached some, but not all, of the Section 22.1 disclosure documents. Alex Wiseman of Westward Management, Inc. signed the Disclosure Statement as Agent for the Association. (A copy of the "Condominium/Townhouse Disclosure Statement" is attached as **Exhibit E**).

56. Plaintiffs' statutory obligation under Section 22.1(a) continued up through the date of closing to provide the prospective buyer with the required disclosure documents. In this case, the closing occurred on April 18, 2016.

57. On or about July 28, 2017, the Channons sent a letter to Westward, wherein they demanded that Westward provide information and/or documentation supporting: (a) "out-of-pocket" costs for providing disclosure documents, (b) a basis for how it determined the amount to charge for these documents, and (c) supporting documentation for the $150.00 charge for the Paid Assessment Letter and/or basis for how it determined the fee. Westward did not respond to the Channons' demand. (A copy of the "Demand Letter" is attached as **Exhibit F**).

58. Unit sellers, such as Plaintiffs, have a statutory duty to provide prospective purchasers all disclosure documents and statements listed in Section 22.1 of the Act. Nonetheless, Westward prices these documents separately and misleads the unit seller to believe they can cherry pick and choose among a list of disclosure documents to provide prospective purchasers. (*See* **Group Exhibit D**).

59. Although the statute provides only that "[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 the information," Westward's "Document Request Form" has pre-set charges for "each" 22.1 disclosure item---regardless of the length of the document or method of delivery. (*See* Group Exhibit D).

60. The management of disclosure documents occurs, or should occur, on an ongoing basis and well before a condo owner submits a request to Westward. Thus, Section 22.1(c)'s fee restrictions only apply to the cost associated with making those documents *available* to condo owners---for example, the cost of printing or delivery through expedited mail. 765 ILCS 605/22.1(c).

61. Westward's fee of Two-Hundred and Forty-Five dollar ($245.00) for providing the statutorily required Section 22.1 documentation is not a "reasonable fee" covering direct out-of-pocket costs for providing such information. 765 ILCS 605/22.1(c).

62. On information and belief, Westward does not itemize its charges, or otherwise state the basis for how it determines the amount charged for these documents.

63. The Channons and other similarly situated Class members cannot reasonably obtain the necessary documents to sell their unit from any other source but from Westward, and only if they provide Westward their credit card information in the Authorization Form. Plaintiffs are thus beholden to Westward and have no reasonable choice but to pay its excessive and unreasonable fees to obtain the necessary disclosure documents to sell their condominium unit and comply with their own statutory duty under the Condo Act.

64. Westward is essentially using the cost-shifting provision of 765 ILCS 605/22.1(c) to make an unlawful profit. In so doing, Westward has effectively compelled the Channons, and

other similarly situated Class members, to pay this excessive and unreasonable fee to sell their condominium units, in violation of the statute and public policy of the State of Illinois.

CLASS ALLEGATIONS

65. **Class Definition**: Plaintiffs bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a Class of similarly situated individuals, defined as follows:

> All persons who sold or attempted to sell a condominium unit in a condominium association managed by Defendant where the purchaser(s) demanded that seller(s) provide the legally required disclosure information listed in 765 ILCS 605/22.1, compelling the seller(s) to pay Defendant what is supposed to be a "reasonable fee" to obtain this information from Defendant.
>
> Excluded from the Class are: (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entities' current and former employees, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

66. **Numerosity**: The exact number of Class members is unknown and is not available to Plaintiffs at this time, but individual joinder in this case is impracticable. The Class is likely to consist of hundreds, if not thousands, of individuals due to Defendant's management of a number of condominium associations in the Chicago metropolitan area.[2] Class members can be easily identified through Defendant's records or by other means.

[2] *See* one of Westward's websites at https://westward360.com/ which "[o]ffers community association management in Chicago for homeowners, condos, townhomes and co-op associations..." and also "offer[s] management for local Chicago single-unit condos, multi-family properties, and apartment buildings with up to 400 units."

67. **Commonality and Predominance**: There are several questions of law and fact common to the claims of Plaintiffs and the Class members, and those questions predominate over any questions that may affect individual class members. The common questions of law and fact for Plaintiffs and all Class members include, but are not limited to, whether Defendant's charges of amounts in excess of its "direct out-of-pocket cost[s]" for providing the disclosure information that Plaintiffs were legally obligated to obtain under 765 ILCS 605/22.1 constitutes an unreasonable and statutorily improper fee under Section 22.1 of the Illinois Condominium Property Act:

A. In violation of the Illinois Condominium Property Act; and/or

B. In violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

68. **Adequacy of Representation**: Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in complex class action litigation. Plaintiffs have no interest antagonistic to those of the Class, and Defendants has no defenses unique to Plaintiffs.

69. **Appropriateness**: Class proceedings are also superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. Further, it would be virtually impossible for the individual members of the Class to obtain effective relief because the damages suffered by individual Class members are likely to be relatively small, especially given the burden and cost of individually conducting the complex litigation necessitated by Defendant's actions. Even if Class members were able or willing to pursue such individual litigation, a class action would still be preferable due to the fact that a multiplicity of individual actions would likely increase the expense and time of litigation given the complex legal and factual controversies presented in this Class Action Complaint. A class action,

on the other hand, provides the benefits of fewer management difficulties, single adjudication, economy of scale, and comprehensive supervision by a single Court, and would result in reduced time, effort and expense for all parties and the Court, and ultimately, the uniformity of decisions.

COUNT I

(Violation of the Illinois Condominium Property Act)

70. Plaintiffs restates and incorporates by reference paragraphs 1 through 69 of this Class Action Complaint as paragraph 70 as if fully set forth herein.

71. Section 22.1 of the Illinois Condominium Property Act provides,

> (a) In the event of any resale of a condominium unit by a unit owner other than the developer such owner shall obtain from the Board of Managers and shall make available for inspection to the prospective purchaser, upon demand . . .
>
> (b) The principal officer of the unit owner's association ***or such other officer as is specifically designated*** shall furnish the above information when requested to do so in writing and within 30 days of the request. 765 ILCS 605/22.1(a), (b).[3]

72. Section 22.1 (c) further provides,

> (c) 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." 765 ILCS 605/22.1(c).

73. Kenmore Club specifically designated Westward as its Agent to provide Section 22.1 Disclosure Documents under Section 22.1(b) to the Channons and similarly situated Class members. (*See* **Exhibit E**).

74. Property management agents, such as Westward, exercise dominion and control over the Association's disclosure documents and do not disclose their "actual cost" of providing the documents to condo sellers. Therefore, this imbalance of control over disclosure documents provides a basis to find an implied cause of action to protect condo sellers from managing agents that can easily take advantage of sellers under this structure.

[3] Emphasis added unless otherwise noted.

75. To protect condo sellers and buyers involved in the sale and purchase of condo units, in 1972 the legislature added Section 22, "Full disclosure before sale," to the Condo Act. Subsequently, in 1980 the legislature added Section 22.1, "Resales; disclosures; fees." 765 ILCS 605/22; 605/22.1.

76. Under Section 22.1(e), Kenmore or its Board of Managers are restricted to charging only a "reasonable fee" covering the direct out-of-pocket costs for providing disclosure documents to condo sellers such as Plaintiffs. 765 ILCS 605/22.1(e). The restriction has the effect of protecting both condo sellers and prospective buyers, by ensuring that sellers are not price gouged and by removing cost-prohibitive barriers to providing potential buyers with the documents to make an informed decision regarding the purchase.

77. The purpose of the Condo Act is to govern the affairs of Illinois Condo Associations, and establish procedures for the creation, ***sale***, and operation of condominiums. 765 ILCS 605/18, *et seq*. The spirit of the Act is to protect the public ("so they know exactly what they're getting into"). (A copy of the Senate Proceedings of 77th Ill. Gen. Assem., Senate Proceedings, June 21, 1972, at 91 is atrached as **Exhibit G**).

78. The Illinois legislative record states that the Condo Act was intended to provide "the ultimate amount of consumer protection." (A copy of the House Proceedings of 83rd Ill. Gen. Assem., House Proceedings, May 26, 1983, at 157 is attached as **Exhibit H**). Speaker Madigan states, "The essence of the Bill [the proposed amendment overhauling the Condo Act] is to provide that regulation of condominiums statewide shall be uniform at the same time that we provide the *ultimate amount of consumer protection*." (*See* **Exhibit H**).

79. Section 22.1 was enacted on January 1, 1980, to address the resale of condo units. While it is undisputed that disclosure requirements imposed by Section 22 and 22.1 protects

potential buyers, the legislative record demonstrates that it was also intended to protect sellers (*i.e.*, condo owners). (A copy of the 83rd Ill. Gen. Assem., House Proceedings, Jul. 2, 1983, at 4 amending the Condo Act to "strengthen[] the rights of unit owners" is attached as **Exhibit I**).

80. Disclosure requirements necessarily protect both sellers and buyers. The prospective buyer is protected from potentially making a bad investment, whereas the condo seller's compliance with the disclosure requirements protects him or her from liability.

81. A plain reading of Section 22.1(c) demonstrates that it was intended to protect sellers, because the fee for obtaining disclosure documents is imposed only on them. 765 ILCS 605/22.1(c). Therefore, the statutory provision to charge only "a reasonable fee" covering the actual cost of producing disclosure documents directly impacts the seller who is statutorily charged with demanding and obtaining the documents for a cost, and may be liable for failing to make them available to potential buyers, or providing deficient disclosure documents.

82. The overarching objective of the Condo Act is uniformity in regulation, while providing the ultimate amount of consumer protection. (*See* **Exhibit H**, at 157). An implied private right of action against property management companies, such as Westward, who are the designated agents of condo associations, by condo sellers can be inferred because the legislative record confirms that Section 22.1 was intended to protect *both* sellers and potential buyers.

83. The Channons are within the Class of persons the Illinois Condominium Act is designed to protect. Plaintiffs are condominium unit sellers who have a statutory duty to provide disclosure documents to prospective buyers pursuant to Section 22.1 of the Condo Act upon selling their units. 765 ILCS 605/22.1(a). Section 22.1(c), when read in conjunction with the Act's legislative history, clearly demonstrates that the legislature was well aware that property management agents may charge excessive fees for their services. As a measure of protection for

the seller from unscrupulous managing agents, and to ensure that the condo seller can fulfill his statutory duty to potential buyers, the legislature imposed a fee restriction for disclosure documents in Section 22.1. Therefore, the Channons are members of the particular class of individuals for which the statute was designed to protect.

84. Implying a cause of action in favor of condominium sellers against condominium management companies, such as Westward, who are agents of the Association, is consistent with the underlying purpose of Section 22.1: to ensure that the seller can satisfy their statutory obligation to demand and provide prospective buyers with disclosure documents.

85. Failing to find an implied cause of action against Westward would render the Condo Act useless for all parties involved in the condo resale transaction, as it would preclude both the seller from protection against price gouging, and prevent the prospective buyer from obtaining the information held within the disclosure documents. In addition to harming the seller through price gouging, Westward forces the seller to choose between paying an exorbitant fee and failing to provide the necessary disclosure documents to potential buyers, thus opening themselves to potential liability. This is no real choice at all.

86. In refusing to abide by Section 22.1(e), Westward is acting contrary to the purpose of the Act. Westward degrades consumer protection for members of the public, specifically condo sellers and prospective buyers, by disrupting the established procedures regulating the sale of condominiums in Illinois that were intended to ensure the fair dispensation of disclosure documents.

87. Plaintiffs' injury of being the captive victim of Westward's price gouging is precisely the kind of injury that Section 22.1(e) was designed to prevent. The legislative history of the Condo Act demonstrates that the Act was intended to provide the "ultimate consumer

protection"—which necessarily includes condo sellers in this protection. Ultimate consumer protection encompasses sellers precisely because Section 22.1 imposes a duty on sellers to obtain disclosure documents from designated managing agents for a cost. If the court were not to find an implied cause of action, Westward could conceivably continue charging the public higher and higher fees without limit. Rather than limiting fees to the direct out-of-pocket cost covering the electronic transmission and/or printing of documents, as the statute demands, Westward is charging $245.00 for this service with no distinction between the actual cost for the method of delivery.

88. Implying a private cause of action is necessary to effectuate the purpose of the statute because by failing to do so, the public—particularly condo sellers—would be left open to harm and have no recourse to enforce the "reasonable fee" provision in Section 22.1.

89. Westward's allegedly exorbitant fees for disclosure documents violates public policy of the State of Illinois because condo sellers in Illinois are being forced to pay excessive and unreasonable fees to obtain disclosure documents they have a legal obligation to provide prospective buyers.

90. The duty to provide disclosure documents is ascribed to the Association and managing agent, interchangeably. The Condo Act does not make a distinction between the duties of the Association and those assumed by its agent because the statute assumes that the duties of the Association are co-extensive with those of its agent.

91. Section 18(a)(5) of the Condo Act expressly permits professional property management companies, like Westward, to assume the fiduciary and statutory duties of the Association Board of Managers. 765 ILCS 605/18(a)(5) ("the board may engage the services of a manager or a managing agent").

92. Westward chose to assume the statutory duty to *manage* and *provide* disclosure documents to condo sellers, as prescribed under Sections 22.1(a) and (b) of the Condo Act.

93. The duties of the Principal-Condo Association and that of its Agent-property management company are one and the same. Section 18(g) of the Condo Act defines a "property management company" as,

> [A] person, partnership, ***corporation***, or other legal entity ***entitled to transact business on behalf of others***, action on behalf of or ***as an agent for*** a unit owner, unit owners or ***association of unit owners*** for the ***purpose of carrying out the duties, responsibilities, and other obligations*** necessary for the day to day operation and management of any property subject to this Act. 765 ILCS 605/18(g).

94. Conversely, Section 18.3 of the Condo Act states the following,

> The unit owners ***association*** is responsible for the ***overall administration*** of the property through its duty elected board of managers . . . The ***association*** shall have and exercise all powers necessary or convenient to effect any or all of the ***purposes for which the association is organized*** and to do ***every other act not inconsistent with law*** which may be appropriate to promote and attain the purposes set forth in this Act or in the condominium instruments. 765 ILCS 605/18.3.

95. While the Condo Act explicitly authorizes the Association Board of Managers to hire a management agent, such as Westward, and does not place a limit on bargained for benefits under the contract or management agreement, as long as the requirements of the Condo Act are followed, the Board may impose additional rules in its declaration or bylaws. However, the Board of Managers may not take any action that is beyond the authority granted it under the condominium instruments and the Condominium Property Act. 765 ILCS 605/18.4.

96. Westward's "duties, responsibilities, and obligations" are that of its principal Association—which includes complying with the Condo Act, and any other applicable laws "which may be appropriate to promote and attain the purposes set forth in this Act." 765 ILCS 605/18.3; 605/18(g).

97. Property management agents are assuming the very duties that the Condo Act was created to regulate. By providing the disclosure documents to the Channons, it is evident that Westward has understood from Section 18 that this duty can be assumed by managing agents (presumably as the "such other officer as is specifically designated"). It follows then that, Westward, as Agent of the Association, which has been permitted to assume the statutory duty of the Association, and which has in fact done so, must be held to the same statutory limitations as that of the Association or Board of Managers of charging only a "reasonable fee" covering the "direct out-pocket-cost" for providing the disclosure documents.

98. Westward is presumed to have prior knowledge of all statutory duties that it assumed by virtue of its contract or agreement with the Kenmore Club and its professional responsibilities under the Condo Act. 765 ILCS 605/18.7(c)(3), 605/18.4. As Westward's business effectively *is* assuming the duties of the Condo Act, there is no conflict between an implied cause of action under Section 22.1(c) and any other statutes.

99. At all relevant times, Westward was, or should have been, aware at the time it charged Plaintiffs an unreasonable fee to obtain disclosure documents that the Kenmore Club Board of Managers did not have authority to charge more than a "reasonable fee of the direct out-of-pocket costs" for providing disclosure documents to condo sellers.

100. In Illinois, an agent is liable where he or she takes an active part in violation of some duty the principal owes to a third person.

101. Westward is an agent of Kenmore Club pursuant to a contract or agreement wherein it assumed the Association's statutory duties under Sections 22.1 (a), (b), and (c) of the Act, and therefore can be held liable for taking an active part in breaching statutory duties owed by its principal (Kenmore Club) to third-party condo sellers.

102. By failing to perform their statutory duty to charge only a "reasonable fee covering the direct out-of-pocket costs" of providing disclosure documents to condo sellers, Westward has taken an active part in violating the duty to charge only a reasonable fee which their principal, the Association, owes to the Plaintiffs.

WHEREFORE, Plaintiffs, individually, and on behalf of all others similarly situated, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;

B. Designating the Channons as representative of the Class, and their undersigned counsel as Class Counsel;

C. Entering Judgment in favor of the Channons and the Class and against Defendant Westward Management, Inc.

D. Awarding the Channons and the Class all equitable and monetary relief in an amount to be determined at trial, including pre-judgment and post-judgment interest;

E. Awarding the Channons and the Class any and all actual damages, attorney's fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further relief and other relief as the Court deems just and appropriate.

COUNT II
(Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act)

103. Plaintiffs restate and incorporate by reference paragraphs 1 – 102 of this Class Action Complaint as paragraph 103 as if fully set forth herein.

104. The Illinois Consumer Fraud and Deceptive Business Practices Act prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment,

suppression, or omission of any material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act." 815 ILCS § 505/2.

105. The Illinois Consumer Fraud and Deceptive Business Practices Act applies to Defendant's unfair acts as described herein because Defendant's unfair acts occurred in the course of trade and commerce, *i.e.* transactions involving the sale of goods or services to consumers.

106. Westward is a "person" as defined by Section 505/1(c) of the Illinois Consumer Fraud and Deceptive Business Practices Act.

107. The Channons and each Class member are "consumers" as defined by section 505/1(e) of the Illinois Consumer Fraud and Deceptive Business Practices Act.

108. Westward's acts of charging the Channons and similarly situated Class members an unreasonable and excessive fee to produce the necessary Section 22.1 disclosure documents violates the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*) because: (1) Westward's acts are unfair, (2) Westward intended that the Channons and each Class member rely on its unfair acts, (3) Westward's unfair acts occurred in the course of trade or commerce, and (4) Westward's unfair acts proximately caused the Channons' and each Class member's actual damages.

109. Westward's act of charging the Channons and each Class member an unreasonable and excessive fee to produce the necessary section 22.1 disclosure documents is unfair because it (1) offends public policy, (2) is immoral, unethical, oppressive, and/or unscrupulous, and (3) causes substantial injury to the Channons and each Class member.

110. Westward's acts offend Illinois' statutorily-defined public policy because they violate the Illinois Condominium Property 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." 765 ILCS 605/22.1(e).

111. Westward's acts also offend Illinois' public policy because the Channons and each Class member have no reasonable choice but to obtain the documents from Westward in order to sell their individual condominium units, in exchange for an excessive and unreasonable fee.

112. Westward's acts are immoral, unethical, oppressive and/or unscrupulous because the Channons and each Class member have no reasonable alternative but to pay Westward's excessive and unreasonable fee to obtain the necessary 22.1 disclosure documents.

113. Pursuant to the Illinois Condominium Property Act, the Channons and similarly situated Class members are required by law to obtain and disclose the 22.1 disclosure documents to a prospective condominium purchaser to sell their individual condominium units. 765 ILCS 605/22.1(a).

114. Westward's acts are so oppressive as to leave the Channons and each Class member with no reasonable alternative but to pay Westwards' excessive and unreasonable fees to obtain the necessary Section 22.1 disclosure documents, because the Channons and the Class cannot reasonably obtain the necessary Section 22.1 disclosure documents from any other source but from Westward.

115. The Channons and each Class member are required to use Westward to obtain the necessary Section 22.1 disclosure documents, and thus have no meaningful choice except to pay Westward's excessive and unreasonable fees. Westward forces the seller to choose between paying an exorbitant fee and failing to provide the necessary disclosure documents to potential buyers, thus opening themselves to potential liability. This is no real choice at all.

116. The Channons and each Class member cannot obtain the necessary Section 22.1 disclosure documents from Westward without first paying Westward's excessive and unreasonable fees.

117. Westward's acts cause substantial injury to consumers because the Channons and each Class member are forced to pay Westward's excessive and unreasonable fees that is not the "direct out-of-pocket costs of providing such information and copying." 765 ILCS 605/22.1(c).

118. The Channons and each Class member paid Westward's excessive and unreasonable fees under the assumption and in reliance that Westward's fees for producing the necessary Section 22.1 disclosure documents covered and was no greater than Westward's actual "direct out-of-pocket expenses for providing such information and copying." 765 ILCS 605/22.1(c).

119. Westward intended that the Channons and each Class member rely on its unfair acts of charging excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents because the Principal-Association (Kenmore Club) is required by statute to, and Westward as designated Agent, therefore knew it may only charge a "reasonable fee" covering and not greater than the direct out-of-pocket cost for providing the necessary Section 22.1 disclosure documents to condo sellers. 765 ILCS 605/22.1(c).

120. Westward's unfair acts of charging the Channons and each Class member excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents occurred in the course of trade and commerce because the production of condominium records in exchange for a fee constitutes trade and commerce.

121. Westward's unfair acts of charging the Channons and each Class member excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents are the actual

and proximate cause of the Channons' and each Class member's injuries because but for the Westward's unfair acts, the Channons and each Class member would not have had to pay excess and unreasonable fees to obtain the necessary Section 22.1 disclosure documents. 765 ILCS 605/22.1(c).

122. The Channons and each Class member sustained actual damages due to the Westward's unfair acts because the Channons and each Class member were forced to pay excessive and unreasonable fees to obtain disclosure documents necessary to comply with their statutory duty under Section 22.1 to provide to prospective buyers. 765 ILCS 605/22.1(c).

123. As a result of Westward's wrongful and unfair conduct in charging an unreasonable and excessive fee to produce Section 22.1 disclosure documents which the Channons and each Class member is effectively compelled by law to obtain for a prospective condominium purchasers, Westward has committed, and continues to commit, unfair acts in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*).

WHEREFORE, Plaintiffs, individually, and on behalf of all others similarly situated, pray for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Illinois, and certifying the Class defined herein;

B. Designating the Channons as representative of the Class, and their undersigned counsel as Class Counsel;

C. Entering Judgment in favor of the Channons and the Class and against Defendant Westward Management;

D. Enjoining Defendant's illegal conduct alleged herein and ordering disgorgement of any of its ill-gotten gains;

E. Awarding the Channons and the Class any and all actual, compensatory, and punitive damages to the extent permitted under the Illinois Consumer Fraud and

Deceptive Business Practices Act, in addition to their reasonable attorney's fees and costs; and

F. Granting all such further relief and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiffs demand trial by Jury on any issues triable by a Jury.

Dated: April 16, 2019

Respectfully submitted,

Plaintiffs, Harry Channon and Dawn Channon, individually, and on behalf of all others similarly situated

By: */s/ Terrie C. Sullivan*
Counsel for the Plaintiffs and the Putative Class

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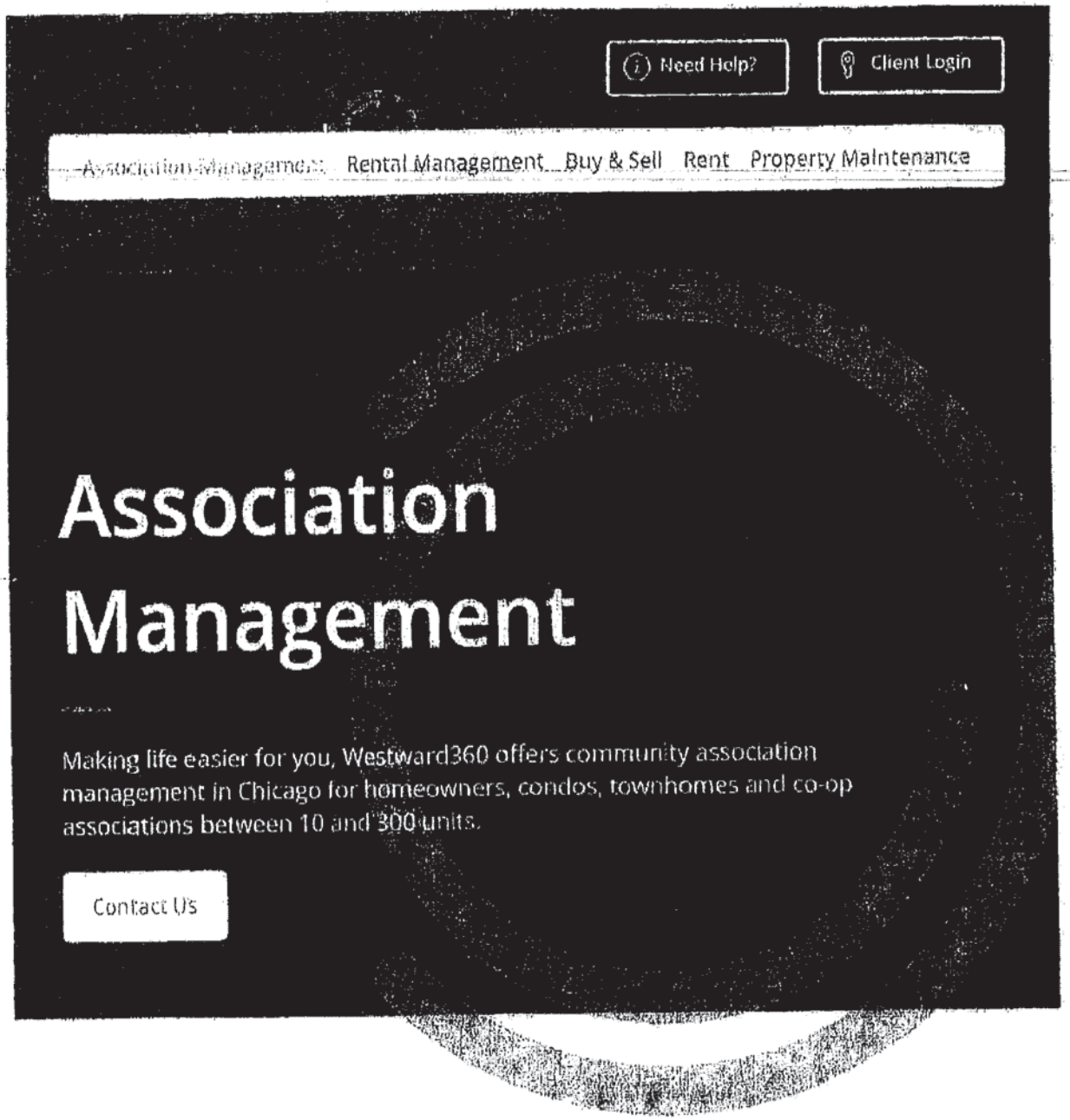
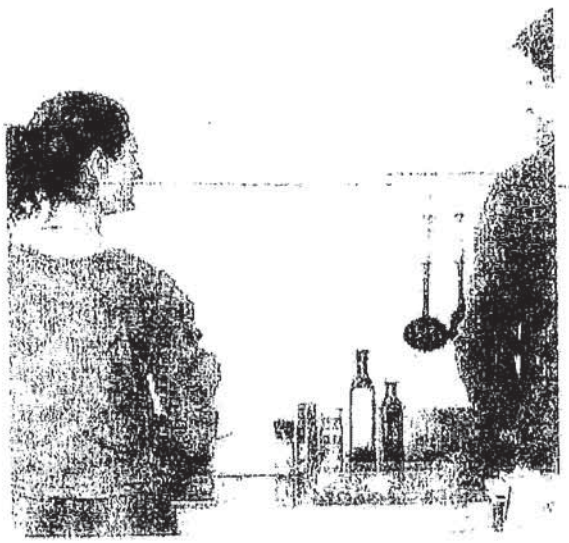
EXHIBIT A



Our advantage.

Saving time & protecting your investment.

As a property owner you want to protect and enhance your investment. As a resident, you want your day-to-day to be easy. We get it. Our services can manage every side of your association, without missing a beat.



Association management packages.

Financial Management

Let us pay the bills, keep the books, and collect assessments while you call the shots on the day-to-day. Our financial services include:

- Real-time financial reporting
- Bill pay and collections
- Help with budgeting
- Access to maintenance support

Recurring Maintenance & On-Call Support

When you're dealing with a maintenance issue, you want fast and reliable service. We employ a full suite of Chicago's best service professionals to make it easy to manage your home, rental or association.

- Property inspection and report
- Recurring maintenance calendar
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Full-Service Management

Get our full range of property management services at a great value.

- Full financial management
- Property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager with a team of assistant property managers and operations specialists
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Premium Full-Service Management

Get a dedicated, day-to-day property management partner.

- Full financial management
- Full property inspection and report
- Recurring maintenance calendar and pricing
- A dedicated property manager
- Full-service operations and maintenance support
- Association/board meetings as needed
- Access to entire staff of service experts
- Emergency on-call services

available 24/7

Custom Onsite Management

Get the convenience of an onsite property manager.

- Full or part-time onsite manager
- Full property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Get started.

Let's get started! Tell us about your property.

Contact Us

Property Perks

Hey residents, did you know Westward 360 offers exclusive maintenance deals? Sign up for Property Perks and get our monthly newsletter featuring deals on services, such as painting, HVAC, general handyman work and more!

Sign up today! Submit

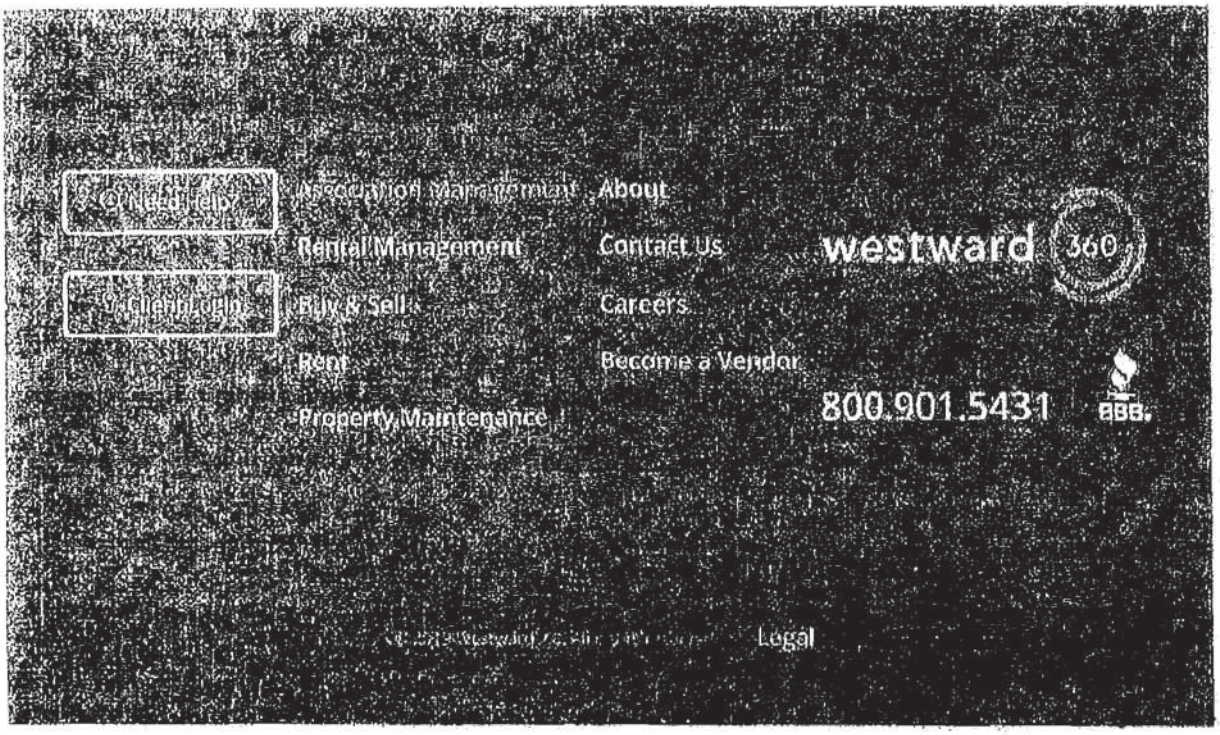


EXHIBIT B

14-08-402-016-1004

REALTOR

MULTI-BOARD RESIDENTIAL REAL ESTATE CONTRACT 6.1

1. **THE PARTIES:** Buyer and Seller are hereinafter referred to as the "Parties".

Buyer Name(s) *[please print]* Cahontas Vincent and Elizabeth Vincent

Seller Name(s) *[please print]* Harry & Dawn Channon

If Dual Agency Applies, Complete Optional Paragraph 31.

2. **THE REAL ESTATE:** Real Estate shall be defined as the property, all improvements, the fixtures and Personal Property included therein. Seller agrees to convey to Buyer or to Buyer's designated grantee, the Real Estate with approximate lot size or acreage of Common commonly known as:

5109 N Kenmore Ave, 1E, Chicago, IL 60640
Address City State Zip

Cook 1E 14084020161004
County Unit # (if applicable) Permanent Index Number(s) of Real Estate

If Condo/Coop/Townhome Parking is included: # of spaces(s)_____; identified as Space(s) #_____;
[check type] ☐ deeded space, PIN:_____ ☐ limited common element ☐ assigned space.

3. **PURCHASE PRICE:** The Purchase Price shall be $ 197,000. After the payment of Earnest Money as provided below, the balance of the Purchase Price, as adjusted by prorations, shall be paid at Closing in "Good Funds" as defined by law.

4. **EARNEST MONEY:** Earnest Money shall be held in trust for the mutual benefit of the Parties by *[check one]*:
☑ Seller's Brokerage; ☐ Buyer's Brokerage; ☐ As otherwise agreed by the Parties, as "Escrowee".
Initial Earnest Money of $ 1,000 shall be tendered to Escrowee on or before 3 day(s) after Date of Acceptance. Additional Earnest Money of $ 2,000 shall be tendered by 03/04/2016.

5. **FIXTURES AND PERSONAL PROPERTY AT NO ADDITIONAL COST:** All of the fixtures and included Personal Property are owned by Seller and to Seller's knowledge are in operating condition on the Date of Acceptance, unless otherwise stated herein. Seller agrees to transfer to Buyer all fixtures, all heating, electrical, plumbing, and well systems together with the following items of Personal Property at no additional cost by Bill of Sale at Closing *[Check or enumerate applicable items]*:

☑ Refrigerator	☑ Central Air Conditioning	☐ Central Humidifier	☑ Light Fixtures, as they exist
☑ Oven/Range/Stove	☐ Window Air Conditioner(s)	☐ Water Softener (owned)	☑ Built-in or attached shelving
☑ Microwave	☒ ☐ Ceiling Fan(s)	☐ Sump Pump(s)	☑ All Window Treatments & Hardware
☑ Dishwasher	☑ Intercom System	☐ Electronic or Media Air Filter(s)	☑ Existing Storms and Screens
☒ ☐ Garbage Disposal	☐ Backup Generator System	☐ Central Vac & Equipment	☐ Fireplace Screens/Doors/Grates
☐ Trash Compactor	☐ Satellite Dish	☑ Security System(s) (owned)	☐ Fireplace Gas Log(s)
☐ Washer	☐ Outdoor Shed	☐ Garage Door Opener(s) with all Transmitters	☐ Invisible Fence System, Collar & Box
☐ Dryer	☑ Planted Vegetation		☑ Smoke Detectors
☐ Attached Gas Grill	☐ Outdoor Play Set(s)	☑ All Tacked Down Carpeting	☑ Carbon Monoxide Detectors

Other Items Included at No Additional Cost:_____

Items Not Included:_____

Seller warrants to Buyer that all fixtures, systems and Personal Property included in this Contract shall be in operating condition at Possession except:_____.
A system or item shall be deemed to be in operating condition if it performs the function for which it is intended, regardless of age, and does not constitute a threat to health or safety.

If Home Warranty will be provided, complete Optional Paragraph 34.

Buyer Initial CV 07/31/19 *Buyer Initial* EV 07/31/19 *Seller Initial* HC DS *Seller Initial* VC DS

4/11

5. CLOSING: Closing shall be on 04/25/2016 or at such time as mutually agreed by the Parties in writing. Closing shall take place at the escrow office of the title company (or its issuing agent) that will issue the Owner's Policy of Title Insurance, situated nearest the Real Estate or as shall be agreed mutually by the Parties.

7. POSSESSION: Unless otherwise provided in Paragraph 40, Seller shall deliver possession to Buyer at Closing. Possession shall be deemed to have been delivered when Seller has vacated the Real Estate and delivered keys to the Real Estate to Buyer or to the office of the Seller's Brokerage.

8. MORTGAGE CONTINGENCY: If this transaction is NOT CONTINGENT ON FINANCING, Optional Paragraph 36 a) OR Paragraph 36 b) MUST BE USED. If any portion of Paragraph 36 is used, the provisions of this Paragraph 8 are NOT APPLICABLE.
This Contract is contingent upon Buyer obtaining a *[check one]* ☐ fixed; ☐ adjustable; *[check one]* ☑ conventional; ☐ FHA/VA (if FHA/VA is chosen, complete Paragraph 37); ☐ other _____ loan for 95 % of the Purchase Price, plus private mortgage insurance (PMI), if required, with an interest rate (initial rate if an adjustable rate mortgage used) not to exceed 4 % per annum, amortized over not less than 30 years. Buyer shall pay loan origination fee and/or discount points not to exceed 0 % of the loan amount. Buyer shall pay usual and customary processing fees and closing costs charged by lender. (Complete Paragraph 35 if closing cost credits apply).

Buyer shall make written loan application within five (5) Business Days after the Date of Acceptance; failure to do so shall constitute an act of Default under this Contract. *[Complete both a) and b)]*:

a) Not later than 03/21/2016, (if no date is inserted, the date shall be twenty-one (21) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has provided to such lending institution an "Intent to Proceed" as that term is defined in the rules of the Consumer Financial Protection Bureau and has paid all lender application and appraisal fees. If Buyer is unable to provide such written evidence, Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

b) Not later than 04/15/2016, (if no date is inserted, the date shall be sixty (60) days after the Date of Acceptance) Buyer shall provide written evidence from Buyer's licensed lending institution confirming that Buyer has received a written mortgage commitment for the loan referred to above. If Buyer is unable to provide such written evidence either Buyer or Seller shall have the option of declaring this Contract terminated by giving Notice to the other Party not later than two (2) Business Days after the date specified herein or any extension date agreed to by the Parties in writing.

A Party causing delay in the loan approval process shall not have the right to terminate under either of the preceding paragraphs. In the event neither Party elects to declare this Contract terminated as of the latter of the dates specified above (as may be amended from time to time), then this Contract shall continue in full force and effect without any loan contingencies.

Unless otherwise provided in Paragraph 32, this Contract shall not be contingent upon the sale and/or closing of Buyer's existing real estate. Buyer shall be deemed to have satisfied the financing conditions of this paragraph if Buyer obtains a loan commitment in accordance with the terms of this paragraph even though the loan is conditioned on the sale and/or closing of Buyer's existing real estate.

9. STATUTORY DISCLOSURES: If applicable, prior to signing this Contract, Buyer:
[check one] ☑ has ☐ has not received a completed Illinois Residential Real Property Disclosure;
[check one] ☑ has ☐ has not received the EPA Pamphlet, "Protect Your Family From Lead In Your Home";
[check one] ☑ has ☐ has not received a Lead-Based Paint Disclosure;
[check one] ☑ has ☐ has not received the IEMA, "Radon Testing Guidelines for Real Estate Transactions"; as

new carpet/paint in hallways
special assessment - common areas associated w/ will be paid in full prior to closing

87 *[check one]* ☑ has ☐ has not received the Disclosure of Information on Radon Hazards.

88 **10. PRORATIONS:** Proratable items shall include without limitation, rents and deposits (if any) from tenants;
89 Special Service Area or Special Assessment Area tax for the year of Closing only; utilities, water and sewer; and
90 Homeowner or Condominium Association fees (and Master/Umbrella Association fees, if applicable).
91 Accumulated reserves of a Homeowner/Condominium Association(s) are not a proratable item. Seller
92 represents that as of the Date of Acceptance Homeowner/Condominium Association(s) fees are $254.00
93 per month (and, if applicable Master/Umbrella Association fees are $0 per 0).
94 Seller agrees to pay prior to or at Closing any special assessments (by any association or governmental entity)
95 confirmed prior to the Date of Acceptance. Special Assessment Area or Special Service Area installments due
96 after the year of Closing shall not be proratable items and shall be paid by Buyer. The general Real Estate taxes
97 shall be prorated as of the date of Closing based on 105 % of the most recent ascertainable full year tax bill. All
98 prorations shall be final as of Closing, except as provided in Paragraph 22. If the amount of the most recent
99 ascertainable full year tax bill reflects a homeowner, senior citizen or other exemption, a senior freeze or senior
100 deferral, then Seller has submitted or will submit in a timely manner all necessary documentation to the
101 appropriate governmental entity, before or after Closing, to preserve said exemption(s). The requirements of
102 this Paragraph shall survive the Closing.

103 **11. ATTORNEY REVIEW:** Within five (5) Business Days after Date of Acceptance, the attorneys for the respective
104 Parties, by Notice, may:
105 a) Approve this Contract; or
106 b) Disapprove this Contract, which disapproval shall not be based solely upon the Purchase Price; or
107 c) Propose modifications except for the Purchase Price. If within ten (10) Business Days after the Date of
108 Acceptance written agreement is not reached by the Parties with respect to resolution of the proposed
109 modifications, then either Party may terminate this Contract by serving Notice, whereupon this Contract
110 shall be null and void; or
111 d) Propose suggested changes to this Contract. If such suggestions are not agreed upon, neither Party may
112 declare this Contract null and void and this Contract shall remain in full force and effect.
113 **Unless otherwise specified, all Notices shall be deemed made pursuant to Paragraph 11 c). If Notice is not**
114 **served within the time specified herein, the provisions of this paragraph shall be deemed waived by the**
115 **Parties and this Contract shall remain in full force and effect.**

116 **12. PROFESSIONAL INSPECTIONS AND INSPECTION NOTICES:** Buyer may conduct at Buyer's expense (unless
117 otherwise provided by governmental regulations) any or all of the following inspections of the Real Estate by
118 one or more licensed or certified inspection services: home, radon, environmental, lead-based paint, lead-based
119 paint hazards or wood-destroying insect infestation.
120 a) Buyer agrees that minor repairs and routine maintenance items of the Real Estate do not constitute defects
121 and are not a part of this contingency. **The fact that a functioning major component may be at the end of**
122 **its useful life shall not render such component defective for purposes of this paragraph.** Buyer shall
123 indemnify Seller and hold Seller harmless from and against any loss or damage caused by the acts of
124 negligence of Buyer or any person performing any inspection. The home inspection shall cover only the
125 major components of the Real Estate, including but not limited to central heating system(s), central cooling
126 system(s), plumbing and well system, electrical system, roof, walls, windows, doors, ceilings, floors,
127 appliances and foundation. A major component shall be deemed to be in operating condition if it performs
128 the function for which it is intended, regardless of age, and does not constitute a threat to health or safety. If
129 radon mitigation is performed, Seller shall pay for any retest.

b) Buyer shall serve Notice upon Seller or Seller's attorney of any defects disclosed by any inspection for which Buyer requests resolution by Seller, together with a copy of the pertinent pages of the inspection reports within five (5) Business Days ten (10) calendar days for a lead-based paint or lead-based paint hazard inspection) after the Date of Acceptance. If within ten (10) Business Days after the Date of Acceptance written agreement is not reached by the Parties with respect to resolution of all inspection issues, then either Party may terminate this Contract by serving Notice to the other Party, whereupon this Contract shall be null and void.

c) Notwithstanding anything to the contrary set forth above in this paragraph, in the event the inspection reveals that the condition of the Real Estate is unacceptable to Buyer and Buyer serves Notice to Seller within five (5) Business Days after the Date of Acceptance, this Contract shall be null and void. Said Notice shall not include any portion of the inspection reports unless requested by Seller.

d) **Failure of Buyer to conduct said inspection(s) and notify Seller within the time specified operates as a waiver of Buyer's rights to terminate this Contract under this Paragraph 12 and this Contract shall remain in full force and effect.**

13. **HOMEOWNER INSURANCE:** This Contract is contingent upon Buyer obtaining evidence of insurability for an Insurance Service Organization HO-3 or equivalent policy at standard premium rates within ten (10) Business Days after the Date of Acceptance. **If Buyer is unable to obtain evidence of insurability and serves Notice with proof of same to Seller within time specified, this Contract shall be null and void. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency and this Contract shall remain in full force and effect.**

14. **FLOOD INSURANCE:** Buyer shall have the option to declare this Contract null and void if the Real Estate is located in a special flood hazard area. **If Notice of the option to declare contract null and void is not given to Seller within ten (10) Business Days after the Date of Acceptance or by the time specified in Paragraph 8 b), whichever is later, Buyer shall be deemed to have waived such option and this Contract shall remain in full force and effect.** Nothing herein shall be deemed to affect any rights afforded by the Residential Real Property Disclosure Act.

15. **CONDOMINIUM/COMMON INTEREST ASSOCIATIONS:** (If applicable) The Parties agree that the terms contained in this paragraph, which may be contrary to other terms of this Contract, shall supersede any conflicting terms.

a) Title when conveyed shall be good and merchantable, subject to terms, provisions, covenants and conditions of the Declaration of Condominium/Covenants, Conditions and Restrictions ("Declaration/CCRs") and all amendments; public and utility easements including any easements established by or implied from the Declaration/CCRs or amendments thereto; party wall rights and agreements; limitations and conditions imposed by the Condominium Property Act; installments due after the date of Closing of general assessments established pursuant to the Declaration/CCRs.

b) Seller shall be responsible for payment of all regular assessments due and levied prior to Closing and for all special assessments confirmed prior to the Date of Acceptance.

c) Seller shall notify Buyer of any proposed special assessment or increase in any regular assessment between the Date of Acceptance and Closing. The Parties shall have three (3) Business Days to reach agreement relative to payment thereof. Absent such agreement either Party may declare the Contract null and void.

d) Seller shall, within five (5) Business Days from the Date of Acceptance, 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. This Contract is subject to the condition that Seller be able

agreed upon IC

to procure and provide to Buyer a release or waiver of any right of first refusal or other pre-emptive rights to purchase created by the Declaration/CCRs. In the event the Condominium Association requires the personal appearance of Buyer or additional documentation, Buyer agrees to comply with same.

e) In the event the documents and information provided by Seller to Buyer disclose that the existing improvements are in violation of existing rules, regulations or other restrictions or that the terms and conditions contained within the documents would unreasonably restrict Buyer's use of the premises or would result in financial obligations unacceptable to Buyer in connection with owning the Real Estate, then Buyer may declare this Contract null and void by giving Seller Notice within five (5) Business Days after the receipt of the documents and information required by this Paragraph, listing those deficiencies which are unacceptable to Buyer. If Notice is not served within the time specified, Buyer shall be deemed to have waived this contingency, and this Contract shall remain in full force and effect.

f) Seller shall not be obligated to provide a condominium survey.

g) Seller shall provide a certificate of insurance showing Buyer and Buyer's mortgagee, if any, as an insured.

16. THE DEED: Seller shall convey or cause to be conveyed to Buyer or Buyer's Designated grantee good and merchantable title to the Real Estate by recordable Warranty Deed, with release of homestead rights, (or the appropriate deed if title is in trust or in an estate), and with real estate transfer stamps to be paid by Seller (unless otherwise designated by local ordinance). Title when conveyed will be good and merchantable, subject only to: covenants, conditions and restrictions of record and building lines and easements, if any, provided they do not interfere with the current use and enjoyment of the Real Estate; and general real estate taxes not due and payable at the time of Closing.

17. MUNICIPAL ORDINANCE, TRANSFER TAX, AND GOVERNMENTAL COMPLIANCE:

a) The Parties are cautioned that the Real Estate may be situated in a municipality that has adopted a pre-closing inspection requirement, municipal Transfer Tax or other similar ordinances. Transfer taxes required by municipal ordinance shall be paid by the Party designated in such ordinance.

b) The Parties agree to comply with the reporting requirements of the applicable sections of the Internal Revenue Code and the Real Estate Settlement Procedures Act of 1974, as amended.

18. TITLE: At Seller's expense, Seller will deliver or cause to be delivered to Buyer or Buyer's attorney within customary time limitations and sufficiently in advance of Closing, as evidence of title in Seller or Grantor, a title commitment for an ALTA title insurance policy in the amount of the Purchase Price with extended coverage by a title company licensed to operate in the State of Illinois, issued on or subsequent to the Date of Acceptance, subject only to items listed in Paragraph 16. The requirement to provide extended coverage shall not apply if the Real Estate is vacant land. The commitment for title insurance furnished by Seller will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. **If the title commitment discloses any unpermitted exceptions or if the Plat of Survey shows any encroachments or other survey matters that are not acceptable to Buyer, then Seller shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments.** If Seller fails to have such exceptions waived or insured over prior to Closing, Buyer may elect to take title as it then is with the right to deduct from the Purchase Price prior encumbrances of a definite or ascertainable amount. Seller shall furnish Buyer at Closing an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Insurance Policy.

19. PLAT OF SURVEY: Not less than one (1) Business Day prior to Closing, except where the Real Estate is a condominium (see Paragraph 15) Seller shall, at Seller's expense, furnish to Buyer or Buyer's attorney a Plat of

Survey that conforms to the current Minimum Standard of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement placed near the professional land surveyor's seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey." A Mortgage Inspection, as defined, is not a boundary survey and is not acceptable.

20. **DAMAGE TO REAL ESTATE OR CONDEMNATION PRIOR TO CLOSING:** If prior to delivery of the deed the Real Estate shall be destroyed or materially damaged by fire or other casualty, or the Real Estate is taken by condemnation, then Buyer shall have the option of either terminating this Contract (and receiving a refund of earnest money) or accepting the Real Estate as damaged or destroyed, together with the proceeds of the condemnation award or any insurance payable as a result of the destruction or damage, which gross proceeds Seller agrees to assign to Buyer and deliver to Buyer at Closing. Seller shall not be obligated to repair or replace damaged improvements. The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Contract, except as modified by this paragraph.

21. **CONDITION OF REAL ESTATE AND INSPECTION:** Seller agrees to leave the Real Estate in broom clean condition. All refuse and personal property that is not to be conveyed to Buyer shall be removed from the Real Estate at Seller's expense prior to delivery of Possession. Buyer shall have the right to inspect the Real Estate, fixtures and included Personal Property prior to Possession to verify that the Real Estate, improvements and included Personal Property are in substantially the same condition as of the Date of Acceptance, normal wear and tear excepted.

22. **REAL ESTATE TAX ESCROW:** In the event the Real Estate is improved, but has not been previously taxed for the entire year as currently improved, the sum of three percent (3%) of the Purchase Price shall be deposited in escrow with the title company with the cost of the escrow to be divided equally by Buyer and Seller and paid at Closing. When the exact amount of the taxes to be prorated under this Contract can be ascertained, the taxes shall be prorated by Seller's attorney at the request of either Party and Seller's share of such tax liability after proration shall be paid to Buyer from the escrow funds and the balance, if any, shall be paid to Seller. If Seller's obligation after such proration exceeds the amount of the escrow funds, Seller agrees to pay such excess promptly upon demand.

23. **SELLER REPRESENTATIONS:** Seller's representations contained in this paragraph shall survive the Closing. Seller represents that with respect to the Real Estate Seller has no knowledge of nor has Seller received any written notice from any association or governmental entity regarding:

a) zoning, building, fire or health code violations that have not been corrected;
b) any pending rezoning;
c) boundary line disputes;
d) any pending condemnation or Eminent Domain proceeding;
e) easements or claims of easements not shown on the public records;
f) any hazardous waste on the Real Estate;
g) any improvements to the Real Estate for which the required initial and final permits were not obtained;
h) any improvements to the Real Estate which are not included in full in the determination of the most recent tax assessment; or
i) any improvements to the Real Estate which are eligible for the home improvement tax exemption.

Seller further represents that:

(Initials) There *[check one]* ☐ is ☑ is not a pending or unconfirmed special assessment affecting the Real Estate by any association or governmental entity payable by Buyer after the date of Closing. The Real Estate *[check one]* ☐ is ☑ is not located within a Special Assessment Area or Special Service Area, payments for which will not be the obligation of Seller after the year in which the Closing occurs. All Seller representations shall be deemed re-made as of Closing. If prior to Closing Seller becomes aware of matters that require modification of the representations previously made in this Paragraph 23, Seller shall promptly notify Buyer. If the matters specified in such Notice are not resolved prior to Closing, Buyer may terminate this Contract by Notice to Seller and this Contract shall be null and void.

24. **BUSINESS DAYS/HOURS:** Business Days are defined as Monday through Friday, excluding Federal holidays. Business Hours are defined as 8:00 A.M. to 6:00 P.M. Chicago time.

25. **FACSIMILE OR DIGITAL SIGNATURES:** Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and delivery thereof by one of the following methods shall be deemed delivery of this Contract containing original signature(s). An acceptable facsimile signature may be produced by scanning an original, hand-signed document and transmitting same by facsimile. An acceptable digital signature may be produced by use of a qualified, established electronic security procedure mutually agreed upon by the Parties. Transmissions of a digitally signed copy hereof shall be by an established, mutually acceptable electronic method, such as creating a PDF ("Portable Document Format") document incorporating the digital signature and sending same by electronic mail.

26. **DIRECTION TO ESCROWEE:** In every instance where this Contract shall be deemed null and void or if this Contract may be terminated by either Party, the following shall be deemed incorporated: "and Earnest Money refunded upon the joint written direction by the Parties to Escrowee or upon an entry of an order by a court of competent jurisdiction."

In the event either Party has declared the Contract null and void or the transaction has failed to close as provided for in this Contract and if Escrowee has not received joint written direction by the Parties or such court order, the Escrowee may elect to proceed as follows:

a) Escrowee shall give written Notice to the Parties as provided for in this Contract at least fourteen (14) days prior to the date of intended disbursement of Earnest Money indicating the manner in which Escrowee intends to disburse in the absence of any written objection. If no written objection is received by the date indicated in the Notice then Escrowee shall distribute the Earnest Money as indicated in the written Notice to the Parties. If any Party objects in writing to the intended disbursement of Earnest Money then Earnest Money shall be held until receipt of joint written direction from all Parties or until receipt of an order of a court of competent jurisdiction.

b) Escrowee may file a Suit for Interpleader and deposit any funds held into the Court for distribution after resolution of the dispute between Seller and Buyer by the Court. Escrowee may retain from the funds deposited with the Court the amount necessary to reimburse Escrowee for court costs and reasonable attorney's fees incurred due to the filing of the Interpleader. If the amount held in escrow is inadequate to reimburse Escrowee for the costs and attorney's fees, Buyer and Seller shall jointly and severally indemnify Escrowee for additional costs and fees incurred in filing the Interpleader action.

27. **NOTICE:** Except as provided in Paragraph 32 c) 2) regarding the manner of service for "kick-out" Notices, all Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of the multiple person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

a) By personal delivery; or

b) By mailing to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or

c) By facsimile transmission. Notice shall be effective as of date and time of the transmission, provided that the Notice transmitted shall be sent on Business Days during Business Hours. In the event Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or

d) By e-mail transmission if an e-mail address has been furnished by the recipient Party or the recipient Party's attorney to the sending Party or is shown in this Contract. Notice shall be effective as of date and time of e-mail transmission, provided that, in the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission. An attorney or Party may opt out of future e-mail Notice by any form of Notice provided by this Contract; or

e) By commercial overnight delivery (e.g., FedEx). Such Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

28. PERFORMANCE: Time is of the essence of this Contract. In any action with respect to this Contract, the Parties are free to pursue any legal remedies at law or in equity and the prevailing party in litigation shall be entitled to collect reasonable attorney fees and costs from the non-prevailing party as ordered by a court of competent jurisdiction.

29. CHOICE OF LAW AND GOOD FAITH: All terms and provisions of this Contract including but not limited to the Attorney Review and Professional Inspection paragraphs shall be governed by the laws of the State of Illinois and are subject to the covenant of good faith and fair dealing implied in all Illinois contracts.

30. OTHER PROVISIONS: This Contract is also subject to those OPTIONAL PROVISIONS initialed by the Parties and the following additional attachments, if any: _____

_____

OPTIONAL PROVISIONS (Applicable ONLY if initialed by all Parties)

(Initials) [ ] [ ] [ ] [ ] **31. CONFIRMATION OF DUAL AGENCY:** The Parties confirm that they have previously consented to _____ (Licensee) acting as a Dual Agent in providing brokerage services on their behalf and specifically consent to Licensee acting as a Dual Agent with regard to the transaction referred to in this Contract.

[ ] [ ] [ ] [ ] **32. SALE OF BUYER'S REAL ESTATE:**

a) **REPRESENTATIONS ABOUT BUYER'S REAL ESTATE:** Buyer represents to Seller as follows:

1) Buyer owns real estate (hereinafter referred to as "Buyer's real estate") with the address of:

_____

Address City State Zip

2) Buyer *[check one]* ☐ has ☐ has not entered into a contract to sell Buyer's real estate.
If Buyer has entered into a contract to sell Buyer's real estate, that contract:
a) *[check one]* ☐ is ☐ is not subject to a mortgage contingency.
b) *[check one]* ☐ is ☐ is not subject to a real estate sale contingency.
c) *[check one]* ☐ is ☐ is not subject to a real estate closing contingency.

3) Buyer *[check one]* ☐ has ☐ has not listed Buyer's real estate for sale with a licensed real estate broker and in a local multiple listing service.

4) If Buyer's real estate is not listed for sale with a licensed real estate broker and in a local multiple listing service, Buyer *[check one]*:

a) ☐ Shall list real estate for sale with a licensed real estate broker who will place it in a local multiple listing service within five (5) Business Days after Date of Acceptance.
(For information only) Broker:_____
Broker's Address:_____ Phone:_____

b) ☐ Does not intend to list said real estate for sale.

b) **CONTINGENCIES BASED UPON SALE AND/OR CLOSING OF REAL ESTATE:**

1) This Contract is contingent upon Buyer having entered into a contract for the sale of Buyer's real estate that is in full force and effect as of_____. Such contract should provide for a closing date not later than the Closing Date set forth in this Contract. **If Notice is served on or before the date set forth in this subparagraph that Buyer has not procured a contract for the sale of Buyer's real estate, this Contract shall be null and void. If Notice that Buyer has not procured a contract for the sale of Buyer's real estate is not served on or before the close of business on the date set forth in this subparagraph, Buyer shall be deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.** (If this paragraph is used, then the following paragraph must be completed.)

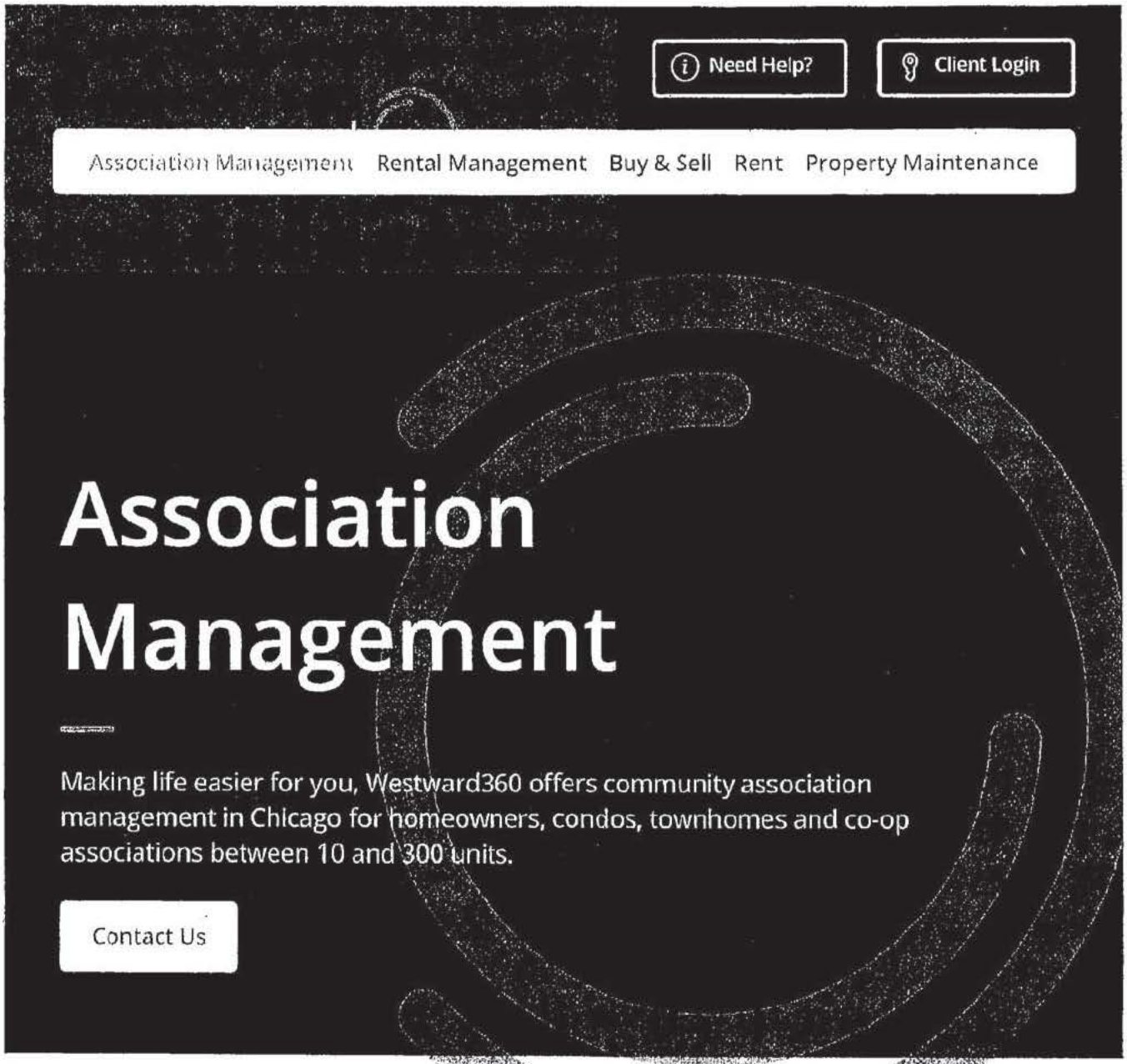
2) In the event Buyer has entered into a contract for the sale of Buyer's real estate as set forth in Paragraph 32 b) 1) and that contract is in full force and effect, or has entered into a contract for the sale of Buyer's real estate prior to the execution of this Contract, this Contract is contingent upon Buyer closing the sale of Buyer's real estate on or before_____. **If Notice that Buyer has not closed the sale of Buyer's real estate is served before the close of business on the next Business Day after the date set forth in the preceding sentence, this Contract shall be null and void. If Notice is not served as described in the preceding sentence, Buyer shall have deemed to have waived all contingencies contained in this Paragraph 32, and this Contract shall remain in full force and effect.**

3) If the contract for the sale of Buyer's real estate is terminated for any reason after the date set forth in Paragraph 32 b) 1) (or after the date of this Contract if no date is set forth in Paragraph 32 b) 1)), Buyer shall, within three (3) Business Days of such termination, notify Seller of said termination. **Unless Buyer, as part of said Notice, waives all contingencies in Paragraph 32 and complies with Paragraph 32 d), this Contract shall be null and void as of the date of Notice. If Notice as required by this subparagraph is not served within the time specified, Buyer shall be in default under the terms of this Contract.**

c) **SELLER'S RIGHT TO CONTINUE TO OFFER REAL ESTATE FOR SALE:** During the time of this contingency, Seller has the right to continue to show the Real Estate and offer it for sale subject to the following:

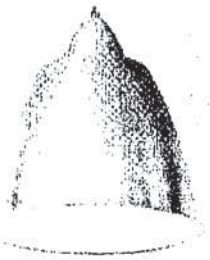
1) If Seller accepts another bona fide offer to purchase the Real Estate while contingencies expressed in Paragraph 32 b) are in effect, Seller shall notify Buyer in writing of same. Buyer shall then have_____ hours after Seller gives such Notice to waive the contingencies set forth in Paragraph 32 b), subject to Paragraph 32 d).

2) Seller's Notice to Buyer (commonly referred to as a 'kick-out' Notice) shall be in writing and shall be served on Buyer, not Buyer's attorney or Buyer's real estate agent. Courtesy copies of such 'kick-out' Notice should be sent to Buyer's attorney and Buyer's real estate agent, if known. Failure to provide such courtesy copies shall not render Notice invalid. Notice to any one of a multiple-person Buyer shall be sufficient Notice to all Buyers. Notice for the purpose of this subparagraph only shall be served upon Buyer in the following manner:
a) By personal delivery effective at the time and date of personal delivery; or
b) By mailing to the address recited herein for Buyer by regular mail and by certified mail. Notice shall be effective at 10:00 A.M. on the morning of the second day following deposit of Notice in the U.S. Mail; or



Our advantage.

https://westward360.com/association-management/



Saving time & protecting your investment.

As a property owner, you want to protect and enhance your investment. As a resident, you want your day-to-day to be easy. We get it. Our services can manage every side of your association, without missing a beat.

Our association management packages.

Financial Management

Let us pay the bills, keep the books, and collect assessments while you call the shots on the day-to-day. Our financial services include:

- Real-time financial reporting
- Bill pay and collections
- Help with budgeting
- Access to maintenance support

Recurring Maintenance & On-Call Support

When you're dealing with a maintenance issue, you want fast and reliable service. We employ a full suite of Chicago's best service professionals to make it easy to manage your home, rental or association.

- Property inspection and report
- Recurring maintenance calendar
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Full-Service Management

Get our full range of property management services at a great value.

- Full financial management
- Property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager with a team of assistant property managers and operations specialists
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Premium Full-Service Management

Get a dedicated, day-to-day property management partner.

- Full financial management
- Full property inspection and report
- Recurring maintenance calendar and pricing
- A dedicated property manager
- Full-service operations and maintenance support
- Association/board meetings as needed
- Access to entire staff of service experts
- Emergency on-call services

available 24/7

Custom Onsite Management

Get the convenience of an onsite property manager.

- Full or part-time onsite manager
- Full property inspection and report
- Recurring maintenance calendar and pricing
- Support from a licensed property manager
- One association meeting per year
- Access to our entire staff of service experts
- Emergency on-call services available 24/7

Get started.

Let's get started! Tell us about your property.

Contact Us

Property Perks

Hey residents, did you know Westward360 offers exclusive maintenance deals? Sign up for Property Perks and get our monthly newsletter featuring deals on services, such as painting, HVAC, general handyman work and more!

Sign up today! Submit

WESTWARD
PROPERTY MANAGEMENT

Escrow Document Request Form

COVER SHEET

Date: 3/16/16

To: Westward Management

Email: transitions@westwardmanagement.com

From: Name:
HARRY CHANNON

Address:
5109 N. KENMORE AVE, 1E

Phone:
708.217.1838

Fax: 501-5390
(847) [redacted]

Email:
hchannon@charlesfranklinlaw.com

PLEASE NOTE:

If this is a request to obtain a **LOAN** for a **PURCHASE/REFINANCE TRANSACTION**, please fax/email: Cover Sheet, Document Request Form and Credit Card Authorization Form.

If this request is to obtain a **PAID ASSESSMENT LETTER** for a **SALE/TRANSFER of OWNERSHIP**, please fax/email: Cover Sheet, Document Request Form, Credit Authorization Form, Notice of Intent to Sell, Homeowner Information Sheet and Governing Documents Rider (entire package).

Also, please provide estimated closing date: 4/18/16

EXHIBIT
tabbies
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WESTWARD
PROPERTY MANAGEMENT

DOCUMENT REQUEST FORM

Your request will be processed within five (5) business days of receipt of this request AND payment of fees.

Association Name: Kenmore Club

Property Address: 5109 N. Kenmore Ave, 1E

Seller/Current Owner Name: Harry Channon + Dawn Channon

(X) SALE ( ) REFINANCE

PLEASE CHECK THE APPROPRIATE BOX BELOW FOR ITEMS THAT YOU REQUIRE. PLEASE NOTE THAT AN ACCOUNT STATEMENT FOR THE UNIT IS AUTOMATICALLY INCLUDED WITH YOUR REQUEST AND DOES NOT NEED TO BE REQUESTED SEPARATELY.

We Require This Item:	Description	Amount Due
[✓]	Paid Assessment Letter	150.00
[ ]	Declaration	30.00
[ ]	Bylaws	20.00
[ ]	Articles of Incorporation	10.00
[ ]	Rules & Regulations	15.00
[✓]	Year to Date Income Statement & Budget	20.00
[ ]	**Minutes (per quarter)	5.00
[✓]	Condo Questionnaire/Disclosure Statement/22.1 (each)	75.00
[✓]	Insurance Contact Information	0.00
[ ]	Super Rush (turnaround of one business day)	200.00
[ ]	Rush (turnaround of 3 business days)	150.00

**Please indicate how many sets of minutes you require here: 0

WESTWARD
PROPERTY MANAGEMENT

CREDIT CARD AUTHORIZATION FORM

1. Complete this form and send WITH your request for information.
2. A signature of the credit card holder is required on the line where indicated.

Completion of the Credit Card Authorization Form helps us to protect you, our valued clients, from credit card fraud. All information entered on this form will be kept strictly confidential by Westward Property Management, Inc. We do not share your information with any third party vendor.

Fax all required documents to: 773-897-0690
OR
Email to: transitions@westwardmanagement.com

I, Harry Channon hereby authorize Westward Property Management to charge my credit card account in the amount of $ 245.00

Type of Credit Card (circle one):

(VISA) MASTERCARD AMERICAN EXPRESS DINER'S CLUB DISCOVER

Card Number [4] [0] [0] [3]~[4] [4] [7] [8]~[4] [4] [0] [9]~[9] [2] [3] [6]

Expiration Date: [ ] [0]~[ ] [8] CVC Code (last 3 digits on the back): [0] [0] [2]

Signature: HCh

Printed Name: Harry Channon

Credit Card Billing Address: 5109 N. Kenmore Ave 1E

City: Chicago

State: IL

Zip: 60640

Telephone: 708-217-1838

Westward Property Management | 129 E Calhoun St | Woodstock, IL 60098

WESTWARD
PROPERTY MANAGEMENT

NOTICE OF INTENT TO SELL

Homeowner Association Name: Kenmore Club

C/O Westward Management
4311 N Ravenswood Ave #201
Chicago, IL 60613
Phone: (800) 901-5431

Attention: Property Manager

In compliance with the established procedures of the above referenced homeowner association, the undersigned owner(s) of unit number 5109, 1E hereby serve notice that I (we) have offered said unit for (sale)/lease to: Cahoutas + Elizabeth Vincent

Enclosed please find:

1. One copy of the Notice of Intent to Sell Form filled out and signed by the seller;
2. One copy of the sales contract, signed by both seller and purchaser;
3. One copy of the Incoming Homeowner Information Sheet filled out by the purchaser;
4. Governing Documents Rider to be signed by the purchaser.
5. Anticipated Closing Date: 4/18/16
6. Deposit (if applicable) made payable to the homeowner association as per Rules and Regulation. All payments must be made by money order or cashier check. All payments made otherwise will be returned. For information on the moving deposits please contact your Property Manager.

Incomplete packets will be returned to the seller or their representative. A Paid Assessment Letter will not be issued without the complete packet (all applicable forms, deposits, and fees).

Although State law allows thirty (30) days for the processing of this information, normal processing occurs within 5 business days once the COMPLETED PACKET has been received. Services provided within 72 hours are considered RUSH and are billed at a premium rate of $150.00. Any documents requested for the NEXT BUSINESS DAY will be billed the SUPER RUSH rate of an additional $200.00. If the association has the RIGHT OF FIRST REFUSAL, the processing of the documents are dependent on the Board of Directors and priority and express options are not available.

Owner Signature: [signature]
Print Name: HALEY CHANNON
Date: 3-16-16

WESTWARD

GOVERNING DOCUMENTS RECEIPT

Kenmore Club Association

By my signature below, I attest that I have both received and read the Rules & Regulations (if applicable), and the Declaration/Bylaws of the Association. I have understood them and I will fully comply with these rules.

A community can be thought of as a small town. The Board President is the equivalent of the Mayor; the Association is equivalent of the law enforcement agency, and the Assessments can be thought of as taxes to pay for the maintenance, repairs and improvements in the community.

In a well-run community, it is necessary to have Rules and Regulations to protect the quality of life of the residents. Without clear guidelines for the behavior of its residents, a community is likely to deteriorate in safety, appearance and property value.

The Rules and Regulations have been designed to insure that your community will continue to be safe, beautiful and enjoyable place to live as well as a solid investment for each property owner.

Elizabeth Vincent & CaHontas Vincent
Owner/Tenant Name

Elizabeth Vincent
Owner/Tenant Signature

3.21.2016
Date

April 19, 2016
Prospective Move-In Date

Westward Management, 4311 N. Ravenswood Ave, Suite 1 Chicago, IL 60613

MAR/21/2016/MON 06:38 AM FAX No. P. 003

FORM WMHIF 121013

WESTWARD

HOMEOWNER INFORMATION FORM

(PLEASE PRINT)

Community Name: Kenmare Club				Unit Number: 1E
OWNER INFORMATION				
Vincent	Elizabeth	A	☐ ☑ ☐	☑ Yes ☐ No
Vincent	Cahontas	L	☐ ☑ ☐	
N/A			708·829·7744	708·829·7744
			X	X
eaheaton13@gmail.com		cl-vincent@hotmail.com		
TENANT INFORMATION				
N/A				
PET INFORMATION				
N/A				
VEHICLE INFORMATION				
N/A				
INSURANCE INFORMATION				
MVP Insurance Agency	Grant Thompson	708-460-6193		
118122959	April 18, 2016	4/18/2017		
EMERGENCY CONTACT				
Marybeth Kaczmarek	Mother	708.906.2687	708.906.2687	
Jeff Heaton	Brother	708·508·3746	—	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	No. 2019 CH 04869
v.	)	Judge Anna M. Loftus
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO DISMISS COMPLAINT PURSUANT TO 735 ILCS 5/2-615

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I. INTRODUCTION

This action arises from Defendant, Westward Management, Inc.'s ("Westward" or "Defendant"), alleged unlawful price gouging of condominium sellers for fees relating to obtaining access to disclosure documents. Condo sellers in Illinois are statutorily required to obtain disclosure documents from their Condo Association or its managing agent, in this case from Westward, by paying them a reasonable fee for the actual costs of providing the documents. Condo sellers must then provide the documents to prospective buyers. Westward, on the other hand, is in the business of assuming the duties of Condo Associations for compensation, which includes the statutory duty to *manage* and *provide* disclosure documents to condo sellers—and on information and belief, did so in this case pursuant to its Management contract with Kenmore Club Condo Association ("Kenmore" or "Association").[1] Condo sellers, like plaintiff class representatives, Harry and Dawn Channon ("Plaintiff"), and others similarly situated, have no choice or alternative to obtain the disclosure documents as the property management companies have complete control over the disclosure documents by virtue of their Management contracts with Condo Associations.

Defendant does not address its agency contract with the Association and ignores settled Illinois law on agent liability for statutory violations. Plaintiff has stated an implied private right of action against Westward, a statutory agent, for violating the assumed statutory duty to provide disclosure documents to condo sellers, upon request for a reasonable fee of the direct out-of-pocket costs to provide the documents. Plaintiff has similarly stated a cause of action for Consumer Fraud. Accordingly, this Court should deny Westward's motion to dismiss and order Westward to answer.

II. PERTINENT STATUTORY AND LEGAL STANDARDS

In construing a statute, the primary rule is to give effect to the legislative intent of the

[1] All emphasis added unless otherwise noted.

statute. *Royal Glen Condo. Ass'n v. S.T. Neswold & Assocs., Inc.*, 2014 IL App (2d) 131311, ¶ 19. Where there is a conflict in the interpretation of a single provision of a statute, the statute's goal and purpose of the statute, as a whole, should be considered. *Id.*, ¶ 21. "When a controversy regarding the rights of a condominium unit owner in a condominium arises, we must examine any relevant provisions in the Act and the Declaration or bylaws and construe them as a whole." *Carney v. Donley*, 261 Ill. App. 3d 1002, 1008 (2d Dist. 1994). This Court can consult legislative history to ascertain legislative intent, which should be employed here given that this case presents a question of first impression under Illinois law. *See Royal Glen*, 2014 IL App (2d) 131311, ¶ 19.

Furthermore, a statute may not be interpreted to render an absurd result or thwart the goals of the statutory scheme. *Village of Lake in the Hills v. Niklaus,* 2014 IL App (2d) 130654, ¶ 21 (a court should not depart from a statute's plain language by reading into it limitations that would render any part of the statute meaningless or superfluous); *Fisher v. Lexington Health Care, Inc.*, 188 Ill.2d 455, 464 (1999) (implied private right of action may be found under a statute where the statute would be ineffective, as a practical matter, unless such an action were implied). It is also a "fundamental principal of statutory construction (and, indeed, of language itself) that the meaning of a words cannot be determined in isolation, but must be drawn from the context in which it is used." *Corbett v. County of Lake*, 2017 IL 121536 ¶ 27. In determining Section 22.1's legislative intent, the Court should consider the Act's entire statutory scheme "in a manner that renders the statute consistent, useful, and logical." *Royal Glen*, 2014 IL App (2d) 131311, ¶ 21.

III. ARGUMENT

A. PROPERTY MANAGEMENT COMPANIES CAN BE HELD LIABLE FOR VIOLATING SECTION 22.1 (C)'S "REASONABLE FEE" REQUIREMENT.

First, Westward incorrectly states that "***Illinois Courts*** and the United States Court of Appeals for the Seventh Circuit have ***repeatedly***

ruled that Illinois law precludes Plaintiffs' claims and that there is no implied right of action for sellers of a condominium."[2] (Mot. 2). This is entirely misleading. The only Illinois court to rule on the viability of a claim by a seller under section 22.1 of the Condo Act found that such a claim could be made by the seller against a property management company hired by the condo association. (*See* Ex. 1, Trial Court Order and Transcript). Judge Allen, who then presided over the *Friedman v. Lieberman* matter, denied a strikingly similar motion to dismiss disputing the existence of an implied cause of action against a property management company that allegedly violated Section 22.1(c).[3] *Id*. On appeal, the First District Appellate Court in *Friedman* found it improvidently granted defendant's Rule 308 application and remanded to the trial court. However, the Appellate Court declined to disturb the finding of an implied cause of action. (Ex. 2). Importantly, **no Illinois case has interpreted Section 22.1 has sellers from bringing a claim**. Although this Court is not bound by the decision of another trial court judge, Judge Allen's decision deserves deference as a coordinate court in this division. Judge Allen consulted Illinois law and engaged in statutory interpretation of the Condo Act as a whole—which is critically absent from the federal opinions.

Notably, Defendant cites no Seventh Circuit Opinion to support its contention. Defendant instead relies on two federal district court decisions: *Horist v. Sudler & Co*., 17-CV-08113, WL 1920113 (N.D. Ill. 2018), *aff'd*, 41 F.3d 274 (7th Cir. 2019) and *Ahrendt v. Condocerts.com, Inc*.,

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[2] Defendant refers to the decision from the "United States Court of Appeals for the 7th Circuit", yet, fails to cite to the decision. (Mot. 2 fn 2, 5). The Seventh Circuit affirmed the district court's holding in *Horist v. Sudler & Co.*, 41 F.3d 274 (7th Cir. 2019). Thus, in responding to Defendant's argument, Plaintiff maintains that **both** *Horist* decisions should not be followed.

[3] *Friedman v. Lieberman Management Services, Inc.*, 2019 IL App (1st) 180059-U. While parties may not cite to unpublished orders pursuant to Illinois Supreme Court Rule 23(e) for precedential value, trial courts are not prohibited from adopting the sound reasoning of an unpublished Order. *See Byrne v. Hayes Beer Distrib. Co.*, 2018 IL App (1st) 172612, ¶22 (stating that nothing in Rule 23 expressly prohibits the trial court or the appellate court from adopting the reasoning of an unpublished Order).

17-cv-08418, 2018 WL 2193140 (N.D. Ill. May 14, 2018) (vacated).[4] As discussed below, neither federal opinion applies to the Complaint at hand nor can be binding on this Court.

Second, Westward's Motion fails because it ignores both legislative history and binding Illinois Supreme Court precedent recognizing the active part agency theory, which Illinois Courts have long followed. Under Section 22.1, Condo Associations or their Board of Managers are restricted to charging only a "reasonable fee" covering the direct out-of-pocket costs for providing disclosure documents to condo Sellers. 765 ILCS 605/22.1(c). This is a restriction on what may be charged to the unit seller. Defendant argues that Sellers are not a class which Section 22.1 is designed to protect. (Mot. 5). Under Defendant's interpretation, not only do sellers have no implied cause of action against property management companies under Section 22.1, but they would similarly have no protection against an Association or Board of Managers for overcharging. Such an interpretation would give this portion of Section 22.1 no effect, which runs directly counter to principles of proper statutory interpretation.

Significantly, neither Westward nor the federal opinions in *Horist* address public policy of Illinois. The legislative record states that the purpose of the Condo Act is to provide uniformity in regulation and at the same time "***provide the ultimate amount of consumer protection***." 83rd Ill. Gen. Assem., House Proceedings, May 26, 1983, at 157. (Ex. 4). Addressing the question of whether Section 22 provided protections for sellers, Representative David J. Regner confirmed that it did. The legislative record states:

> [T]his is the amendment that I was referring to that is in agreement with the members that objected to the bill and in its form as introduced and it does provide the necessary, it does answer the questions that there were on this bill **and also**

[4] Any reliance on *Ahrendt* is flat out wrong. The dismissal Order in *Ahrendt* was vacated. *See* (Ex. 3) "[t]he effect of a vacated order is that of a void order." *New York Life Ins. Co. v. Sogol*, 311 Ill.App.3d 156, 158 (1st Dist. 1999). While *Ahrendt* was later voluntarily dismissed, the Rule 12(b)(6) dismissal Order was not reinstated. Thus, *Ahrendt* cannot support Westward's arguments.

> **provides the necessary protections to the seller** and I would for its adoption. 77th Ill. Gen. Assem., House Proceedings, May 9, 1972, at 31-33. (Ex.5).

Section 22.1's reasonable fee restriction has the effect of protecting ***both*** condo sellers and prospective buyers, by ensuring that sellers are not price gouged and by removing cost-prohibitive barriers to providing potential buyers with the documents to make an informed decision regarding the purchase. *See id*. The purpose of the Condo Act is "to govern the affairs of Illinois Condo Associations, and establish procedures for the creation, sale, and operation of condominiums." *Royal Glen*, 2014 IL App (2d) 131311, ¶22. The Act is designed to protect the public "so they know exactly what they're getting into". 77th Ill. Gen. Assem., House Proceedings, June 21, 1972. (Ex. 6). Hence, a plain reading of the Act in conjunction with Section 22.1 makes one thing clear: The Condo Act intended to protect the public—which includes sellers.

Third, the above-mentioned federal decisions are not Illinois law as Westward contends—in fact, it is not Illinois law at all. Only Illinois courts authoritatively determine Illinois law; what a federal court says about Illinois law is not binding on any Illinois court, especially those of first impression on a state statute. *Ryan v. World Church*, 198 Ill.2d 115, 127 (2001) (Illinois Supreme Court makes final determination on state statutes). An Illinois state court need not follow federal decisions that address Illinois law. Plain and simple, the Seventh Circuit's opinion in *Horist*, 941 F.3d 274 is not binding on this Court. Illinois courts, not federal decisions, are the final arbiter on questions of Illinois statutes. *Ryan*, 198 Ill.2d at 127. Especially, as here, on matters of first impression. *Bridgeview Health Care Ctr., LTD., State Farm Fire & Casualty Co.*, 2014 IL 116389 ¶16 (federal opinions that make an "*Erie* guess" on a question of first impression interpreting state law, are not binding on Illinois courts, thus, Illinois courts are under no obligation to accept federal court decisions). Even if the court were to consider them (which it should not), the federal court opinions are not binding on this Court's interpretation of a state statute. More persuasively, is the

decision by an Illinois Judge previously denying a defendant property management company's previous motion to dismiss, coupled with an Illinois Appellate Justice, rejecting *Horist* outright.

Furthermore, the federal decisions are flawed. The federal court's analysis was confined to Section 22.1, and did not perform statutory interpretation as Judge Allen did. Therefore, on their face, the federal decisions read the statute in a vacuum, did not construe it as a whole or in accordance with the statute's stated purpose. *Horist* makes the conclusory, and implausible statement that Section 22.1 was intended to relieve the Association from the cost of providing the necessary disclosures and does not provide protection to the seller. *Horist*, 2018 WL 1920113 at 6. If this were true, it would be unnecessary for Section 22.1 to provide that only a "reasonable fee" for the "direct out- of-pocket costs" may be charged. Essentially, Westward contends that the term "reasonable" has no meaning at all in connection with sellers—***despite the fact that the fee is imposed only on the seller***. (Mot. 5). An implausible contention. It follows then that the inclusion of the restriction to a "reasonable fee" covering the "direct out-of-pocket costs" protects the condo *seller* from excessive fees from third parties—not the Association.

B. **CONDO SELLERS HAVE AN IMPLIED CAUSE OF ACTION UNDER SECTION 22.1.** Plaintiff reiterates that he states a claim under Section 22.1 because: (1) Westward is an agent (C ¶¶73, 93-96, 101); (2) legislative history demonstrates that Section 22.1 protects unit *sellers* and buyers (C ¶¶65-84); (3) statutory limitations concerning "reasonable fee" in Section 22.1(c) apply to Westward, the Association's agent (C ¶¶82-94, 96-101); and (4) condo sellers have a private right of action against Westward, the agent, for allegedly violating its assumed statutory duty under Section 22.1(c). (C ¶¶70-74, 81-96, 97-101). Westward's heavy reliance on *Horist*, which is not binding on this Court, should not be followed on account of its patently faulty premise—which

was recognized by First District Appellate Justice Walker in his dissent issued in the *Friedman* appeal. (Ex. 2 ¶33).

In determining whether an implied cause of action exists, the court applies a four-part test: (1) the plaintiff is within the class of persons the statute is designed to protect; (2) implying a cause of action is consistent with the underlying purpose of the statute; (3) the plaintiff's injury is one the statute is designed to prevent; and (4) implying a cause of action is necessary to effectuate the purpose of the statute. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865 ¶35, 37 (2015) (finding an implied right of action existed for purchasers under Section 22.1). Where a statutory violation is alleged a private right of action can be implied. *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill.App.3d 45, 59 (2d Dist. 1999). In such cases, courts consider the relevant provisions of the Act and "the Declaration or bylaws" to "construe them as a whole" and consult legislative history to ascertain the legislative intent. *Carney v. Donley*, 261 Ill.App.3d 1002, 1008 (2d Dist. 1994); *Royal Glen Condo. Ass'n.*, 2014 IL (2d) 131311, ¶19.

1. Condo Sellers Are Consumers Within The Section 22.1 Protected Class of Persons. Westward maintains condo sellers are not protected under Section 22.1. (Mot. 5). But Westward altogether ignores evidence in the legislative record of Section 22.1 that the statute is intended to protect *both* purchasers and sellers. (C ¶¶71-73, 75, 80, Ex. 5); *supra* at 5. Nowhere does the Condo Act provide, nor has any Illinois court interpreted Section 22.1, as protecting ***only purchasers.*** Westward cites *Nikolopulos* and *D'Attomo*—decisions ***not*** involving protections for sellers—and argues those cases hold *only purchasers*, not sellers, are protected under Section 22.1. (Mot. 3-4). This a red herring: neither decision ever addresses, let alone holds, that ***sellers*** lack a private cause of action under Section 22.1. Conversely, both cases only involved whether *buyers* had an implied cause of action under Section 22.1. *Nikolopulos*, 245 Ill.App.3d 71, 76-77 (1st Dist. 1993);

D'Attomo, 2015 IL App (2d) 140865 ¶¶35, 37. Westward mischaracterizes Plaintiff's argument, implying Plaintiff claims Section 22.1 *only* protects sellers. (Mot. 5). Wrong. Plaintiff's contention that Section 22.1 is intended to—and should—protect ***both buyers and sellers***, is well-grounded and consistent with public policy. (C ¶¶70-73, 75-83, 87-88); *supra* at 5; *Mikulecky v. Bart*, 355 Ill.App.3d 1006, 1010-14 (1st Dist. 2004) (discussing public policy of disclosure under Section 22.1; buyer protected from bad investment, seller shielded from liability when complying with statute).

2. Implying a Cause of Action Against Property Management Companies Is Consistent With The Purpose Of Section 22.1. Section 22.1(c) was meant to protect sellers as well. The limitation to charge only "a reasonable fee" covering the actual cost of producing disclosure documents directly impacts the seller, who is statutorily charged with obtaining the documents ***for a cost***, and liable for failing to make them available to potential buyers. (C ¶¶79, 83-85, 87). *Mikulecky,* 355 Ill.App.3d at 1013–14. Thus, an implied private right of action against property management companies by condo sellers is entirely consistent with the legislative intent, because the legislative record unambiguously confirms that Section 22.1 was intended to protect *both* sellers and potential buyers. 77th Ill. Gen. Assem., House Proceedings, May 9, 1972, at 31-33. (Ex. 5).

3. The Statute Is Designed To Prevent Plaintiff's Injury. Unlike the federal opinions which failed to consult legislative history, Judge Allen's statutory analysis is rooted in the Condo Act. Judge Allen held "***the intent of the act is to protect probably sellers, buyers, owners, board managers to try to – [] be comprehensive***, but we can never protect against all eventualities. ***But [] that's the intent of the act***." (Ex. 1 at 20). Judge Allen's interpretation further comports squarely with the legislative comments when enacting Section 22.1, namely, to expressly

provide "the necessary protections to the ***seller***[.]" 77th Ill. Gen. Assem., House Proceedings, May 9, 1972 (Ex. 5 at 31-33). Judge Allen further reasoned that given the Act's purpose and legislative history, the legislature imposed a fee restriction for documents under 22.1(c) ***as a measure of protection for sellers from excessive fees and to ensure that the seller can fulfill his statutory duty to potential buyers***. (C ¶75); (Ex 1, at 20-21; 29-34). On appeal, Justice Walker dissented from the majority decision to vacate the Appellate Court's grant of the 308 application. In his dissent, Justice Walker agreed with Judge Allen's reasoning and sharply criticized the holding in *Horist v. Sudler & Co*., 17 C 8113 (N.D. Ill. 2018), *aff'd*, 41 F.3d 274 (7th Cir. 2019), that Section 22.1 only protects potential buyers as "implausible" because *Horist* disregarded the relationship between Illinois' Condo Act, the Uniform Condominium Act and the various rights conferred to unit owners. (Ex. 2, ¶33).

As Judge Allen held, and as Justice Walker recognized, the defendant's crabbed interpretation of Section 22.1 depriving condo sellers from maintaining any remedy under that provision would be antithetical to common sense. (Ex. 2 ¶¶19-22). Westward's contention that the legislature intended to leave sellers remediless under Section 22.1 is facially absurd. (Mot. 6-7). Courts are admonished not to construe statutes to reach an absurd result. *Progressive*, 215 Ill.2d at 129-30, 134. Westward's absurd construction of Section 22.1 must be rejected.

4. Implying A Cause Of Action Effectuates The Purpose Of The Statute. The reasonable fee provision in section 22.1(c) prevents condo sellers from being captive victims of price gouging schemes. Westward's interpretation of "reasonable fee" defies common sense. (Mot. 6). Westward never explains how the purpose of the Condo Act works if sellers remain unprotected from a management company's wrongful conduct while exercising their statutory duty to purchasers under Section 22.1(a). (C ¶¶7, 68, 74-80, 85). *Fisher v. Lexington Health Care, Inc.*, 188 Ill.2d

455, 464 (1999) (implied private right of action may be found where statute would be ineffective, as a practical matter, unless such action were implied). Westward reaches its interpretation of the word "reasonable" in Section 22.1(c) by the following faulty logic: since Westward is neither a condo association nor a member of the Board of Managers, the provision does not apply to them. (Mot. 5). Westward then fails to explain how *they* (as opposed to the Association) were able to provide and charge condo sellers with disclosure documents in the first place. (Mot. 6).[5]

Westward points to no authority to support its position that the restrictions under Section 22.1 not apply to them. That is because the law provides no such exemption. Courts may not read exceptions into a statute that are otherwise nonexistent. Westward is the chosen statutory agent under Section 22.1 of the Act. (C ¶92). Thus, property management companies, like Westward, are equally subject to the statutory restrictions under section 22.1 as their principal would be. An agent is one who acts under authority from another to transact business for him or manage his affairs and who is required to act for the other. *Villa v. Rubloff,* 183 Ill.App.3d 746, 750 (1st Dist. 1989); *Alliance Property Management,* 2015 IL App (1st) 150169 ¶¶30, 33-34 (agent that assumes statutory duties of principal cannot feign ignorance to evade liability). Westward cannot reconcile fee restrictions under Section 22.1 with its insistence that it is not liable for violating the statutory duties it agreed to assume. (C ¶¶90-101). *Alliance,* 2015 IL App (1st) 150169 ¶ 34. Judge Allen questioned the defendant property management company's nonliability theory when he denied their motion to dismiss, stating: "*they can't just put their head in the sand and – and say that we're going to ignore [the Condo Act] because it doesn't apply to us.*" (Ex. 1, at 23). Justice Walker highlighted the absurdity of the defendant's argument. (Ex. 2 ¶21). Westward's interpretation of

[5] Section 18(a)(5) of the Condo Act expressly permits an association to hire a management agent. 765 ILCS 605/18(a)(5). (Mot.6) (C ¶95). *Alliance*, 2015 IL App (1st) 150169 ¶30. By providing the disclosure documents to Plaintiff, Westward has understood from Section 18(a)(5) that this duty can be assumed by managing agents (presumably as the "such other officer") under section 22.1. (C ¶¶21, 91, 97).

Section 22.1 renders the purpose of that section meaningless—a conclusion courts are directed not to find when interpreting statutory language. (C ¶80). *Progressive.*, 215 Ill.2d at 134. Westward should be held to the legislative standard set forth in Section 22.1, just as the Association would. Any other reading would defeat the purpose of the statute. (C ¶¶76-78; 89, 93-94); (Ex. 2 ¶44).

5. The Active-Part Agency Doctrine Remains Valid Under Illinois Law.[6] The Illinois Supreme Court case, *Landau v. Landau*, 409 Ill. 556, 564 (1951), remains authoritative law in Illinois, as the case has not been overruled by any subsequent Illinois Supreme Court case. Nor has any Illinois appellate court challenged *Landau's* holding regarding the active agent theory in actions involving statutes. *Gateway Erectors v. Lutheran General Hospital*, 102 Ill. App. 3d 300 (1st Dist. 1981) (distinguishing *Landau* on the basis that it did not deal with a contractual action, but rather, dealt with the fiduciary relationship of an agent to a successor trustee). To the contrary, *Landau* has been cited to reiterate the active agent principle in numerous Illinois cases. *See e.g.*, *Health Cost Controls v. Sevilla*, 365 Ill. App. 3d 795, 806 (1st Dist. 2006); *Cummings Foods, Inc. v. Great Central Ins. Co.*, 108 Ill.App.3d 250, 256 (4th Dist. 1982); *Gateway Erectors*, 102 Ill. App.3d 303. Following the Court's opinion in *Landau*, the case became binding authority in subsequent cases as legal precedent, such as in the case of *Merrill v. HUD*, 638 F.2d 1086 (7th Cir. 1981).

Westward incorrectly cites to *Thomas D. Philipsborn Irrevoc. Tr. v. Avon Capital, LLC*, 699 F. App'x 550, 552 (7th Cir. 2017) as authoritative. (Mot. 6). *Landau*, not the Seventh Circuit is binding on this Court. Nor can the Seventh Circuit articulate Illinois law when the Illinois Supreme Court has held to the contrary. *Merrill* is instructive, however, because that case concerns

[6] Westward citing *Bovan v. Am. Family Life Ins. Co.* 386 Ill.App.3d 933, 942 (1st Dist. 2008), asserts Illinois has rejected the active-part agency theory. Westward is wrong. *Bovan* held the theory inapplicable in the circumstances of that case— *Bovan* never wholly rejected the viability of that theory. *Bovan* also concerned an agent's liability ***in tort***. Plaintiff's claim is statutory, not tort.

a statutory violation by an agent and applies active part agency as stated in *Landau*. *Merrill*, 638 F. 2d at 1095 ("[i]t is considered a well settled principle of Illinois law that an agent is not liable for the acts of a disclosed principal unless he takes an active part in violating some duty the principal owes a third person").

The *Merrill* court held that defendant by failing to perform its statutory duty to pay interest on the plaintiff's security deposits, the property management companies had "taken an active part in violating the duty to pay interest which their principal, HUD, owes to the plaintiff." *Merrill*, at 1095. *Merrill* illuminates the problem with defendant's argument: "[i]t is considered a well settled principal in Illinois that an agent is not liable for the acts of a disclosed principal unless he takes an active part in violating some duty the principal owes to a third person." *Merrill*, 638 F.2d at 1095, citing 1 ILL. L & PRAC., AGENCY § 130 (1953); *Landau*, 409 Ill. at 556, *Grover v. Commonwealth Plaza,* 76 Ill.App.3d 500 (1st Dist. 1979) (following *Landau*).

Reading *Merrill* into the record, Judge Allen in *Friedman* quoted the "well-settled principle of law in Illinois that an agent is not liable for the acts of a disclosed principal unless he takes an active part in violating some duty the principal owes to a third person." (Ex. 1, at 33:13-17). In *Friedman*, Judge Allen correctly noted that, like the agent in *Merrill*, who assumed the statutory duties of the principal, the property management company assumed the statutory duties of the Condo Association and is liable if it took an active part in violating those same duties. As such, and as Judge Allen held, *Merrill* provides a sound basis that Westward should be held to the legislative standard set forth in Section 22.1, just as the Association would.

C. COUNT II: CFA CLAIM BASED ON UNFAIRNESS STATES A CAUSE OF ACTION. Plaintiff's CFA claim stands independent of the Condo Act. Even if the violated statutes do not allow for private enforcement, the claim based on the *conduct* prohibited by the statute can still form the

basis for a finding of unfairness under the CFA. *Gainer Bank, the N.A. v. Jenkins*, 284 Ill.App.3d 500, 503 (1st Dist. 1996). Defendant further contends (wrongly) that Count II should be dismissed because Plaintiff has not alleged fraud or deception. (Mot. 8). But Plaintiffs' CFA claim is brought under the unfairness prong of the CFA, not deception. Thus, Plaintiff need not allege facts demonstrating fraud, deception or concealment to adequately allege unfairness. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 417-18 (2002). Illinois courts determine whether conduct is unfair on a case-by-case basis (*i.e.*, unfairness is factual question). *Saunders v. Michigan Ave. Natl' Bank*, 278 Ill.App.3d 307, 313 (1st Dist. 1996). Unfairness factors include: (1) whether public policy of the State is violated, (2) the conduct is immoral, *unethical*, *oppressive*, or *unscrupulous*; and (3) consumers are injured by the conduct. *Robinson*, 201 Ill.2d 403, 417-18 (2002). The test does not require all three criteria be satisfied to find unfairness. *Id.*, at 418.

First, Westward's conduct violates statutorily defined public policy because the Condo Act's stated intent that only a reasonable fee covering the direct out of pocket costs of providing the documents and copying may be charged. (C ¶¶59-68; 70, 73; 94-95). The fee restriction imposed by the legislature ensures that condo sellers can fulfill their statutory duty to prospective buyers and that the fair dispensation of disclosure documents is not disrupted by unscrupulous managing agents. (C ¶¶67-68; 70, 72, 94-95). In this case, Plaintiffs were compelled to pay excessive fees for disclosure documents which are necessary to comply with the Sellers duty under the Condo Act. (C ¶¶1-3; 21; 32). *Robinson*, 201 Ill.2d at 418 (forcing person to pay unreasonable fee can give rise to oppressive conduct satisfying unfairness prong).

Second, Westward's *conduct* is alleged to be, at once unethical, oppressive, and unscrupulous because it charges condo sellers excessive fees to obtain disclosure documents under the guise it has authority to do so via its management contract with the Association. (C ¶¶20, 22-

32; 46-47; 98-100). *See also Hartigan v. Knecht Services, Inc.*, 216 Ill.App.3d 843, 855-56 (2d Dist. 1991) (unfair conduct where defendant used superior bargaining position to charge and collect excessive fees). Westward's conduct is oppressive; its agency position and entrustment with documents was used to induce sellers to pay an unreasonable fee. Westward uses its position of entrustment and control (*i.e.*, leverage) over disclosure documents and does not disclose their "actual cost" of providing the documents to sellers. (C ¶58). Because Westward manages and provides disclosure documents to condo sellers, the Channons and the class paid Westward's excessive and unreasonable fee under the assumption and in reliance that Westward's fees for producing the documents were the actual "direct out-of-pocket expenses for providing such information and copying." (C ¶103).

Also, Plaintiffs could not have obtained the documents from any other source. (C ¶¶1-4; 8-10; 19; 21). Westward explicitly states in its own Document Request Form, attached to the Complaint, that: "***Your request will be processed within five business days of receipt of this request AND payment of fees***." (C, Ex. C); *Demitro v. General Motors Acceptance Corp.*, 388 Ill.App.3d 15, 20-21 (1st Dist. 2009) (unfair and oppressive conduct found where plaintiff left with two choices: pay or lose). Westward allegedly uses its position of entrustment and authority with disclosure documents as leverage to abuse condo sellers who are often involved in time-sensitive real estate sale transaction and have no other option but to pay whatever fee Westward chooses to charge, or risk liability by not providing deficient documents or none at all to prospective buyers. ***This is no real choice at all***. (C ¶¶4, 7, 24, 27; 99). *Fahner v. Hedrich*, 108 Ill.App.3d 83, 89-91 (2d Dist. 1982) (oppressive conduct where defendant charged unconscionable fee because plaintiff had no reasonable alternative).

Third, Westward's conduct caused substantial injury to consumers because Plaintiff and

each Class member are forced to pay Westward's excessive and unreasonable fees that is not "the direct out of pocket costs of providing such information and copying, and thus, was compelled to pay an unreasonable amount in excess of what she would have reasonably agreed to pay. (C ¶¶101-102; 107). *Hedrich*, 108 Ill.App.3d at 90-91 (resale fee unfair and deceptive).

D. VOLUNTARY PAYMENT DOCTRINE IS INAPPLICABLE TO COUNTS I AND II. Plaintiff alleged facts that bring its claim under recognized exception to the voluntary payment doctrine. *Walgreens v. McIntosh*, 2019 IL 123626 ¶23; *Knecht*, 202 Ill.App.3d at 717. Three exceptions apply. ***First***, Plaintiff's allegations of *compulsion* and *lack of any reasonable choice* in paying Westward's unreasonable and unlawful demanded fee—which must be accepted as true for purposes of this motion—render the voluntary payment doctrine inapplicable to these claims. (C ¶¶3, 8-13, 21, 104-08, 112-23). *McIntosh*, 2019 IL 123626 ¶23. ***Second***, as alleged at length in the Complaint, Westward's conduct was *unlawful* because it violated Section 22.1(c) when it charged Plaintiff, and others similarly situated, an excessive and unreasonable fee to obtain disclosure documents. ***Third***, Condo sellers are statutorily required to provide disclosure documents to prospective buyers (*i.e.*, necessity). Disclosure documents can only be obtained from Westward, as they are retained by the Association to manage and provide the documents to condo sellers. 765 ILCS 605/22.1(a)(b) (sellers "shall" obtain the documents from the Board or its manager; (C ¶¶8,9, 21, 27). Plaintiffs did not voluntarily pay the fee they did not have any other option but to pay for disclosure documents or risk their own potential liability under the Condo Act and a possible failed real estate sale. Lastly, Defendant improperly interjects factual matters such as whether Plaintiff sought the documents from Kenmore instead of Kenmore's designated agent. This argument should be rejected outright as impermissibly raised in a section 2-615 motion to dismiss.

Wherefore, Plaintiffs request that this Court deny Westward's motion to dismiss and be

ordered to answer the complaint.

Dated: September 4, 2020

Respectfully submitted,

By: *s/s* Terrie C. Sullivan
Counsel for the Plaintiffs and Putative Class

EXHIBIT 1

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FRANKLIN P. FRIEDMAN, AS TRUSTEE OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, individually and on behalf of all others similarly situated, Plaintiff, vs. LIEBERMAN MANAGEMENT SERVICES, INC., an Illinois corporation, Defendant.	No. 2016 CH 15920

Report of proceedings had at the hearing in the above-entitled cause before the Honorable THOMAS R. ALLEN, Judge of said Court, at Richard J. Daley Center, 50 West Washington Street, Room 2302, Chicago, Illinois, commencing at 11:14 a.m., on June 14, 2017.

APPEARANCES:

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On behalf of the Defendant.

(WHEREUPON, the following proceedings were had in open court.)

THE COURT: Okay. Good morning.

MR. BLUMENTHAL: Good morning, your Honor.

MR. McCOLGAN: Good morning, your Honor.

THE COURT: Parties want to identify themselves for the record, please.

MR. BLUMENTHAL: Yes, your Honor.

Jeff Blumenthal for the plaintiff Friedman.

MR. McCOLGAN: And Art McColgan for defendant Lieberman Management Services, Inc.

THE COURT: Okay. So we're here on a motion to dismiss filed by the defendants. And I've read the briefs and certainly would welcome your comments and arguments on whether -- what's reasonable, who got ripped off, who didn't get ripped off, and whether it's a private right of action here, whether it's consumer fraud, or whether it's just business as usual in the world of condominium law. So I appreciate the parties citing the appropriate cases, and let's talk about it.

Mr. McColgan, you're the movant. Okay.

MR. McCOLGAN: Correct, your Honor.

I guess to -- to sort of summarize our argument, it's Lieberman's position that Section 22.1 of

the Condo Act doesn't apply to it as a property management company. 22.1 regulates boards of managers, condo associations, and unit owners. And we cited to you the Royal Glen case on that issue.

We also believe there's no private right of action here under the Condo Act. There are no Consumer Fraud Act claims. There are no proper restitution claims.

The fact -- the facts here are that the plaintiff was selling his condo, and in connection with the sale on September 27th, 2016, he requested -- or actually his attorney requested certain documents from Lieberman Management to comply with his obligations to provide the purchaser with documents required by 22.1.

Rather than contacting the condo association for these documents, the plaintiff had his attorney request the documents from Lieberman. His attorney went online, identified the specific documents he wanted, saw what the fee would be for these documents, paid the fee, and, in fact, asked that the documents be rushed and paid a rush fee. Apparently, the closing occurred on October 7th, so obviously they were in a bit of a rush to get this transaction done.

You know, it's Lieberman's position that you take the complaint, the Condo Act, the exhibits to the

complaint, you view them in the light most favorable to the plaintiff, and it still fails to state a cause of action upon which relief can be granted.

As I mentioned earlier, the -- the Condo Act by its terms applies -- and I'm talking about Section 22.1 specifically here -- applies to the association or its board of managers. The act could have said it applies to property management companies. It doesn't. Could have said it applies to agents of the condo association. It doesn't say that.

You know, the fact is that in -- in a small condo association, perhaps the -- the members of the board can handle requests for documentation. In larger associations, I think it's common practice for them to pass this on to property management companies like Lieberman.

And so as you were mentioning earlier, it's our view that this is business as usual. It happens all over Illinois. It happens all over the country.

So it's our view that if there is a beef here, it's with the condo association or the board of managers, and it has to be under the act. If plaintiff has a problem with what it is getting charged for these documents, they need to contact the condo association, ask them to change the bylaws or change their contract

or ask them to do the -- the searching themselves.

There's nothing in the Condo Act or in common sense that would make Section 22.1 applicable to a property management association. You know, the Condo Act -- Section 22.1 of the Condo Act states that the association or the board of managers can only charge their out-of-pocket costs for providing the documents required by 22.1. Basically, it's saying that the board of managers or condo association can't make a profit when they are providing the documents required by 22.1. To say that that would apply to a for-profit property management company just defies logic. What property management company would sign up for that deal if they were told, "Oh, you can't make any profit on giving this service, doing a rush job for" -- "for the clients who want rush jobs. You can't make any profit on that. You have to provide it at cost."

That's -- that obligation is only when the condo association themselves or the board of managers does it themselves. In this situation, they passed on this task to a property management company that is in the business of doing it. They do it right, they do it quickly, but it costs a fee. They never said that they wouldn't make a profit on it.

So in passing this -- this task on to the

property management company, it helps ensure that the documents are timely provided to sellers like plaintiff here who need to close on their -- on their properties; whereas, the board of managers or condo association is allowed by statute 30 days to provide that information.

There's -- as you mentioned, we also take the position that there's no private right of action by a seller against either a condo association or board of managers, let alone a property management company as indicated in the act. The act is silent as to remedy. And, as we mention in our brief, the -- the claims here don't meet the test for implying a private cause of action here.

Lieberman also takes the position there is no consumer fraud here. They chose the documents they wanted. They agreed to the fee. They paid the fee. There's no fraud, no misrepresentation. There's no deceptive act alleged here. There's no unfair practice. This -- what's going on here doesn't offend public policy.

As I said, it happens all over Illinois, happens all over the country. They are taking the burden off the condo association and providing a needed service to the unit owners who are required to provide these documents, and there's no substantial injury here.

It's not immoral, unethical, oppressive, unscrupulous. It -- it allows sales to happen in a timely manner is what's going on here. The charges aren't excessive.

You know, Lieberman is one of many property management companies out there. They are in line with the market. They -- and, plus, the plaintiff here never sought the documents from the condo association, never objected to the charges, and voluntarily paid for the documents. So there's no intent here. And we cited to the Krause case at Page 13 of our brief for that.

The consumer fraud claim is barred by the voluntary payment doctrine as we mentioned at Page 14 of our brief, the Jenkins case.

There's also no proper restitution claim here. The plaintiff received services and documents that they voluntarily ordered, and, again, this claim is barred by the voluntary payments doctrine, and it doesn't survive if the other claims don't survive, which we don't think they should.

And they can't show compulsion where they never asked the condo association for the documents in the first place and where they were, in fact, represented by an attorney in the transaction.

So I guess that's -- that's the longer-than-I-intended summary.

THE COURT: Okay. Well, it's helpful. Thank you.

Mr. Blumenthal?

MR. BLUMENTHAL: Yes, your Honor.

This case boils down to one common thing, and that is what Lieberman is saying is that they can charge as an agent a fee that the principal cannot charge as a matter of law. There is a statute that says -- and it's for the protection of the seller -- that the documents are to be provided at the direct -- quote, "Direct out-of-pocket costs."

What the statute does is it says you got to provide some documents to the condominium purchaser so that they know what they're getting into. They know what the -- what the costs are, what, you know, deferred expenses are, et cetera, et cetera. And what the statute does for the sellers is it says these documents aren't going to be charged to you at a cost more than what it costs to provide the documents. There's not going to be a profit made.

My client, just obviously -- the lawyer didn't just look in the telephone book and say, "Oh, yeah, there's Lieberman. I'm going to call Lieberman and ask for the documents." Lieberman has been delegated the condo association's duty to provide these documents. And it's our position that they cannot charge more than

their principal can charge. The notion that the property management company is, you know -- needs to make a fee, they're getting a fee. They sign up with condo -- condominiums, and they get paid a fee for services. And they're required to adhere to the law, and they're required to adhere to the things that the principal is required to adhere to, and one of those things is to provide the documents at cost.

There is a conflict in the case law with respect to whether or not an agent who plays an active duty in violating a duty the principal owes can be liable -- can be held liable. Landau v. Landau, a Supreme Court case, and it says that "where the agent plays an active role in the violation of the duty, the agent can be held liable."

There's a Seventh Circuit case, which I think is on almost all fours, it's the Merrill case where there was a statute that said HUD had to pay and -- had to pay interest where there were -- there was a building that had more than 25 tenants. HUD had property managers that it retained to run the building, and the property managers were not named in the statute, yet the Court found that -- that the property managers owed the -- having assumed the obligations of the -- of HUD for this owed the fee, and the class action was allowed

to proceed. I think that applies here as well.

Now, there are -- like I said, there is the Grover case, which we disclosed in our brief. There were other Illinois cases that took exception to it. But as far as I can tell, Landau is still good law, and Merrill is still good law. It's still cited in Illinois Law and Practice, the principle that -- where an agent participates and plays an active role in breaching a duty to -- to the principal's -- the party whom the principal owes, the agent also can be held liable. And that's what we've alleged.

I just don't think it's fair, and I think what you would be doing essentially is driving a truck through the statute if you were to hold -- well, this law provides that it applies to the condo association, it applies to the board, but it doesn't apply to their agents? They'll be -- except for small condominiums, every condo association will hire somebody to avoid the responsibility.

This isn't business as usual. This is gouging the client. These documents did not cost $470 to provide. This isn't rocket science. There's a -- in counsel's brief, they make a point, "Well, this is a professional service. This is a service where an administrative assistant punches out on a computer some

documents and produces the documents."

This is not brain surgery here. And it's not fair, and it would drive, like I said, a hole as big as a truck through the statute, and it's clearly not what the legislature could have intended would lead to observed results. Simply the only ones that the statute will reach are small condo associations that are -- are simply too small to have -- to be able to afford to hire a property management company. That can't be what the law intended. It can't be.

And there's no way my client could do a search and come up with the documentation. They -- they had their lawyer call the -- the party that was designated as the person -- the entity to provide the documents. They had no choice. There's nowhere else they could go. If they wanted to achieve a sale, they have to get the documents, and they have to get the documents from the entity that has been charged with providing those documents. That's all that's going on here, and it isn't business as usual. There is a statute that requires that these documents be provided at cost. It's not going to dissuade management companies from managing condos because they get paid, and they get paid from the association and the board of directors for that management.

That's pretty much what I have to say, your Honor.

THE COURT: What about -- so you have a three-count complaint. Talk to me about the consumer fraud. How do you -- how do you --

MR. BLUMENTHAL: The consumer fraud count, there are a number of cases where courts have held that excessive fees are unfair and subject to the consumer fraud action, and we've cited them. And this is an excessive fee. The statute provides that these documents are to be provided at -- at cost, and they clearly aren't. Counsel's own argument is that they are making a profit on these documents.

THE COURT: So the consumer fraud, then, is bootstrapped by the principal-agency thing, right? I mean, because what about -- what are the elements of -- of proof on a fraud case? You know, where is the misrepresentation? Where is the trickery?

MR. BLUMENTHAL: You don't have to have that.

THE COURT: Where is the exception?

MR. BLUMENTHAL: It just has to be unfair. You don't have to have trickery under the act to -- to have a consumer fraud action. And this qualifies as duress. There's nowhere else to get the documents. And we've alleged that in the complaint.

So, I mean, that was the argument here, was that the voluntary payment doctrine bars the -- bars the cause of action, and it doesn't because duress allows the cause of action, and that's what you have here.

THE COURT: Duress in what sense?

MR. BLUMENTHAL: There's nowhere else to get the documents. They want to sell the condo. They have to have the Section 22.1 documents. And the only place that's designated as the place to get them is from the property management company. You want to sell your condo and comply with the law, then you got to get these documents upon purchaser's request, and that's what happened here.

And, as I said, the lawyer didn't just reach in the phone book and say, you know, Lieberman looks like a good property management company to ask for these documents. They were directed to Lieberman. Lieberman is the property manager for this condo association, and that's the only place to get these documents.

And, like I said, this is not brain surgery. This isn't -- doesn't require professional skill. This is, you know, you punch in something on your computer and print the documents. They have those documents and they have an obligation to make them available to the clients. The clients should -- the client is the

seller, the condominium unit owner. That's the only place where he can get the documents. And you don't have to say to the -- to the condo association, by the way, we're asking for these documents, but we want you to know that after we're done with getting these documents, I'm going to turn around and file class actions. You're likely not to get the documents.

You don't have to do that. That's not what the law requires. Duress means there's no other place to go to really get these documents. There's duress here.

THE COURT: So under the consumer fraud, all they have to do is show that it's unfair?

MR. BLUMENTHAL: That it's excessive. That, you know, we have a statute here that makes this excessive.

THE COURT: The statute -- you're relying on 22.1?

MR. BLUMENTHAL: Yes, I am. I am relying on 22.1.

I think, though -- I don't know that I would necessarily need 22.1. I think $470 for printing out some documents --

THE COURT: 75 is for a rush fee. So it's 395, let's say.

MR. BLUMENTHAL: All right. 395 for 100 pages of documents is a lot of money. I think it's excessive.

THE COURT: It's kind of like surge pricing on

Uber, right?

MR. BLUMENTHAL: Maybe. Maybe. It's a little high. And I'm -- I'm being understated here. I mean, it's outrageous. These documents don't cost $395 to produce. It doesn't cost that in terms of time of an administrative assistant to compile these documents.

THE COURT: Paragraph 35 of your complaint on the consumer fraud -- Illinois Consumer Fraud and Deceptive Business Practices Act prohibits any deceptive, unlawful, unfair, or fraudulent business acts or practices. All right. So with that -- out of that litany, which ones apply to you?

MR. BLUMENTHAL: Well, I think unfair does and unlawful does.

THE COURT: Unfair and unlawful in what sense? Relating back to --

MR. BLUMENTHAL: The section --

THE COURT: -- 22.1?

MR. BLUMENTHAL: Yes, sir.

THE COURT: Because it's more than reasonable and more than covering out-of-pocket expenses?

MR. BLUMENTHAL: Right. But I think -- yes.

THE COURT: And they're the standard issues of the condo board because they're the agent? Is that --

MR. BLUMENTHAL: Yes. Yes. And I think the word

"reasonable out-of-pocket costs," I think the reason they put the "reasonable" in is to avoid a situation where you would go to your cousin Fred and have him copy the documents with a wink and a smile and charge you 350 when they cost, you know, $50. It wouldn't be reasonable. I mean, that's not a reasonable cost.

So reasonable was put in there as a modifier to out of pocket meaning that you can't make an end run around the statute by having some third party jack the price up and then charging that price and, you know, you've then claimed it's the out-of-pocket costs. So it really is the out-of-pocket costs.

It makes sense statutorily. You have a statute that says "Purchaser, we want you to have a number of documents so you can determine what the costs of buying your condo are going to be, see whatever defrayed expenses there are, any charges on the unit, you know, whatever's there." "And, Seller, you have to provide these documents, but what we're going to do for you is we're going to make sure that you are only charged what it costs to produce those documents. And it's not going to be a profit center. I think that is from the reading of the statute what is intended. And I think what Lieberman is doing violates that intent.

THE COURT: Okay. Mr. --

MR. McCOLGAN: Can I respond?
THE COURT: Yes, I would want you to respond. Talk about this consumer fraud, start there.
MR. McCOLGAN: Under consumer fraud, they are claiming that it's an unfair practice. In order to constitute an unfair practice, there are three requirements to be met; that is, it does not -- does not offend public policy is the first one. And as I discussed before, this happens all over Illinois and all over the country where property management companies charge a fee for providing documents prior to closing.
THE COURT: Well, I don't think there's an issue with that. He's saying "excessive fee." I mean, I think we -- all three of us would agree that they're entitled to charge a -- a fee for those documents, but he's saying it's excessive. So how does a consume -- excessive, unfair, unlawful. He's saying -- he gets them into the consumer fraud, unlawful, unfair.
MR. BLUMENTHAL: And excessive.
THE COURT: Excessive. All right.
So how do you -- how do we escape from that?
MR. McCOLGAN: Let's start with the act itself. The act states, quote, "A reasonable fee covering the direct out-of-pocket costs 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," end quote.

I would contend that this paragraph may, in fact, protect the board of managers so that people can't just come to them and say, "Give me all these documents" and -- and not be able to charge a fee. They get to charge whatever it costs them to produce these documents for the seller.

And to digress for just a minute, Counsel is -- is stating that -- that these costs should be included in -- in the management fees for the whole association, that they shouldn't be charged the individuals, that they -- they can make their profit on the -- the fees that they charge for the whole association.

The problem with that is if I live in the condominium, and I'm not selling my condominium, why should I have to pay for fees relating to somebody else who is selling?

THE COURT: Because the act says you have to.

MR. McCOLGAN: Well, the act says that --

THE COURT: Unless you hand it off to some corporation. And they can go 100 miles an hour and do whatever they want.

MR. McCOLGAN: Well, here's the fact of the matter.

The -- the condo association can charge their out-of-pocket costs. So if -- if Mr. Friedman comes to the condo association, says, "I need these documents for my closing," condo association turns around, comes to Lieberman, says, "I need these documents for Friedman's closing," we send the bill to the condo association for $470, the condo association turns around and hands that to Mr. Friedman as they are out-of-pocket costs. That's exactly what's happening here.

THE COURT: And that's legit?

MR. McCOLGAN: Absolutely.

THE COURT: Looks like a little bit of camouflage to me. I mean, or -- or laundering of sorts.

I mean, so because we pass it through to the -- I mean, wouldn't the intent --

I mean, first of all, we're talking about a motion to dismiss, but the intent of this, you know, Condo Act is we've got an unusual or artificially created ownership of buildings with common walls and all the different problems that are associated with that. And the legislature created this and tried to predict all the eventualities that would flow from that. And so the intent of the act is to protect probably sellers, buyers, owners, board managers to try to -- you know, everything's -- tries to be comprehensive, but we can

never protect against all eventualities. But it's -- that's the intent of the act.

And on the resale of a unit, they want to protect the buyer. So the legislature doesn't want these buyers not getting information or having it concealed from them that someone owes assessment fees. So, I mean, it's like, "Okay. Let's all be fair. Let's protect both sides."

Now, the seller, you're selling, so you have to, you know, give the 22.1 disclosure. You have to get a paid assessment letter, and that way the buyer has notice.

Now, the seller, you have to share or pay that fee, and it comes from the board of managers, because they're the source of the information, and the condo association, that's the legal entity, the umbrella under which everybody lives. So there's, in a sense, a corporation.

And the legislature says you have to do this, but, you know, the legislature has experience, and they know that people can get crazy charging fees, and they want to be fair to both sides. So they said you can do it, but sellers do it, board has to pay reasonable out-of-pocket costs.

Now, they hand this thing off to a property

manager, which most of them do, I agree with you, and they go crazy. Okay. They go off the rails, and they charge excessive fees. I am not saying in this case it is.

So they've delegated their authority. You know, we get the difference in the case law and that, and they're an agent. And now we've insulated and defeated the intent of this statute because we -- we have a conduit, and we handed it off to someone else.

How do you -- how do you address that?

MR. McCOLGAN: Well, your Honor, I agree with everything you're saying, but the -- the problem is when you have a large condo association like this one --

THE COURT: Right.

MR. McCOLGAN: -- the people on the board can't handle all the paperwork.

THE COURT: I agree.

MR. McCOLGAN: So they hand it off to a property manager --

THE COURT: Right.

MR. McCOLGAN: -- who computerizes all the documents --

THE COURT: Don't they have to comply with some -- or, you know, wouldn't a prudent board or an association tell their property managers and the property managers

who are in the business of running condo -- condo -- and managing condo associations -- they would have to know. They know this is out there. Okay. And they -- they can't just put their head in the sand and -- and say that we're going to ignore this because it doesn't apply to us. Maybe it doesn't. I don't know. I don't know where this thing will end up.

But you're right. They don't do it, but they hand it off to them, and aren't they responsible in some way? Obviously, they can sue the condo association and the board of managers, which you're saying is the proper legal step is, you know.

MR. McCOLGAN: That's right.

And to the -- to Counsel's point that they had nowhere else to go for documents, they never asked the condo association for the documents.

THE COURT: We know what the answer there would be.

MR. McCOLGAN: Well, there's two issues there. The plaintiff in this case needed to close quickly. Under the act --

THE COURT: They got 30 days.

MR. McCOLGAN: Under 22.1(b), they have 30 days to provide the documents. So it was to a benefit to his client. They could go someplace --

THE COURT: Yeah, to pay a rush fee -- $75 rush

fee.

MR. McCOLGAN: Well, to go someplace where the documents were already computerized, easily accessible for the property management company to produce to them; whereas, the condo association isn't equipped to do that. That's why they farm it out to somebody who is equipped to do that who charges a fee that's competitive with other property management companies. And, if -- if they weren't being competitive, it would be up to the unit owners and the board of managers to hire a new property management company.

THE COURT: Why do they care? They don't care. They handed it off. They closed their eyes. They don't care. They've handed it off. And the seller is gone. Seller is gone. The seller paid the fee. They're not living in the building anymore. They're mad. They're grumbling. They're angry when they get to the closing. They say, "What do you mean I paid $475?"

So they're not -- you know, the condo board and the management -- or the board of managers, they're not -- they're not going to babysit this thing. That's why they handed it off.

MR. McCOLGAN: The proper party for a unit seller to -- to go after here would be the condo association if they improperly delegated their duty. And that party

isn't before your Honor.

THE COURT: Well, what about the consumer fraud? I mean, Mr. Blumenthal claims all he has to do is say, "Unfair." I'm being simplistic, but, you know, I read -- I'm reading from your Paragraph 35, unfair, unlawful, that gets him past the motion to dismiss.

MR. McCOLGAN: Well, your Honor, here we have a real estate attorney going to Lieberman Management, designate the documents they wanted, seeing what the charges were for those documents, not asking the condo association to give them the documents because they thought these fees were excessive, not complaining to anyone about any excessive fees, and paying with no objection.

MR. BLUMENTHAL: Judge, may I say something?

THE COURT: No, that's okay. Let's talk one at a time.

MR. McCOLGAN: And if you look at the Krause case cited at Page 13 of our brief, there's -- there's no intent that would be required here for -- for the fee to be excessive.

THE COURT: You need intent, did you say? I'm sorry. "Failure to plead sufficient intent of defendant requires dismissal of the complaint."

MR. McCOLGAN: And just briefly on Landau versus

Landau, which is a 1951 case that they rely on, and the Merrill case, which is a 1981 case, the Merrill case relied on the Grover case, which was a 1978 case. The Grover case was rejected by the Bovan case that we cite in our reply -- reply brief in 2008, I believe it was. So the Bovan case, I think, controls there.

You -- you can't assert that the agent is liable for the principal's duties. And, you know, I'll also note that nowhere in the complaint does plaintiff allege that Lieberman Management Services is the agent of the board of managers or condo association.

All right. And I guess to summarize, again, the act only applies to condo associations, boards of managers. They would be the proper defendant if there was a private right of action under the statute, which there isn't. Here, a third party, such as the property management company, isn't required by the act to -- to not make a profit. They are a for-profit company. We fully admit that. And they charge for their services the sellers who need their services. They don't charge the other condo association owners. They charge the sellers who need their services to get the documents, and sometimes get the documents very quickly, which the condo association isn't required to do.

THE COURT: Okay. Mr. Blumenthal, did you have

something else to add? And then I'll let Mr. McColgan finish. But go ahead.

MR. BLUMENTHAL: Sure. I'll make it very brief.

The law doesn't require someone to do a futile act. You don't have to call the condo association -- the condo association where it's clear that the -- the party that charged to give you the documents is the property management company. They didn't have to do that.

There is a public policy here, and the public policy is what's set forth in 22.1, which is that the fee for these charges is to be the out-of-pocket costs. I'm not saying that Lieberman can't ask my client or clients, the class, for the out-of-pocket costs. Of course they can.

I'm complaining because instead of asking for $20, they asked for $400, not including the -- the rush fee. That's -- that's the -- the gravamen here. That's what's motivating this.

You have a statute that says -- you know, that has a statutory framework, and that framework, that -- the intent of that statute is being aggregated by the charge that is probably ten times what it should be.

THE COURT: All right. Mr. McColgan?

MR. McCOLGAN: Just to finish up, your Honor, as I

said, the act allows the condo association to cover its direct out-of-pocket costs for providing the documents. A condo association with as many units as this one can't do that job by itself, so it farms it out. And it is -- unfortunately for them, they have to go out into the market to find a company that will do that for them, and no -- no company is going to do that for them without charging for a little bit of profit on top of the actual cost of the documents. So that if the plaintiff had requested the documents from the condo association, the condo association would go to Lieberman, get the documents, get the bill for 470, and pass that on to Mr. Friedman. That would be their direct out-of-pocket costs to obtain those documents for Mr. Friedman's closing.

THE COURT: Well, the -- practically speaking, that's probably not what would happen.

But, again, we're just having a discussion here. But, practically speaking, if they called the condo association, they say, "Here, call the management company," they're not going to call the management company and say, "Okay. Mr. Smith wants his 22.1 statement; therefore, Lieberman, you send it to us with the bill, and then we'll take that bill and hand that on to" -- because they wouldn't do that. And at that point

they may -- when they saw the 470, they might -- might be cognizant of this reasonable fee provision, and then now they've touched the evidence, and now they would want to touch it. Now, they've handed it off to an agent -- but anyhow.

I'm just having this discussion. It doesn't bear on the complaint. Trust me. I'm not trying to -- trying to be tricky or anything.

MR. McCOLGAN: No, I agree, your Honor. I think that, you know, the condo association wants to save a step.

THE COURT: I know.

MR. McCOLGAN: It doesn't want to have to front the money for every seller. So they say go directly to the property management company.

THE COURT: All right. Well, let me start with the Count 1, because we've had a long discussion on Count 1.

I think I'll just kind of touch a little bit on the Condo Act. I've already talked about it. It's legislative creation, a lot of eventualities.

The Condo Act has been in existence for 50, 60 years, and these -- the legislative intent, although I looked at, you know, looking for a preamble, there's really not one there, but the tone of the act is, to be fair, evenhanded, protect buyers, sellers, no

surprises -- or try to prevent surprises as generally the legislature tries to anticipate and account for problems in their -- in the act before -- before they even happen.

So what we have at -- the issue here is this 22.1 disclosure. It's required in the sale of every -- resale, I should say, of every condominium unit. And it's a matter of law. You can't close a real estate transaction without this document, plain and simple. Seller is obligated to pay. The disclosure is pretty much a set forth in 22.1, Nos. 1 through 9, and it's -- it states that the condo board or the association has to provide this letter to a seller upon request, and they have to do it within 30 days.

And then we get to the crux of our discussion here, and that is that the legislature obviously recognized that this is going to take time, and the board of managers and/or the association will have to have some person or persons do this, and, therefore, there should be a fee associated with it to neutralize that cost, theoretically, and that the language reads, quote, "a reasonable fee covering direct out-of-pocket costs 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." So

that's the crux of our discussion here.

Now, it's clear both -- based on the complaint and our discussion, that the condo association and/or the board of managers did not do this service. They contracted that service with probably all other services that -- you know, this is not just that they hired Lieberman to do one thing. Lieberman is managing the whole condo building. And there's a number of units here. I don't think it was in a complaint, but this is Mission Hills. It's a big operation. So there's hundreds -- maybe hundreds of units.

So Lieberman is the management company. So they hired them, and they handed off this task to Lieberman. And Lieberman charged $470, but $75 of that was a rush request. So -- so I don't think that's even -- should be in the mix here. But I would submit that probably every -- every lawyer that's out there probably has to pay that $75 rush fee because every real estate closing is always a rush by definition. So it's $395, let's say, for purposes of our discussion here.

And plaintiff's complaint alleges that -- in Count 1 that -- that Lieberman violated the condominium Condo Act but not adhering to this language in the statute under 22.1. That's the reasonable -- they can only charge the reasonable fee covering the direct

out-of-pocket costs of providing that information.

Now, obviously, the defendant's motion here is focused on the fact that -- that the proper defendant here is the condominium board and not Lieberman. And plaintiff responds that under principal agency law, that Lieberman is acting as an agent of the condo board. They obviously have some contract defining their responsibilities and payment terms, et cetera. And, therefore, that, as agent, they are held to this legislative standard that's laid out in 22.1.

Now, the cases that parties have cited on this, plaintiff cites Merrill Tenant Council, which is a 1981 Seventh Circuit case, and Mr. Blumenthal suggests that it's on all fours. And that case, HUD hired a management company and -- to manage the properties, and, under federal law, HUD, if they collect security deposits, has to pay interest. And they hired the management company, Pyramid West, to collect security deposits, and then apparently they didn't pay interest.

So in that lawsuit, Pyramid West, the management company -- the Seventh Circuit held that they -- under principal and agency law, that they -- they were required to pay the security deposits and, therefore, because the -- HUD was supposed to pay, and they didn't pay and they were the agent of HUD, that

they were responsible. I'm going to read some of the language from that.

"The private defendants" -- it's on page -- the last page of the ruling, "The private defendants strenuously argued that under Illinois law, the acts of an agent considered to be those of a principal and no where an agency is as is" -- "as here disclosed that the agent is not liable in any undertaking or contract unless the agent finds himself to become personally responsible in that contract."

The problem with that argument of the private defendants is that the very same section of Illinois Law and Practice states, quote, "It is considered a well-settled principle of law in Illinois that an agent is not liable for the acts of a disclosed principal unless he takes an active part in violating some duty the principal owes to a third person."

And then citing Landau, the U.S. Supreme Court case, L-A-N-D-A-U, "Further, it is an accepted rule that a complaint should be liberally construed and should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Here, the complaint alleged that the private defendants have failed to perform their delegated duty of paying

interest to the plaintiffs. We hold that plaintiffs have stated a claim that the private defendants by failing to perform their duty to pay interest to plaintiffs have taken and are taking an active part in violating the duty to pay interest, which their principal, HUD, owes to the plaintiffs."

So, in this instance, I mean, this is analogous in some sense to statutory obligation that the principal delegated or handed off to an agent, and for purposes of a motion to dismiss, this language I think, is -- helps me make the finding that Count 1, I'm going to deny the motion to dismiss. And I think there is support in this -- this case that I just read into the record. Where -- where it goes after that, I don't know, but -- so Count 1, I'm going to deny the motion to dismiss.

Count 2 -- Count 2, consumer fraud, I think that -- all right. Let me get to Count 2.

I think this complaint as drafted on the consumer fraud is not sufficient. I know we've had this discussion here. Mr. Blumenthal contends that, "If it's unlawful, it's unfair. That's really all I got to show. That's all I have to plead."

I'm not so sure that that's the case. I think that there needs to be more detail if that's -- if there

is any detail to give, but just alleging unfair and unlawful I don't think is sufficient, and, for that reason, I'm going to grant the motion to dismiss, but I'll allow you to replead. If there's a way to replead it, I don't know.

But Count 3, restitution, unjust enrichment. Unjust enrichment, I don't think this -- this is -- I think I'm going to grant the motion to dismiss on this with prejudice. I don't think unjust enrichment or restitution lies here.

And so I'll allow you to replead Count 2 on consumer fraud, Count 1, motion to dismiss is denied, and Count 3, motion to dismiss granted with prejudice.

MR. BLUMENTHAL: Thank you, your Honor.

THE COURT: All right. Let's see. So 28 days to replead?

MR. BLUMENTHAL: 28 days is fine, your Honor.

THE COURT: 28 days.

MR. BLUMENTHAL: Except one thing, I -- I spoke to counsel outside. There's one thing I would like, and maybe he can get me this in 14 days if he's willing to do that. I would like to see the management contract. I think I should be entitled to see what the contract is between Mission Hills and Lieberman.

THE COURT: Counsel, any thoughts on that?

MR. McCOLGAN: Your Honor, I -- I guess, since we're not at issue yet, I would say he's not entitled to it.

MR. BLUMENTHAL: But they're -- they're making an argument that I haven't alleged enough for my consumer fraud. I mean, I -- they want details. I think I should be able to at least see the contract.

THE COURT: Well, you're going to eventually be able to see the contract.

MR. BLUMENTHAL: Right.

THE COURT: The question is under -- I mean, do I have authority to order you to produce a contract?

MR. BLUMENTHAL: Sure. I think the rules on discovery would allow you to make the expedited discovery.

THE COURT: Well, I'll tell you what --

MR. BLUMENTHAL: It's not a major request.

THE COURT: No, it's not. Count 1 is -- has survived, so it's got a viable complaint, you know, obviously subject to your answer and everything else.

MR. McCOLGAN: Your Honor --

THE COURT: He's going to get the document, but -- go ahead.

MR. McCOLGAN: All I was going to say is that, you know, one of the things that I'm standing here

contemplating is whether my client is going to want us to file a motion for reconsideration on the Count 1 based on the Bovan case, which is a much more recent case saying that, "The agent's breach of a duty owed to a principal is not an independent basis for the agent's tort liability to a third party. An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party." That's a 2008 First District case. And we think that controls here.

THE COURT: Okay.

MR. McCOLGAN: And before I get into discovery issues, I need to consider whether -- whether we want to pursue that avenue.

THE COURT: I get you. So this -- all this hour and time we just spent here was -- and my reading everything and I make a decision -- but I understand the motions to reconsider. But, oh, my goodness. I mean -- okay.

MR. McCOLGAN: I understand where you're coming from, your Honor.

THE COURT: All right. At some point, all I do is read motions to dismiss and -- but I'm good with motions to reconsider, too, I mean, but what you just said is nothing new. It's in your brief. So, I mean --

All right. I'm not going to order anything. Let's just get on with it.

MR. BLUMENTHAL: Okay.

THE COURT: 28 days. Let's come back somewhere in -- so the 12th -- July 12th you have to answer by. So how about if we come back like July the 25th for status?

MR. BLUMENTHAL: Sounds great, your Honor.

MR. McCOLGAN: Your Honor -- I'm slightly confused, your Honor.

Is counsel going to replead first?

THE COURT: Wait. I'm sorry. He's got to replead. What did I say, "answer"?

MR. McCOLGAN: Yeah.

THE COURT: See, you got my brain fried. I'm worried about my motion to reconsider knowing that I have to look at this again.

All right. Yeah, my apologies. It's your motion to -- his, 28 days to replead.

MR. McCOLGAN: So by July 12th, he'll replead?

THE COURT: And then we'll come back like the -- did I say the 25th?

MR. BLUMENTHAL: Yeah.

THE COURT: 25th of July, okay? Come back on a status at that point. At that point, you will be

probably teeing up another motion to dismiss. That's okay. I get that and -- whatever. If you have a motion to reconsider, file that.

And so we'll come back July 25th at 10:30. How's that?

MR. BLUMENTHAL: Thank you so much.

MR. McCOLGAN: Sounds good, your honor.

THE COURT: Have a good one. See you next time.

(WHEREUPON, proceedings in the above-entitled cause were continued until Tuesday July 25th, 2017 at 10:30 a.m.)

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, NICOLE MARIE DeBARTOLO, a Certified Shorthand reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid and that the foregoing is a true, complete, and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed by me.

IN WITNESS WHEREOF, I do hereunto set my hand at this 23rd day of June, 2017.

NICOLE MARIE DeBARTOLO, CSR, RPR
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Chicago, Illinois 60603
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CSR License No. 084-004127

Q

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Friedman v. Liberman Services

No. 2016 CH 15920

ORDER

This cause coming to be heard on status due notice having been given & the Court being advised in the premises, it is hereby ordered that:

DEFENDANT HAS UNTIL AUGUST 22, 2017 TO ANSWER OR OTHERWISE PLEAD.

MATTER CONTINUED FOR STATUS TO AUGUST 28, 2017 AT 10:30 A.M.

(3) DEFENDANT TO PROVIDE ANY MANAGEMENT CONTRACT BETWEEN FRIEDMAN'S CONDO ASSOCIATION AND LIEBERMAN AT TIME SUBJECT UNIT SOLD BY FRIEDMAN. COPIES TO BE PROVIDED TO PLAINTIFF BY AUGUST 14, 2017. of contract

Attorney No.: 38847
Name: J Blumenthal
Atty. for: Plaintiff
Address: 2970 Main
City/State/Zip: Northbrook IL 60062
Telephone: 847-498-3226

ENTERED
JUDGE THOMAS ALLEN-2043
JUL 25 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated: _____, _____

Judge's No.

2

EXHIBIT 2

FIRST DIVISION
March 25, 2019

No. 1-18-0059

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

FRANKLIN P. FRIEDMAN, as Trustee of the Franklin P. Friedman Living Trust, Individually, and on Behalf of All Others Similarly Situated, Plaintiff-Appellee, v. LIEBERMAN MANAGEMENT SERVICES, INC., Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 16 CH 15920 The Honorable Thomas R. Allen, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justice Griffin concurred in the judgment.
Justice Walker dissented.

ORDER

¶ 1 *Held:* We vacate our order granting defendant's Supreme Court Rule 308 application for leave to appeal, dismiss this appeal, and remand to the circuit court.

¶ 2 This appeal is before us on two substantially similar questions of law certified by the circuit court under Illinois Supreme Court Rule 308 (eff. July 1, 2017). The questions ask whether a condominium seller can sue a third-party management company, acting as an agent for a condominium board, for charging an allegedly excessive fee for furnishing disclosure

documents, in violation of section 22.1(c) of the Condominium Property Act (Act) (765 ILCS 605/22.1 (West 2016)). After careful consideration of the limited record before us, we find that the certified questions are improper in form, and answering the questions would not materially advance the litigation toward termination. For the reasons that follow, we find that defendant's application for leave to appeal pursuant to Rule 308 was improvidently granted. We therefore vacate our order granting leave to appeal, dismiss this appeal, and remand this cause to the circuit court for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff's operative complaint alleges that Franklin P. Friedman decided to sell his condominium unit in the Mission Hills Condominiums in Northbrook, Illinois. The Mission Hills Condominiums Association (Association) retained defendant Lieberman Management Services, Inc., a for-profit property management company, to provide property management services. Plaintiff went to defendant's website and submitted a request for certain disclosure documents set forth in section 22.1(a) of the Act (765 ILCS 605/22.1(a) (West 2016)), so that plaintiff could give those documents to the potential condominium purchaser. Defendant furnished the documents requested and charged plaintiff a $220 fee. Plaintiff also requested a paid assessment letter. Defendant furnished the paid assessment letter and charged plaintiff a separate $250 fee, which included a rush fee and a buyer's transfer fee.

¶ 5 Plaintiff, as trustee of the Franklin P. Friedman Living Trust, individually, and on behalf of all others similarly situated, filed this action in the circuit court of Cook County against defendant. The Association was not named as a defendant. In relevant part, count I of plaintiff's complaint asserted that defendant "is a condominium association management company that, with the authorization of the applicable Condominium Association and/or its Board of Managers,

provides [section 22.1 disclosure documents] that a prospective condominium seller must, upon demand from the prospective purchaser, legally disclose[.]" Plaintiff alleged that defendant violated section 22.1(c) of the Act by charging an excessive fee to furnish copies of the section 22.1 disclosure documents. Plaintiff alleged that he "could not obtain [the disclosure documents] from any other source but the [d]efendant."[1] The only exhibits attached to plaintiff's complaint were copies of the order forms for the disclosure documents that were downloaded from defendant's website and the paid assessment letter.

¶ 6 Defendant did not answer the complaint. Rather, defendant moved to dismiss count I of plaintiff's complaint due to a failure to state a cause of action pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). Defendant argued that section 22.1 of the Act does not apply to third-party property management companies because, by its own terms, section 22.1 only applies to "the association or its Board of Managers." 765 ILCS 605/22.1(c) (West 2016). Defendant further argued that the Act does not provide an express private right of action in favor of a condominium unit seller against a third-party property management company, and that no private right of action could be implied because the purpose of the Act is to protect condominium unit purchasers, not condominium unit sellers. Plaintiff's response asserted, in part, that an agent may be held liable for a principal's breach of a duty if the agent took an "active part" in violating the principal's duty. Defendant's reply asserted, in part, that plaintiff's complaint "does not plead that [defendant] was the agent of the [Association] for the

[1]At oral argument, we asked plaintiff's counsel whether plaintiff ever sought the disclosure documents directly from the Association. Plaintiff's counsel responded that plaintiff was "directed to the property management company." When asked again whether the plaintiff asked the Association for the disclosure documents, plaintiff's counsel answered "yes," and she "believed" that was set forth in the complaint. The complaint is devoid of any allegations that plaintiff ever sought the disclosure documents directly from the Association at any time, or that the Association directed plaintiff to obtain the documents from defendant.

purpose of providing documents referenced in section 22.1 [of the Act].” After briefing and oral argument, the circuit court denied defendant’s motion to dismiss.

¶ 7 Defendant then filed a motion to certify a question for interlocutory appeal pursuant to Rule 308. Plaintiff did not oppose defendant’s request for a Rule 308 finding, but sought to ensure that additional documents—which were not before the circuit court when it ruled on the motion to dismiss—would be included in the supporting record that would accompany defendant’s Rule 308 application for leave to appeal. Both parties proposed different formulations of the questions to be certified. Both parties proposed certified questions that asked whether a cause of action existed under section 22.1 of the Act in favor of a unit seller against a third-party management company based on the fee it charged for section 22.1 disclosure documents. Defendant’s proposed questions, however, did not presume or assert the existence of an agency relationship between the third-party management company and a condominium association or its board of directors, whereas plaintiff’s proposed questions presumed or asserted that the third-party management company was acting as “agent” or “express agent” for a condominium association or its board of managers.

¶ 8 Defendant’s reply in support of its motion for a Rule 308 certification specifically objected to plaintiff’s attempts to include language in the certified questions that assumed the existence of an agency relationship between defendant and the Association. The record does not indicate that the circuit court heard argument on how to phrase the certified questions.[2] In a written order, the circuit court granted defendant’s motion and certified two questions of law:

> “(1) Whether [section 22.1 of the Act] allows a cause of action to be brought by a condominium unit seller against a property management company,

[2]The only report of proceedings that appears in the record is for the circuit court’s hearing on defendant’s motion to dismiss.

acting as an agent for the Condominium Board of Managers and/or the 'Unit Owners' Association, with respect to the fees charged by the property management company to the condominium unit seller for the documents described in Section 22.1(a) of the Act?

(2) Whether a private cause of action can be implied on behalf of a condominium unit seller and against a property management company, under Section 22.1 of the Act *** where the property management company is acting as agent for the Condominium Board of Managers and/or the 'Unit Owners' Association, with respect to the fees charged by the property management company to the condominium unit seller for the documents described in Section 22.1(a) of the Act?"

¶ 9 We granted defendant's application for leave to appeal. However, for the reasons that follow, we find that our earlier order granting defendant leave to appeal was improvidently granted, and we decline to answer the certified questions. We vacate our order granting defendant's application for leave to appeal, dismiss this appeal, and remand to the circuit court for further proceedings.

¶ 10 II. ANALYSIS

¶ 11 Illinois Supreme Court Rule 308 allows a circuit court to make an otherwise interlocutory order immediately appealable upon a finding that the order involves a question of law as to which there is substantial ground for a difference of opinion and an appeal may materially advance the ultimate termination of the litigation. Ill. S. Ct. R. 308(a) (eff. July 1, 2017). Whether to grant a Rule 308 application for leave to appeal is within our discretion. *Id.* Our review is generally confined to the certified questions. *De Bouse v. Bayer AG*, 235 Ill. 2d 544,

550 (2009); *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 21. Certified questions under Rule 308 involve questions of law, and our review is *de novo*. *Yarbrough v. Northwestern Memorial Hospital*, 2017 IL 121367, ¶ 21. Our supreme court has cautioned, however, that if answering a certified question "will result in an answer that is advisory or provisional, the certified question should not be reached." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. Additionally, "if an answer to a certified question is dependent upon the underlying facts of a case, the certified question is improper." *Id.* Certified questions, as required by the rule, must be framed in such a manner as to materially advance the ultimate termination of the litigation, and must address the underlying disputed question of law so as to avoid a situation where we are asked to render an advisory opinion on matters unrelated to the case before us. *Id.*

¶ 12 We find the two certified questions are improper in form because the underlying facts of the operative complaint do not allege or otherwise establish the existence of an agency relationship between the defendant and the Association or its board of managers, a relationship that forms the basis of both certified questions. There are two major flaws with the certified questions: each question contains an assumption that an agency relationship in fact exists between defendant and the Association or its board of managers. First, plaintiff's complaint does not allege the existence of an agency relationship. Plaintiff merely alleged that defendant "is a condominium association management company that, with the authorization of the applicable Condominium Association and/or its Board of Managers, provides [section 22.1 disclosure documents] that a prospective condominium seller must, upon demand from the prospective purchaser, legally disclose[.]" Critically, plaintiff did not plead the existence of an agency relationship. It is well established that the existence of a principal-agent relationship is ordinarily a question of fact, and that it is the plaintiff's burden to "plead facts, which, if true, could

establish the existence of an agency relationship." *Knapp v. Hill*, 276 Ill. App. 3d 376, 382 (1995). Merely alleging that defendant was authorized by the Association or its board of managers to provide section 22.1 disclosure documents is insufficient to establish the existence of an agency relationship, as it says nothing about the nature of the relationship between the defendant and the non-party condominium association.

¶ 13 Furthermore, because defendant has not admitted that it is in fact the Association's agent in providing the section 22.1disclosure documents, we reviewed the briefing on the motion to dismiss and the briefing on the motion to certify a question of law under Rule 308 filed in the circuit court. Our review makes clear that defendant did not admit or concede that it acted as an agent of the Association or its board of managers in providing the section 22.1disclosure documents, or that any agency relationship existed with either entity. Although the defendant did produce its management agreement with the Association and the management agreement does refer to defendant as the Association's agent for purposes of the agreement, notably there is no duty under the agreement that requires the defendant to provide section 22.1 disclosure documents on the Association's behalf; the capacity in which defendant provided the section 22.1 disclosure documents has not been established, either in the pleadings or by way of concession or an admission. Thus, defendant's management agreement with the Association does not established whether defendant was providing the section 22.1 disclosure documents as an agent of the Association. Defendant consistently urged the circuit court not to formulate any certified question that assumed an agency relationship with the Association as a factual matter. Therefore, we find that the certified questions ask us to answer questions that apply to an assumed agency relationship that has not been adequately pleaded, admitted, or otherwise established. As such, any answer to the certified questions as formulated would be advisory.

¶ 14 Second, because the existence of an agency relationship was not pleaded and is not yet at issue, an answer to the certified questions would be provisional and would not lead to the ultimate termination of this lawsuit. For example, assume that plaintiff properly pleaded that defendant acted as the Association's agent when it provided the section 22.1 disclosure documents, and that defendant answered by denying that it acted as the Association's agent. In that hypothetical situation, any answer to either certified question would not assist in the ultimate termination of this lawsuit because the question of agency would first need to be resolved; if that question of fact was resolved by finding that defendant did not act as an agent, our answers to the certified questions before us would have no connection to the case and would be advisory and provisional.

¶ 15 III. CONCLUSION

¶ 16 Given our review of the pleadings and filings in the circuit court, as well as the form of each certified question, we vacate our order granting defendant's application for leave to appeal pursuant to Rule 308, dismiss this appeal, and remand this cause to the circuit court for further proceedings.

¶ 17 Appeal dismissed; cause remanded.

¶ 18 JUSTICE WALKER, dissenting.

¶ 19 I respectfully dissent. The majority chooses to not answer the certified question, finding that the answer will not avoid protracted litigation. Because one possible answer to the certified question would cause immediate dismissal of the lawsuit, the majority effectively concedes that the correct answer to the certified question is "Yes."

¶ 20 After the circuit court did not rule in its favor on a motion to dismiss, the defendant asked the circuit court to certify a question that involved application of the law to the specific facts,

effectively asking this court to resolve the factual issue of whether defendant acted as agent for the Association. Because questions of fact are not proper for certification, the circuit court instead properly certified two questions of law, which collapse to a single question because the Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2016)) does not expressly provide for any cause of action when a party violates section 22.1 of Act (765 ILCS 605/22.1 (West 2016)). The Condominium Property Act does not explicitly create a cause of action, and a cause of action is allowed "if and only if" a private cause of action can be implied *** under Section 22.1 of Act. See *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). The circuit court asks only the legal question of whether a unit owner has a statutory cause of action against a managing agent for a condominium board, assuming the managing agent acted as agent for the board in providing the documents required under section 22.1 of the Condominium Property Act.

¶ 21 The certified question does not ask us to resolve any issue of fact. Cf. *De Bouse v. Bayer*, 235 Ill. 2d 544 (2009). If we answer "No" to the certified question, the plaintiff has no cause of action even if defendant acted as the board's agent. Defendant would have no need to persuade the circuit court that, although it signed a contract to act as the board's agent, and the board directed the plaintiff to obtain, from defendant, documents needed to complete the sale of his unit, the defendant still did not act as the board's agent when it supplied the necessary documents to plaintiff. The circuit court's certified question presents a question of law.

¶ 22 Rule 308 provides:

> "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may

> materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. *** The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308 (eff. July 1, 2017).

¶ 23 Our supreme court modeled Rule 308 on the federal jurisdictional statute codified at 28 U.S.C. § 1292 (b) (2000). *Voss v. Lincoln Mall Management Co.*, 166 Ill. App. 3d 442 (1988). As with section 1292(b), Rule 308 serves the purpose of "facilitat[ing] disposition of the action by getting a final decision on a controlling legal issue sooner, rather than later" in order to "save the courts and the litigants unnecessary trouble and expense." *United States v. Adam Bros. Farming*, 369 F. Supp. 2d 1180, 1182 (C.D. Cal. 2004), *quoting John v. United States*, 247 F.3d 1032, 1051 (9th Cir.2001)(en banc)(J. Rymer, special statement). "[T]he central purpose of both provisions is to promote greater judicial efficiency." *Castle v. Sherburne Corp.*, 446 A.2d 350, 353 (Vt. 1982).

¶ 24 Rule 308 sets out the criteria for its application. First, the order must "involve[] a question of law." Ill. S. Ct. R. 308 (eff. July 1, 2017). "Certified questions must not seek an application of the law to the facts of a specific case." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21.

¶ 25 Second, the court must certify a question "as to which there is substantial ground for difference of opinion." Ill. S. Ct. R. 308 (eff. July 1, 2017). The federal district court for the Northern District of Illinois, in three separate cases, found that no Illinois case had addressed the issue raised here, and in all three cases, the court answered "No" to the certified question. *Horist v. Sudler & Co.*, 17 C 8113 (N.D. Ill. 2018); *Ahrendt v. Condocerts.com, Inc.*, 17-CV-8418 (N.D. Ill. 2018); *Murphy v. Foster Premier, Inc.*, 2018 WL 3428084. The circuit court agreed with the

federal courts that Illinois courts had not addressed the issue, but the circuit court did not agree with the inconsistent reasoning of the three federal cases or their resolution of the question. Therefore, the circuit court correctly found that the certified question involved an issue "as to which there is substantial ground for difference of opinion." Ill. S. Ct. R. 308 (eff. July 1, 2017).

¶ 26 Third, the circuit court should not certify a question for a Rule 308 appeal unless "an immediate appeal from the order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308 (eff. July 1, 2017). If this court were to agree with the federal courts, the litigation would immediately terminate with dismissal of the complaint. Thus, the certified question here meets the criteria for resolution through a Rule 308 appeal.

¶ 27 Some courts have stressed that the appellate court need not accept jurisdiction in all cases that meet the requirements of Rule 308. In *Voss*, the court noted that federal courts applying section 1292(b) have refused to answer certified questions where the parties expected only short trials if the case proceeded without an appellate answer to the certified questions. *Voss*, 166 Ill. App. 3d at 447-48. The use of Rule 308 appeals, like section 1292(b) appeals, "is reserved for those cases where an intermediate appeal may avoid protracted litigation." *Koehler v. Bank of Bermuda Ltd.*, 101 F.3d 863, 865–66 (2d Cir. 1996).

¶ 28 Here, if we refuse to answer the certified question, the parties will need to resolve issues concerning agency, the class certification plaintiff seeks, and possibly extensive accounting for damages to all members of the class. The parties and the circuit court all seek resolution of the legal issue because "early appellate review might avoid protracted and expensive litigation." *North Carolina ex rel. Howes v. W.R. Peele, Sr. Trust*, 889 F. Supp. 849, 851-52 (E.D.N.C. 1995). Answering the certified question meets the criteria and serves the purpose of the rule.

¶ 29 The circuit court asks us whether the courts can imply a private cause of action for violation of the Condominium Property Act by a condominium unit owner against a property management company if the property management company acts as agent for the condominium board and charges fees in excess of the fees permitted by the Condominium Property Act for providing the documents required for sale of the condominium unit. To determine whether a statute implies a private cause of action, courts consider "(1) whether the plaintiff is within the class of persons the statute was designed to protect, (2) whether implying the cause of action is consistent with the underlying purpose of the Condominium Property Act, (3) whether the plaintiff's injury is one the statute was designed to prevent, and (4) whether implying a cause of action is necessary to effectuate the purposes of the [A]ct." *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 470 (1989).

¶ 30 In support of the amendment to the Condominium Property Act that included the language at issue here, a representative asserted that the amendment would be "consistent with the Uniform Condominium Property Act (Uniform Act)." 82nd Ill. Gen. Assem., House Proceedings, May 23, 1979, at 8. The Uniform Act serves the purpose of "specifying certain rights, duties, responsibilities and liabilities of lenders, unit owners, developers, and other persons and organizations having interests in condominiums; *** [and] specifying rights and duties of buyers and sellers of condominium units." *Anderson v. Council of Unit Owners of Gables on Tuckerman Condominium*, 948 A.2d 11 (Md. Ct. App. 2008). The Uniform Act protects both potential purchasers and owners, even owners who may later become sellers. *State v Rupe*, 428 S.E.2d 480, 488 (N.C. App. 1993); James H. Jeffries IV, Note, *North Carolina Adopts the Uniform Condominium Act*, 66 N.C.L. Rev. 199, 221 (1987). The Uniform Act "was enacted *** to make unit holders' 'bundle of rights' more uniform." *Plano v. Parkway Office*

Condominiums Bever Properties, LLC, 246 S.W.3d 188 (Tex. Ct. App. 2007). In accord with the Uniform Act, the Condominium Property Act "provides the necessary protections to the seller." 77th Ill. Gen. Assem., House Proceedings, May 9, 1972, at 33. Plaintiffs, "as [condominium] owners and sellers, therefore fall within a class for whose benefit the statute was enacted." *Murphy*, 2018 WL 3428084, at *3.

¶ 31 The specific provision at issue limits the amount charged for the documents every owner must "obtain from the [condominium's] Board of Managers" before sale of the owner's unit. (765 ILCS 605/22.1(a) (West 2016)). As the Condominium Property Act specifies that the owner must pay the charge (765 ILCS 605/22.1(c) (West 2016)), the limitation of the charge protects the owner who seeks to sell his unit. Plaintiffs fall within the class of persons the legislature intended to protect when it adopted the provision.

¶ 32 Implying a cause of action for charging an amount in excess of the "reasonable fee covering the direct out-of-pocket cost of providing such information and copying," (765 ILCS 605/22.1(c) (West 2016)), serves the statutory purpose of limiting the fees charged for the required documents. See *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 523-24 (1990).

¶ 33 In one of the three cases in which the District Court for the Northern District of Illinois addressed the issue of whether the courts need to imply a private cause of action under section 22.1(c), the court implausibly concluded that Condominium Property Act protects only prospective purchasers, not unit owners seeking to sell, and therefore a cause of action in favor of owners would not serve the Condominium Property Act's purposes. *Horist v. Sudler & Co.*, 17 C 8113 (N.D. Ill. 2018). The *Horist* court disregarded the relationship between the Condominium Property Act and the Uniform Act, and the court did not address the many provisions throughout the Condominium Property Act that protect owners, not prospective

purchasers. See, e.g., 765 ILCS 605/18.4 (West 2016); *Boucher v. 111 East Chestnut Condominium Association, Inc.*, 2018 IL App (1st) 162233, ¶¶ 14-38 (specifying some of the owners' rights protected by Act). In the second case, the court found Illinois decisions insufficient and deferred to the *Horist* court. *Ahrendt v. Condocerts.com, Inc.*, 17-CV-8418 (N.D. Ill. 2018).

¶ 34 In the third case, the Northern District of Illinois acknowledged that the Condominium Property Act served the purpose of protecting owners, even when they sought to sell, but found no need to imply a private cause of action in favor of the owners for violations of section 22.1(c). *Murphy*, 2018 WL 3428084, at *7. The *Murphy* court suggested unit owners could simply charge purchasers higher amounts for their units to cover the document costs. *Id.* However, the purchaser could in turn reduce the offer to ensure that the seller pays the cost. When the market favors purchasers, the suggestion offers no help at all to the overcharged owner. Moreover, the court's suggestion only makes the buyer a new victim of the statutory violation. Without a private cause of action against the party who overcharges the unit owner for the documents, the document supplier keeps the amount it overcharges its victims.

¶ 35 The *Murphy* court also suggested the overcharged owner could protest the charges to the condominium board. In an *amicus* brief filed by the Community Associations Institute – Illinois Chapter (the Institute), the Institute said that if managing agents recover only a "reasonable fee covering the direct out-of-pocket cost of providing such information and copying," "there would be no business reason to assume the risk of liability. With the reduced involvement of property management companies, in turn, it is likely that associations will be unable to meet the deadline for providing the disclosure documents." The Institute added a further threat: if condominium associations or the courts disallow the excessive charges managing agents demand, "it may

logically be assumed that associations within Illinois will be required to incur additional expenses ***, or by paying additional management fees to the management companies."

¶ 36 The Institute admitted that its "1300 members includ[e] 250 businesses, 350 community association Board members and unit owners, and over 650 community association managers and management companies," assuring that managers and management companies support the threats in the Institute's brief. Thus, the managing agents threaten to increase fees and withhold the required documents, thus preventing sales, if the courts apply statutory fee limits to them. In view of such threats one might conclude that the vast majority of condominium boards will accede to the demands of the managing agents, and ignore the protest of the owner who pays the excessive fee only when he sells the unit, and thus only when the board expects the owner to no longer have any say in the government of the condominium association.

¶ 37 Therefore, if the courts do not imply a private right of action against the board for violations of the Condominium Property Act's limitation on charges for documents that the owner must "obtain from the [condominium's] Board of Managers" to sell the unit (765 ILCS 605/22.1(a) (West 2016)), the owner will have no recourse, and the limitation on fees will have no effect. Applying the *Board of Education* factors, I would find that, as the majority implicitly concedes, the Condominium Property Act implies a private cause of action for violation of the limitation on charges for the required documents.

¶ 38 The trial court here specifically asked whether the Condominium Property Act implies that the unit owner has a cause of action against "a property management company, acting as an agent for the Condominium Board of Managers." An agent may incur liability if "he takes some active part in violating some duty the principal owes to a third person." *Landau*, 409 Ill. at 564. The Condominium Property Act imposes a duty on unit owners to obtain required documents

from the condominium boards, and it imposes a duty on condominium boards to provide the documents for a limited fee. A board breaches that duty if it directs the owner to obtain the documents from the board's agent, and the agent charges a fee that is excessive. The agent takes an active part in violating the duty the board owes to the owner when it charges an excessive amount for the documents.

¶ 39 In *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (2007), Ramirez asked Pekin Hospital for medical records concerning her treatment at the hospital. In accord with its contract with Pekin, Smart Corporation sent the requested records to Ramirez along with a bill for $34.78 for its services. Ramirez filed a class action complaint against Smart, alleging that Smart's charges exceeded the amount permitted under the Inspection of Hospital Records Act (Hospital Records Act) (735 ILCS 5/8-2001 (West 1998)). The circuit court granted Smart's motion for summary judgment. The appellate court found:

¶ 40 "Section 8-2001 of the Hospital Records Act obligates every hospital in Illinois to enable patients to obtain copies of their medical records. ***

¶ 41 The statute leaves implementation of that duty to those who are most intimately involved. It has been generally accepted that hospitals can compel a patient to obtain their records by paying an outside copying service. *Clay v. Little Company of Mary Hospital*, 277 Ill. App. 3d 175 (1995). In *Clay*, the court construed the statute to imply a reasonableness standard in both the charges to the patient as well as the manner of photocopying, finding that the intent of the statute could not be otherwise. Thus, in order to implement the Hospital Records Act, hospitals can use copying services, but they must act reasonably in its implementation. [Citation.] The purpose of section 8-2001, as construed, leads us to agree with *Pratt* [*v. Smart Corp.*, 968 S.W.2d 868 (Tenn. App. 1997)] that, like Tennessee, this state has an interest in transactions that

violate "statutorily-defined public policy." *Pratt*, 968 S.W.2d at 872. *** Here, if proved, Smart's allegedly excessive charges might well violate the intent of the Hospital Records Act, i.e., that a party must act reasonably when fulfilling its mandate." *Ramirez*, 371 Ill. App. 3d at 810.

¶ 42 The Condominium Property Act here establishes a public policy of limiting the charge for the documents required for sale to the amount set by the Condominium Property Act. Just as the allegations against Smart, if proven, could show a violation of the Hospital Records Act, the allegation against defendant here could show a violation of the Condominium Property Act.

¶ 43 Defendant argues that this court should not follow *Landau* because our supreme court erred when it held that a court could hold an agent liable if "he takes some active part in violating some duty the principal owes to a third person." *Landau*, 409 Ill. at 564. We lack the authority to overrule *Landau*, and we must follow that decision. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 28.

¶ 44 Moreover, *Landau* states a reasonable standard for liability of an agent. Defendant points out that the fees it charged to plaintiff could be charged to the Association, "and if passed through the Association to Plaintiff would comprise the Association's exact costs," so that the Condominium Property Act would permit the Association to recover the excessive charge from plaintiff. The Condominium Property Act's purpose of assuring that the owner can obtain the required documents at a limited price "would be completely defeated through a construction of Act that would allow [owners] to be charged more than the reasonable copying and mailing costs if the providers hire others to perform the task of supplying the records." *Cotton v. Med-Cor Health Information Solutions, Inc.*, 472 S.E.2d 92 (Ga. App. 1996). *Landau* establishes that the Condominium Property Act here, like the Hospital Records Act at issue in *Ramirez*, *Cotton*, and *Pratt*, "applies to independent entities that are retained to provide" the documents. *Pratt v. Smart*

Corp., 968 S.W.2d 868 (Tenn. App. 1997). With *Landau*'s appropriate assignment of liability to agents who actively overcharge for assuming the condominium board's statutory duty to supply the documents required for sale, the Condominium Property Act will effectively prevent overcharging for providing documents required for sale.

¶ 45 Thus, in accord with *Landau* and the purpose of the Act, this court should answer "Yes" to both of the circuit court's questions. The decision to not answer the certified question will have one obvious effect: managing agents will continue collecting excessive fees from condominium unit sellers, secure in the knowledge that many of their victims, leaving the condominiums, will not seek recompense even after the courts declare that the excessive fees violate the Condominium Property Act. The excessive fees will continue until Illinois law is made clear on this issue as explained here. Accordingly, I dissent from the decision to not answer the certified questions, and answer "Yes" a unit owner has a statutory cause of action against a managing agent for a condominium board, assuming the managing agent acted as agent for the board in providing the documents required under section 22.1 of the Act.

EXHIBIT 3

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

Robert Ahrendt

Plaintiff,

v.

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

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

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

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

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

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

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

Robert Ahrendt

Plaintiff,

v.

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

Condocerts.com, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

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

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

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

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

EXHIBIT 4

the Order on page 2, the Order of Special Order of Business, Subject Matter - State and Local Government Administration. House Bill on Third Reading, House Bill 1666. Read the Bill. Out of the record. House Bill 1862. Read the Bill, Mr. Clerk."

Clerk O'Brien: "House Bill 1862, a Bill for an Act to provide for the uniform regulation of condominiums. Third Reading of the Bill."

Speaker Yourell: "Speaker Madigan."

Madigan: "Mr. Speaker, Ladies and Gentlemen of the House, I will speak to this Bill and then Mr. Vinson will also speak to the Bill in support of its passage. This Bill would provide for a uniform system of condominium regulation in Illinois. The essence of the Bill is to provide that regulation of condominiums statewide shall be uniform at the same time that we provide the ultimate amount of consumer protection. The Bill has been drafted in cooperation with the Commission on uniform laws. It has the full support of the Illinois Board of Realtors, the Illinois State Bar Association and the Chicago Bar Association. I think that given the breadth and depth of support for this legislation, that we have come forward with a Bill which would adequately answer the problems that have developed in the area of condominium regulation over these past years and I would recommend an 'aye' vote."

Speaker Yourell: "Is there discussion? The Gentleman from DeWitt, Representative Vinson."

Vinson: "Thank you, Mr. Speaker. I, too, would request an 'aye' vote on House Bill 1862 which does, as the Speaker said, rewrite the Illinois Condominium Law. It affects the creation, management, and protection of purchasers' rights in the condominium statute. The Bill is supported by the Illinois Realtors' Association. It deals in a very

balanced fashion with the critically important preemption question. Essentially, the core of how it deals with the preemption question is that, in essence, new condominium units will be exclusively regulated by this statute. However, existing condominium units which have been regulated in the past by local ordinance will continue to be regulated by those local ordinances. There are some exceptions in the exclusive preemption, the exclusive regulation by the state on this field and they are important exceptions which create the appropriate balance between state and local interests. The home rule unit may regulate in the effect of additional disclosure for condominium conversion. As everyone knows conversions are a major issue in certain portions of the state, and for that purpose, for that reason, home rules...home rule units will be permitted to regulate in that area. Escrow accounts for the purpose of protecting the purchasers in regard to common elements are also left to the home rule units. Existing codes will not apply to new units. I think finally, I would make the point that there is increased consumer protection under this...under this Bill in the area of warranties, in the area of protecting the purchaser in the right to cancel a contract, in the disclosure on conversions and in the termination of sweetheart contracts. With those introductory comments, I would ask for your support for this Bill. I believe it is a very balanced Bill, and I believe it will stimulate construction in this field."

Speaker Yourell: "Further discussion? Minority Leader Representative Daniels."

Daniels: "Mr. Speaker, Ladies and Gentlemen of the House, I join the previous two speakers in supporting this very fine Bill. It has been worked out over a number of months, and

as a matter of fact, a number of years, in very extensive review and negotiations. I think the legislation, as presented to you, contains the elements for a very fine condominium Act and condominium law in this state. I think it's progressive. I think it serves our constituency well with the consumer protection that's listed in the Bill. Upon further study, the Bill gets better and better, and I think you'll find that it's one that you'll readily accept and will be accepted by your constituency and I ask for your favorable support."

Speaker Yourell: "Representative Greiman."

Greiman: "Wonder if Mr. Vinson would yield for a question or two."

Speaker Yourell: "Gentleman indicates he'll yield."

Vinson: "For a question."

Speaker Yourell: "For a question."

Greiman: "Is there some question whether he'll yield?"

Speaker Yourell: "Yes, you...proceed."

Greiman: "Yes, there's a question?"

Speaker Yourell: "No, proceed. If you want to ask Mr. Vinson a question, proceed."

Greiman: "Oh, thank you, Sir. Okay, do I understand it that communities on conversion condominium declarations, in other words, the notice to the tenants and the public notice that a converter gives, that those communities still have a right to go beyond and add items that are not in the statute, is that correct?"

Vinson: "That is correct."

Greiman: "So that communities will be able to add on additional items. For example, the City of Chicago, just as an example, acquires or...or allows, or no, requires that a high rise condominium converter provide the information as to how much it will cost a...an owner to get into the

EXHIBIT 5

Hon. W. Robert Blair: "The gentleman from Cook, Mr. Shea."

Gerald W. Shea: "Well, as I understand the gentleman's appropriation bill, it talks about 20% of the loss being made up in the fiscal year 1973. As I understand the gentleman's appropriation bill, it talks about 20% of the loss being made up in fiscal year 1973 and 80% of it being made up in fiscal 1974. I think that if we are going to be responsible legislators, that we have an obligation to the local communities to make up all the loss in fiscal 1973 and insure the local property tax payers that we are not going to increase real estate taxes next year because of the way we appropriate money and I would like to make my position perfectly clear on the floor of this House and I will have the amendment to do what I want, attempt to do what I think is fiscal responsibility to the local property tax payers."

Hon. W. Robert Blair: "Take it out? Take it out of the record. 3779."

Fredric B. Selcke: "House Bill 3779. A bill for an act to add Section 22 to the Condominium Property Act. Second reading of the bill. One committee amendment. Amend House Bill 3779 on page 2, line 8, by inserting before the period the following: 'except in accordance with the provisions of the declaration, the articles of incorporation or charter, or the bylaws of the association'."

Hon. W. Robert Blair: "The gentleman, the gentleman from Cook, Mr. Regner."

David J. Regner: "Ah, Mr. Speaker, Ladies and Gentlemen of

the House, this particular amendment was put on in committee and due to some question due to the bill in itself. Ah, what this amendment would do would be to strip the bill of any enforcement responsibilities, is all. However, I do have another amendment on the Clerk's desk that I would like to offer later on that has been agreed upon, I just wish that I could move to table Amendment Number One to House Bill 3779."

Hon. W. Robert Blair: "Does the gentleman have leave? All right, the bill will be tabled, the amendment will be tabled. Amendment, read it."

Fredric B. Selcke: "Amendment Number Two, Regner. Amend House Bill 3779 on page 1, by deleting line 26 and inserting in lieu thereof the following: 'of recreational facilities and for any other services to be provided to the owner of the condomimium unit; and'; and so forth."

Hon. W. Robert Blair: "The gentleman from Cook, Mr. Regner."

David J. Regner: "Ah, Mr. Speaker, Ladies and Gentlemen of the House, this is the amendment that I was referring to that is in agreement with the members that objected to the bill and in its form as introduced and it does provide the necessary, it does answer the questions that there were on this bill and also provides the necessary protections to the seller and I would for its adoption'"

Hon. W. Robert Blair: "The gentleman from Cook, Mr. Maragos."

Samuel C. Maragos: "Will the sponsor of the amendment yield to a question?"

Hon. W. Robert Blair: "He indicates that he will."

Samuel C. Maragos: "This the same amendment that we just discussed earlier today regarding the fact that this insures the seller?"

David J. Regner: "Yes, sir, it's the one that I gave you the copy of."

Hon. W. Robert Blair: "Any further discussion? All those in favor of the adoption of the amendment say 'Yeas', the opposed 'No', the 'Yeas' have it and the amendment is adopted Are there further amendments? Third reading. 2792."

Fredric B. Selcke: "House Bill 2792. A bill for an act to amend 'The Non-Profit Hospital Service Plan Act'. Second reading of the bill. No committee amendments."

Hon. W. Robert Blair: "Any amendments from the floor? Third reading. The gentleman from Cook, Mr. Shea."

Gerald W. Shea: "Is the sponsor here on those bills?"

Hon. W. Robert Blair: "Is he what?"

Gerald W. Shea: "Is the sponsor present?"

Hon. W. Robert Blair: "Yes."

Gerald W. Shea: "Oh, I was just wondering if he was back with us."

Hon. W. Robert Blair: "Third reading. 2795."

Fredric B. Selcke: "House Bill 2795. A bill for an act to amend 'The Medical Service Plan Act'. Second reading of the bill. No committee amendments."

Hon. W. Robert Blair: "Any amendments from the floor? Thirds reading. 2796."

EXHIBIT 6

June 21, 1972
HB 3779

3779, Senator Graham. Senator Graham.

SENATOR GRAHAM:

Yes, I am ready. Mr. President and members of the Senate, House Bill 3779, introduced by Representative Regner, had quite a bit of publicity and quite a bit of acceptance and is considered the truth-in-selling bill of condominium property. When it came over to the Senate, I talked to Senator Neistein and there was some discussion as to the homebuilders' version of this particular bill. We adopted a rather comprehensive amendment that satisfies them. And in effect what this does, this bill will indicate that those...in many cases the elderly people who are purchasing condominiums with the intent of spending the rest of their life in the condominiums that they have offered to them by the condominium owners a comprehensive outline of operation of the condominium unit, operating budget spelling out what maintenance fees are and why they are, a floor plan of the apartment purchase so they know exactly what they're getting into, I think this is an admirable piece of legislation. I ask for a favorable roll call.

PRESIDENT:

Is there any discussion? Secretary will call the roll.

PRESIDING SECRETARY: (Mr. Fernandes)

Arrington, Baltz, Berning, Bidwill, Bruce, Carpentier, Carroll, Cherry, Chew, Clarke, Collins, Coulson, Course, Davidson, Donnewald, Dougherty, Egan, Fawell, Gilbert, Graham, Groen, Hall, Harris, Horsley, Hynes, Johns, Knuepfer, Knuppel, Kosinski, Kusibab, Latherow, Laughlin, Lyons, McBroom, McCarthy, Merritt, Mitchler, Mohr, Neistein, Newhouse, Nihill, O'Brien, Ozinga, Palmer, Partee, Rock, Romano, Rosander, Saperstein, Savickas, Smith, Soper, Sours, Swinarski, Vadalabene, Walker, Weaver.

PRESIDENT:

Donnewald, aye. Hynes, aye. On that question, the yeas are

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	
	)	Cook County No. 2019CH04869
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' COMPLAINT

1. INTRODUCTION

Plaintiffs' Response to Defendant's Motion to Dismiss fails to adequately explain why this Court should disregard the highly persuasive authority of the federal courts opinions when those opinions apply the same governing laws and analysis to a nearly identical set of facts. Plaintiffs, after rejecting the reasoned analysis of six (6) federal judges, including a unanimous decision by a three-judge panel of the 7th Circuit of Appeals[1], attempts to steer the court to follow its misguided principal authority, *Merrill,* which is a ruling by the same Seventh Circuit court almost 40 years prior, 1981. In its ruling, the *Horist* court failed to find any factual or legal application of *Merrill*[2] in its own decision.[3] The federal district court for the N.D. of Illinois, in three separate

[1] *Horist v. Sudler & Co.*, 941 F. 3d 274 (7th Cir. 2019).
[2] *Merrill Tenant Council v. HUD*, 638 F.2d 1086 (7th Cir. 1981).
[3] Plaintiffs' argument for the this courts application of Judge Allen's order in *Friedman v. Lieberman Management Services, Inc.*, 2019 IL App (1st) 180059-U is incorrect and fails because Judge Allen's ruling was directly applicable to the fact specific Class Action Complaint at Law filed prior to their filing of a Second Amended Complaint. This analysis was without the benefit of the federal opinions and relied heavily on an incorrect analysis. This order is not binding and a completely new ruling is expected in the near future. As such, it is an example of a flawed opinion and ultimately should be disregarded by this Court. A motion to dismiss the Second Amended Complaint in *Friedman* is currently pending before a different presiding Judge.

cases – one of which was affirmed by the Court of Appeals[4] – granted motions to dismiss for the same reasons Defendant is petitioning this Court - failure of Plaintiffs to plead a cognizable legal claim as outlined in Defendant's Motion to Dismiss Counts I and II of Plaintiffs' Class Action Complaint.[5]

Plaintiff correctly states that the precedent of the federal courts interpreting Illinois state law are not binding on this Court. However, when the exact same issues relevant to this case are fully and completely analyzed by six federal judges, their respective opinions should be utilized by this Court as persuasive authority. The *Horist* court determined, as a matter of law, that a seller of a condominium unit has no cause of action against a property management company arising out of section 22.1 of the Condo Act.[6][7]

Plaintiffs fail to convincingly argue that the six federal judges' rulings were incorrect. Plaintiffs meritless argument that the "federal decisions were flawed" due to Plaintiffs' self-serving analysis that the federal opinions failed to consider statutory interpretation of the Illinois Condo Act. Plaintiffs' analysis of the legislative history of the Condo Act has nothing to do with the issues presented to this Court as the legislative history quoted by Plaintiffs are cherry picked

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[4] *Horist v. Sudler & Co.*

[5] The three federal district court opinions dismissing the copycat actions are (i) *Horist v. Sudler & Co.*, No. 17 C 8113, 2018 WL 1920113 (N.D. Ill. Apr. 24, 2018), *aff'd*, 941 F. 3d 274 (7th Cir. 2019); (ii) *Ahrendt v. Condocerts.com, Inc.*, No. 17-cv-8418, 2018 U.S. Dist. LEXIS 80935 (N.D. Ill. May 14, 2018) – See fn7; (iii) *Murphy v. Foster Premier, Inc.*, No. 17-CV 8114, 2018 WL 3428084 (N.D. Ill. July 16, 2018). As cited by Plaintiffs, there are currently two other known cases currently pending in Cook County Chancery Court pursued by the same attorneys that are representing Plaintiffs in this pending case: (i) *Brown v. GNP Management Group*, 2019 CH 06868 & (ii) *Friedman v. LMS Management Services, Inc.*, 2016 CH 15920.

[6] *Horist v. Sudler & Co.*

[7] In their Response to Defendant's Motion to Dismiss, Plaintiffs correctly point out that the dismissal Order in *Ahrendt* was vacated. (Resp. fn4) However, the dismissal Order in *Ahredtn* presents a full analysis and reasoning by a Seventh Circuit Court based on a very similar fact pattern and the same governing laws. Procedurally, the Motion to Dismiss was granted and later vacated because the same primary issue was pending appeal with the Illinois Court of Appeals. After the Court of Appeals reversed its decision to hear the appeal, Plaintiffs' counsel voluntarily dismissed the matter prior to the reinstatement of the dismissal Order. The reasoning and analysis of the Court should not be disregarded, but rather used as persuasive authority by this Court. *Ahrendt v. Condocerts.com, Inc.*, No. 17-cv-8418, 2018 U.S. Dist. LEXIS 80935 (N.D. Ill. May 14, 2018).

from a floor debate that has nothing to do with the section 22.1, as the debate took place almost ten years prior to the introduction of 22.1. The statutory language is **clear and unambiguous**, Section 22.1 of the Condo Act allows associations to recoup costs from sellers and has not application to regulating third-party property managers. Contrary to Plaintiffs' argument, there is no need to infuse an implied duty into the clear language of Section 22.1 of the Condo Act. If the legislators intended a specific right for the sellers, it would have included it. As such, Plaintiffs' Counts I and II of its class action complaint should be dismissed with prejudice.

2. Plaintiffs' Purported Active Agency Theory is Still Against Illinois Law

Illinois law follows well-settled agency law that the duty of a principal is not imputed on an agent. As discussed it Defendant's motion to dismiss, "It is a general principle of agency law that 'an agent's breach of a duty owed to the principal is not an independent basis for the agent's tort liability to a third party. An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party.'"[8]

In their Response[9], Plaintiffs claim that Defendants are incorrect for relying on the *Bovan* ruling because the court held the theory inapplicable in the circumstances of that case and that it was regarding an agent's liability in tort, not statutory agent liability. Plaintiffs have failed to disclose that the *Bovan* court refused to extend active part agency theory to either the claimed tort

[8] *Bovan v. Am. Family Life Ins. Co*., 386 Ill. App. 3d 933, 942 (1st Dist. 2008)8 (quoting Restatement (Third) of Agency § 7.02, at 138 (2006)). See also 2A C.J.S. Agency § 372 ("where an obligation is that of a principal, a court cannot enforce the obligation against the agent as long as he or she is merely acting as agent. An agent is liable only to the principal for a mere breach of his or her contract with the principal.").
[9] (Response at p. 11 fn6).

duties or statutory duties as alleged in the case and that the only possible application of active-part agency theory as decided by *Bovan*, would be in **contract cases**.[10]

Further, Plaintiffs' improperly rely on their misinterpretation in *Merrill v. HUD* to support its active agency theory. Defendants point the court again to *Thomas D. Philipsborn Irrevocable Trust v. Avon Capital, LLC,*[11] which rejected the "active part" exception to the rule of agent non-liability. In *Horist*, the court reasoned that finding active part theory "distorts basic agency law" that an agent cannot be liable for a breach of duty owed by the principal.[12] Plaintiffs' reliance on Judge Walker's dissent in the Rule 308 order is incorrect and both the courts in *Philipsborn* and *Horist* did not support Merrill's application of such a theory, with *Philipsborn* stating that it would be revolution in the law of agency.[13] Plaintiffs' active agency theory fails and Defendant's motion should be granted in its entirety.

3. Plaintiffs Count II - Alleged Violation of the ICFA Fails as a Matter of Law

Plaintiffs have failed to meet the requirements to plead a cause of action under the ICFA because the type of activity which transpired is simply not the type of conduct which falls within the purview of the ICFA. Plaintiffs – without merit – claim the $245 in fees Westward charged Plaintiffs were unfair under the ICFA. Plaintiffs do not plead any facts that could reasonably interpreted as unfair, oppressive, against public policy or unscrupulous.

Simply put, just because Plaintiffs describe Westward's set rates for 22.1 documents as oppressive, unethical and the like, it doesn't make their statements true. Plaintiffs present no evidence of what is "reasonable", nor any comparisons, authority, basis or foundation for their

[10] *Bovan v. Am. Family Life Ins. Co.* 386 Ill. App. 3d at 944 (declining to expand on Grover decision's broad and sharply criticized view of agent liability in contract); See also *Grover v. Commonwealth Plaza Condo. Ass'n*, 76 Ill. App. 3d 500 (1st Dist. 1979).
[11] *Thomas D. Philipsborn Irrevocable Trust v. Avon Capital, LLC,* 699 F. App'x 550, 552 (7th Cir. 2017).
[12] *Horist v. Sudler & Co.,* 941 F.3d at 281.
[13] *Philipsborn Irrevocable Trust v. Avon Capital, LLC,* at 552.

argument and it fails as a matter of law. Plaintiffs have failed to plead any facts to support the contention they had no choice but to pay Westward's fees. Plaintiffs had an array of other options to take including demanding disclosure documents under Section 22.1 directly from Kenmore or Kenmore's Board, complaining to Kenmore regarding Westward's price prior to obtaining the documents, or contracting with the purchasers of their unit to shift the cost of the documents away from the sellers and onto the buyers. Moreover, Plaintiffs have failed to even plead facts to show the fees charged were in any way unreasonable or oppressive as those terms are defined under the ICFA. *See Batson v. Live nation Entm't, Inc.*, 746 F.3d 827, 833 (7th Cir. 2014).

V. CONCLUSION

In summary, Plaintiffs as sellers of a condominium do not have a private right of action to assert against Westward under Illinois law and Westward is not subject to the Condo Act and therefore, Count I should be dismissed with prejudice pursuant to 735 ILCS 5/2-615. Additionally, Count II alleging a violation of the Illinois Consumer Fraud and Deceptive Practices Act for charging reasonable fees, should be dismissed with prejudice because Plaintiffs have failed to plead facts that would allege an unfair, unscrupulous or unethical act transpired and the Condo Act is not applicable to Westward or Plaintiffs in this case. Westward respectfully requests that this Court dismiss Plaintiffs' Class Action Complaint, Counts I and II, with prejudice pursuant to 735 ILCS 5/2-615.

WHEREFORE, Defendant WESTWARD MANAGEMENT, INC., moves this Court pursuant to 735 ILCS 5/2-615 to dismiss Count I and Count II of Plaintiffs' Class Action Complaint at Law in its entirety, with prejudice, and for any relief this Court deems reasonable and just.

Dated: September 23, 2020

Respectfully submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	Cook County No. 2019CH04869
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that on the 23rd day of September 2020, we filed with the Clerk of the Circuit Court of Cook County, Illinois, **Defendant Westward Management, Inc.'s Reply in Support of Its Motion to Dismiss Plaintiff's Complaint**, a copy of which is attached and served upon you herewith.

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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that on September 23, 2020, she electronically filed **Defendant Westward Management, Inc.'s Reply in Support of Its Motion to Dismiss Plaintiff's Complaint** with the Clerk of the Circuit Court of Cook County, Illinois, using the www.fileandserveillinois.com system, which sent notification of such filing to the parties who are registered participants with the System.

/s/ Patricia M. Kebr

CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	Cook County No. 2019CH04869
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

DEFENDANT'S MOTION TO CERTIFY QUESTION PURSUANT TO SUPREME COURT RULE 308

NOW COMES defendant WESTWARD MANAGEMENT, INC., by its attorneys BRIAN J. RIORDAN, JAMES M. WECK, and CLAUSEN MILLER P.C., and requests this Court to certify the following question pursuant to Supreme Court Rule 308(a):

> Does §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner against a property manager retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under §22.1 of the Act?

This case presents "a question of law as to which there is substantial ground for difference of opinion and an immediate appeal from [this Court's order entered October 27, 2020] will materially advance the termination of the litigation." *Id.* In support, Westward states:

1. Plaintiffs allege that Westward is the agent for Kenmore Club Condominium Association retained as Kenmore's property manager (Complaint ¶6-7). In February 2016, plaintiffs entered into a contract to sell their condominium unit. The contract required plaintiffs to furnish information related to the proposed sale.

2. Plaintiff made a written request asking Westward to provide specified documents needed for the sale. Included were documents required by §22.1 of the Condominium Act (Complaint, Ex. C at 2). The request form listed the prices for the four categories of requested information (*Id.*). The total charge was $245, broken down as follows: (1) "Paid Assessment Letter"--$150; (2) "Year to Date Income Statement & Budget"--$20; (3) "Condo Questionnaire/Disclosure Statement/22.1 (each)"--$75; and (4) "Insurance Contact Information--$0" (*Id.*). Harry Channon authorized Westward to charge his credit card account $245 (*Id.* at 2-3). Plaintiffs do not allege that they protested to Westward and/or Kenmore about the amount of the $75 fee for the §22.1 statement. Neither do allege that they asked for a waiver or reduction of any fee.

3. The question for certification presents a threshold question of law. It asks whether §22.1 of the Act implies a cause of action against a property manager for the recovery of fees "charged by the association or its board of managers" for providing "information" for a unit seller under §22.1. 765 ILCS 605/22.1. Unquestionably, §22.1 does not expressly authorize the cause of action. Whether a cause of action exists is a question of law. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶14.

4. There is substantial ground for difference of opinion about the answer to the question. As this Court recognizes, the Illinois reviewing courts have not yet reached the question presented here (Op. & Order at 3). Westward's motion-to-dismiss documents, which Westward incorporates by reference here, raise substantial grounds for disagreement.

5. More importantly, a federal court of appeals that considered the precise issue here disagrees with this Court's answer. *Horist v. Sudler & Co.*, 941 F.3d 274, 279 (7th Cir. 2019). *Horist* held that a condominium seller does not have an implied cause of action against a

property manager for the recovery of allegedly unreasonable fees under §22.1. *Id.* at 278-80. The Seventh Circuit stated:

> As owners/sellers [plaintiffs] are not within the class of persons [§22.1] was designed to protect, nor have they suffered an injury that the statute was designed to prevent. And implying a remedy for condominium sellers is neither consistent with nor necessary to effectuate the statute's purpose. *Id.* at 279.

See also Ahrendt v. Condocerts.com, Inc., 2018 U.S. Dist. LEXIS 80935, *4-6 (N.D. Ill.) (same); *Murphy v. Foster Premier, Inc.*, 2018 U.S. LEXIS 11781, *4-7 n.4 (N.D. Ill.) (same).

6. And though not speaking on the precise issue here, the first and second appellate districts have stated that §22.1 was "clearly designed to protect purchasers of condominium units." *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71, 77 (1st Dist. 1993); *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865 ¶37. This Court has ruled that those cases did not negate a conclusion that §22.1 also protects sellers (Op. & Order at 3). But at this point, no reviewing court has made that statement.

7. This Court and the Seventh Circuit/Northern District have taken opposite positions on the question here. Moreover, this Court has read a purpose into §22.1 that the first and second appellate districts have not found and might disappove. Those differences are the reasons why the question here should be certified. Rule 308 is designed to provide Illinois reviewing court answers to disputed questions of law, and the question presented here needs an appellate answer. In working toward that answer, the reviewing courts can examine everything raised by this Court's ruling.

8. Getting a decision from the appellate court may materially advance the termination of this litigation. If no cause of action exists, plaintiffs may not move forward with their Condominium Act claim. This may result in a significant savings in effort and expense.

Discovery will undoubtedly be conducted on the reasons for the size of Westward's charges. Considerations of hard costs, labor, and profit will undoubtedly arise. Westward will need to develop evidence that in the Chicago area market, its charges are in line with charges of other managers—and perhaps even below market. Because plaintiffs have demanded a jury, expert witnesses will be needed. The average juror is not familiar with how property managers charge for their services.

9. Then there is the problem of class certification. Certifying a class is rightfully difficult. Section 2-801 of the Code of Civil Procedure states:

> An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:
> (1) The class is so numerous that joinder of all members is impracticable.
> (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
> (3) The representative parties will fairly and adequately protect the interest of the class.
> (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.
>
> 735 ILCS 5/2-801.

Any motion to certify a class will be fought, and the fight will become very time consuming and expensive. All of it can be avoided by an appellate ruling on the question of law.

10. There is an added benefit of certification. This Court's order also denied Westward's motion to dismiss plaintiffs' Consumer Fraud Act claim. The Appellate Court is not limited to answering the certified question; it may consider the appropriateness of the order itself. *See, e.g.*, *Cincinnati Ins. Co. v. Chapman*, 2012 IL App (1st) 111792, ¶21 ("However, we may look at the record of the trial court proceedings and beyond the limits of the certified question to address whether the underlying order is appropriate in order to reach an equitable

result in the interest of judicial economy"); *McRaith v. BDO Seidman, LLP*, 391 Ill. App. 3d 565, 566, 586 (1st Dist. 2009) (could not answer the certified question as phrased but answering a related question); *P.J.'s Concrete Pumping Serv., Inc. v. Nextel West Corp.*, 345 Ill. App. 3d 992, 998-99 (2nd Dist. 2004) ("In the interests of judicial economy and reaching an equitable result, however, a reviewing court may go beyond the certified question and consider the appropriateness of the order giving rise to the appeal"). The Supreme Court may do likewise. *Schrock v. Schumacker*, 159 Ill. 2d 533, 537 (1994) ("the scope of our review is not limited to determining whether the appellate court answered the certified questions correctly"). *See also*, *Johnston v. Weil*, 241 Ill. 2d 169, 175 (2011). Here, plaintiffs' consumer fraud claim is grounded in §22.1 of the Condominium Act, so plaintiffs' claim is closely related to the question presented for certification. And under the law, "charging an unconscionably high price generally is insufficient to establish a claim for unfairness" under the Consumer Fraud Act. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403, 418 (2002) (charges involving car leases). If the rule were otherwise, courts would be deluged by a never-ending rain of consumer fraud cases.

11. Here, plaintiffs' complaint alleges that they were charged only $75 for "Condo Questionnaire/Disclosure Statement/22.1 (each)" (Complaint, Ex. C at 2). Exhibits control over inconsistent allegations in a complaint. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶18. The exhibit further shows that plaintiffs did not request the condominium declaration, bylaws, articles of incorporation, rules and regulations, and quarterly minutes (*Id.*). Perhaps plaintiffs already obtained them—for free—as part of their purchase transaction. Regardless, the reviewing courts can consider whether plaintiffs have stated a consumer fraud claim under the facts alleged. So Rule 308 review has the potential to end the entire case.

CONCLUSION

Defendant Westward Management, Inc. asks this Court to certify the following question for immediate review pursuant to Supreme Court Rule 308(a):

> Does §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner against a property manager retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under §22.1 of the Act?

Dated: November 11, 2020

Respectfully submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	No. 2019 CH 04869
v.	)	Judge Anna M. Loftus
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO CERTIFY QUESTION PURSUANT TO SUPREME COURT RULE 308

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I. PERTINENT PROCEDURAL HISTORY

On April 16, 2019, Plaintiffs brought a two-count complaint against Defendant, Westward, Management ("Defendant" or "Westward"). Count I alleges that Defendant violated Section 22.1 of the Illinois Condominium Property Act ("Condo Act"). Count II is brought under the unfairness prong of the Illinois Consumer Fraud and Deceptive Business Practices Act ("CFA"). On July 31, 2020, Defendant filed a motion to dismiss pursuant to 735 ILCS 5/2-615 seeking to dismiss Count I and Count II of the Complaint.

On October 27, 2020, this Court entered a written Order and Opinion denying Defendant's motion to dismiss on both counts. (Ex. A, Oct. 27 Order). In its order, this Court directed Defendant to answer the complaint within twenty-eight (28) days. (Ex. A, p. 7). Rather than file an answer, on November 12, Defendant filed a Motion to Certify Question seeking an immediate appeal from the October 27 Order. (Motion, p. 1).[1] Defendant is requesting that this Court certify the following question pursuant to Illinois Supreme Court Rule 308(a):

> Does § 22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner against a property manager retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under § 22.1 of the Act? (Motion, p. 1).

Specifically, Defendant argues that certification is proper because: (a) it presents a question of law on whether condo owners/sellers have an implied cause of action under section 22.1 of the Condo Act, (b) there is substantial ground for difference of opinion with the federal court regarding whether an implied cause of action exists, (c) no Illinois reviewing court has ruled that section

[1] Defendant also raises the argument that Class Certification is problematic. (Motion, ¶ 9). However, Class Certification is not presently at issue and this court need not considered it on Defendant's Rule 308 motion.

22.1 protects condo owners/sellers, and (d) a decision from the Appellate Court would materially advance termination of this litigation.

II. APPLICABLE LEGAL STANDARD

Interlocutory appeals pursuant to Illinois Supreme Court Rule 308(a) are not favored in Illinois and should be used only in extraordinary and rare circumstances. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21, *citing Voss v. Lincoln Mall Mgmt. Co.*, 166 Ill.App.3d 442, 450 (1st Dist. 1988) ("[a]ppeals under [Illinois Supreme Court] Rule 308 should be reserved for 'exceptional circumstances'; the rule should be strictly construed and sparingly used"); *Camp v. Chicago Transit Auth.*, 82 Ill.App.3d 1107, 1110 (1st Dist. 1980) ("[] Rule [308] was intended to be used sparingly; it was not intended to open the floodgates to a vast number of appeals from interlocutory orders in ordinary litigation").

To certify a question pursuant to Illinois Supreme Court Rule 308(a), a circuit court must find: (1) the order being appealed involves purely a question of law, (2) the question of law is one as to which there is substantial ground for difference of opinion, ***and*** (3) an immediate appeal would materially advance the ultimate termination of the litigation. Ill. Sup. Ct. R. 308(a). Certified questions must not seek application of the law to the facts of a specific case. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21 ("[i]f an answer is dependent upon the underlying facts of a case, the certified question is improper"); *In re Estate of Luccio*, 2012 IL App (1st) 121153, ¶ 32 ("[a]s too often happens, a certified question is framed as a question of law, but the ultimate disposition depends on 'the resolution of a host of factual predicates.'"); *Voss v. Lincoln Mall Management Co.*, 166 Ill.App.3d 442, 448.

III. ARGUMENT

Defendants' motion to certify under Rule 308(a) should be denied because the proposed question: (a) is premature, (b) not merely a question of law, but includes a question of fact and seeks an application of the law to the facts of this specific case; (c) is not one as to which there is substantial ground for difference of opinion among Illinois courts, and (d) an appellate decision will not materially advance the ultimate termination of the litigation, but rather, would prolong it.

A. The Rule 308 Is Premature Because The Defendant Has Not Answered Material Allegations in The Complaint Nor Have The Parties Engaged In Discovery.

Rule 308(e) states that "[t]he application for permission to appeal or the granting thereof shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order." Ill. S. Ct. R. 308(e). The committee comments further provide that "[n]ormally the interlocutory appeal ***will not stay proceedings*** in the trial court." Ill. S. Ct. R. 308(e), Committee Comments (Revised 1979).

First, granting the Rule 308 would be premature in this instance because even if this court granted defendant's motion, the certified question would likely result in the Appellate Court improvidently granting leave to appeal as it did in *Friedman v. Lieberman,* and then vacating its order because material questions of fact regarding agency have yet to be answered. (Ex. B, Friedman Appellate Order, ¶¶ 13, 14)[2]. Rather than materially advancing its termination, the result in this case would be the same as in *Friedman v. Lieberman*—prolonging litigation for nearly two-years and wasting considerable amount of time and resources for both sides—including that of the trial and appellate court. *Voss v. Lincoln Mall Mgmt. Co.*, 166 Ill.App.3d 442, 449 (1st Dist. 1988).

[2] *Friedman v. Lieberman Management Services, Inc.*, 2019 IL App (1st) 180059-U. While parties may not cite to unpublished orders pursuant to Illinois Supreme Court Rule 23(e) for precedential value, trial courts are not prohibited from adopting the sound reasoning of an unpublished Order. *See Byrne v. Hayes Beer Distrib. Co.*, 2018 IL App (1st) 172612, ¶ 22 (stating that nothing in Rule 23 expressly prohibits the trial court or the appellate court from adopting the reasoning of an unpublished Order).

Like the defendant in *Friedman*, here too, Westward skirts around the issue of agency. Defendant has not admitted to its agency—demonstrated by the absence of that material term in their proposed question. (Motion, p. 1). Significantly, Defendant has not answered the complaint. Plaintiffs have alleged that the association's and/or its board of managers is required by statute to provide the Section 22.1 disclosure documents to a requesting owner. (Compl., ¶ 40). The complaint further alleges that Westward was the agent specifically designated by the associations' board to provide disclosure documents to unit sellers upon request and charging only a reasonable fee for the direct out-of-pocket cost of providing such information. (Compl., ¶ 43). It is further alleged that Plaintiff can only obtain the documents from the association's agent—in this case Westward Management. (Compl., ¶¶ 46, 48-49, 63). *Spears v. Assoc. Ill. Elec. Co-op.*, 2013 IL App (4th) 120289, ¶ 39 (appellate court declined to answer certified question where factual issue existed whether plaintiff had reasonable alternative *i.e.*, could simply walk-away).

Accordingly, resolving these factual issues are critical to Counts I before the Appellate Court could answer whether an implied cause of action exists for condo sellers under the Section 22.1 of the Condo Act.

Second, the parties have not engaged in discovery on the issue of agency. Granting the proposed certified question without first answering the question of Westward's agency would, once again as in *Friedman*, result in little more than an advisory opinion from the Appellate Court. *Id.*, at 258. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21 (if addressing certified question will result in an answer that is advisory or provisional, the question should not be reached) citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 469–70 (1998).

Defendant's motion should, at least for now, be denied and the Defendant should be ordered to answer the complaint and engage in discovery.

B. The Form of The Question Requires That This Court Deny Defendant's Motion.

Defendant's proposed question to certify does not properly frame the issues in this matter. Despite the issue of agency being a crucial element of Plaintiffs' claims as alleged in Counts I and II, Defendant's proposed question does not acknowledge the existence of an agency relationship between the property management company and the condominium association and/or its Board. (Motion, p. 1; *see*, e.g., Compl. ¶¶ 3, 6-9, 13-14, 21-22, 26, 40-46, 51, 55, 73-74). The Complaint thoroughly alleges that Defendant is the agent of the association, specifically is the agent in connection with providing the Section 22.1 documents. (*See* Compl. ¶¶ 3, 6-9, 13-14, 21-22, 26, 40-46, 51, 55, 73-74). A certified question must assert or address the existence of an agency relationship between the Westward and the condo association and/or its Board in order to properly frame the issues in this matter. Defendant's proposed certified question fails to do so and is therefore defective for purposes of Rule 308.

C. Question of Law Requires Determining The Factual Issue of Agency.

"Certified questions must not seek an application of the law to the facts of a specific case. If addressing a certified question will result in an answer that is advisory or provisional, the certified question should not be reached." *Rozsavolgyi*, 2017 IL 121048, ¶ 21 (internal citations omitted). Here, the certified question, as currently phrased, necessarily involves factual considerations regarding Westward's agency and can only be answered equivocally. *Morrissey v. City of Chicago*, 334 Ill.App.3d 251, 258 (1st Dist. 2002). While Defendant's Motion to Certify Question acknowledges that Plaintiff has plead that Westward is the agent for the Association, it does not admit or concede the agency relationship in the proposed certified question. (Motion, p. 1). Furthermore, as stated above, Defendant has not yet answered the Complaint, and thus, has neither admitted or denied their agency relationship. It is well-established that the existence of a

principal-agency relationship is ordinarily a question of fact. *Knapp v. Hill*, 276 Ill.App.3d 376, 382 (1st Dist. 1995). Since questions of fact are not proper for certification, Defendant's motion to certify be denied.

D. No Substantial Ground For Difference of Opinion Whether An Implied Cause of Action Exists For Condo Sellers Under Section 22.1.

Illinois court have found that the "substantial ground for difference of opinion" prong in Rule 308 was satisfied in instances where the question of law had not been ***directly*** addressed by the Appellate Court or Supreme Court *or* where there is a conflict between appellate districts or with the Illinois Supreme Court. *Rozsavolgyi*, 2017 IL 121048, ¶ 32. In the instant case, neither prong is satisfied.

First, this Court is now the ***third circuit court*** in Cook County to affirmatively hold that condo seller/owners have an implied cause of action under Section 22.1 of the Condo Act. *Friedman v. Lieberman*, Cook Co. No. 16 CH 15920, Judge Allen's Order of June 14, 2017,[3]; Ex. C, *Brown v. GNP Mgmt.*, Cook Co. Case No. 2019 CH 06868. There is no split within the First District among the circuit courts on this issue; nor has Defendant cited to any other circuit courts in the State of Illinois that have reached a contrary result. Thus, the current prevailing interpretation does not satisfy the element of showing a substantial ground for different of opinion as required under Rule 308.

Second, to the extent there is any ground for difference of opinion, it is not between any Illinois courts. Every state court that has considered the question of whether condo sellers have an implied cause of action under Section 22.1 (including the dissenting opinion by Justice Walker of the First District of the Appellate Court in *Friedman*), have rejected *Horist* outright. A "substantial

[3] Judge Allen's ruling was previously provided to the Court as Exhibit 1 in Plaintiff's response brief to Defendant's section 2-615 motion to dismiss.

ground for difference of opinion" does not apply to a mere disagreement with existing case law unless that case law conflicts with decisions from other Illinois appellate districts or the Illinois Supreme Court. *Rozsavolgyi*, 2017 IL 121048, ¶¶ 31, 32. Defendant raises no conflicting appellate or supreme court decisions because there are none. Instead, Defendant cites to a "disagreeing" Seventh Circuit opinion—*Horist v. Sudler & Co.*, 941 F.3d 274 (7th Cir. 2019)— and, as stated by Defendant, two appellate decisions that are "not speaking on the precise issue here." (Motion, ¶¶ 5-6).

The *Horist* decision does not create ground for difference of opinion since, as noted by this Court in its October 27 Order, "this Court is not bound by federal decisions, even Seventh Circuit ones, interpreting Illinois law." (Ex. A, p. 4). Similarly, the two Illinois appellate decisions that have considered Section 22.1—*Nikolopulos v. Balourdos*, 245 Ill.App.3d 71, 77 (1st Dist. 1993) and *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 37—do not create ground for difference of opinion since, by Defendant's own admission they are "not speaking on the precise issue here." (Motion, ¶ 6).

E. Appellate Court Decision Will Not Materially Advance Termination of The Litigation.

Rule 308 requires that the resolution of the question materially advance the ultimate termination of the litigation. Ill. S. Ct. R. 308. A decision by the Appellate Court will not materially advance the ultimate termination of the litigation in this matter. Here, the proposed question for certification solely addresses whether Plaintiffs have an implied cause of action under Count I (*i.e.*, violation of Condo Act). Even if an appellate decision prevented Plaintiffs from pursuing its claims under Count I of the Complaint, it would not materially advance the ultimate termination of the litigation. That is because, as this Court held on its Opinion and Order, Plaintiffs will still have the right to pursue their claims under Count II of the Complaint, which alleges a

violation of the Illinois Consumer Fraud Act. (*See* Ex. A., p. 6 (this court held that regardless of whether an implied right of action exists under Section 22.1, Plaintiffs still state a claim for unfairness under the Consumer Fraud Act.)

Defendant's argument that an appellate decision on the Question for Certification may result in significant savings in effort and expense is incorrect. (Motion, ¶ 8). Discovery, expert witnesses, and class certification will still be required in moving forward with Count II and will not be avoided by an appellate ruling on the Certified Question regarding Count I. Hence, the suggestion by Defendant that an appellate ruling on the Question for Certification has the potential to end the entire case is completely misguided. While Plaintiffs acknowledge that the Appellate and/or Supreme Court has the power, under certain and rare circumstances, to look beyond the certified questions and consider the appropriateness of the order giving rise to the appeal, that is not the norm and should not be exercised in this case. *Fosse v. Pensabene*, 362 Ill.App.3d 172, 177 (2d Dist. 2005) ("[t]his court's examination in an interlocutory appeal is strictly limited to the questions certified by the trial court . . . [w]e will ordinarily not expand the question under review to answer other questions that could have been included but were not . . . [o]ur task is to answer the certified questions rather than to rule on the propriety of any underlying order").

Furthermore, it would not be proper for the Appellate Court to decide whether Plaintiffs have stated a Consumer Fraud claim. Count II of the Complaint alleges an imposition of an unreasonable and excessive fee by Defendant. Whether those fees are "unconscionably high" to establish a claim for unfairness is a question of fact, not appropriate for an interlocutory appeal. *Rozsavolgyi*, 2017 IL 121048, ¶ 21 ("[c]ertified questions must not seek an application of the law to the facts of a specific case . . . . [s]imilarly, if an answer is dependent upon the underlying facts of a case, the certified question is improper"). Nor would it be proper to determine as a matter of

law on a Rule 308 certification whether Plaintiffs had no reasonable alternative than to obtain disclosure documents from Westward. Since an appellate decision on the question for certification would not prevent Plaintiffs' right and/or ability to proceed under Count II, it does not materially advance the ultimate termination of the litigation, and Defendant's Motion should be denied.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request this Court deny Defendant's Motion to Certify Question pursuant to Rule 308 and order Defendant to answer Counts I and II of the Complaint forthwith.

Dated: December 21, 2020

Respectfully submitted,

Plaintiffs, Harry Channon and Dawn Channon, individually, and on behalf of all others similarly situated

By: */s/ Terrie C. Sullivan*
Counsel for Plaintiffs and the Putative Class

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Harry Channon & Dawn Channon, individually and on behalf of all others similarly situated, Plaintiffs, v. Westward Management, Inc., Defendant.	No. 19 CH 4869 Calendar 15 Hon. Anna M. Loftus Judge Presiding

OPINION & ORDER

This matter comes before the Court for ruling on Defendant's Motion to Dismiss. For the reasons identified below, the Motion is denied.

The facts of the claim and relevant authorities are known to the parties, and the Court does not summarize them here. Likewise, the procedural history of this case, which includes a brief expedition to federal court, is known to the parties and otherwise irrelevant here. *See Channon v. Westward Mgmt.*, 2020 U.S. Dist. LEXIS 43697 (N.D. Ill. 2020).

Defendant's Motion is brought under Section 2-615, which is premised on defects and other legal points apparent on the face of the Complaint. 735 ILL. COMP. STAT. 5/2-615(a). In such an analysis, the Court accepts as true all well-pleaded facts and inferences stemming therefrom. The essential question is whether the allegations, "when construed in the light most favorable to the [non-moving party], are sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer*, 2016 IL 118781, ¶19. Here, the allegations are sufficient.

I. Count I: Section 22.1

Count I seeks recovery under Section 22.1 of the Illinois Condominium Property Act. 765 ILL. COMP. STAT. 605/22.1. Specifically, Plaintiffs allege that Defendant, management company for their former condominium association, Kenmore Club, charged unreasonable fees for production of Section 22.1 disclosure documents, in violation of Section 22.1(c).[1]

[1] The Court observes that the fee provision is tucked away into Section 22.1(c), a seemingly odd place to put it. This placement is a historical quirk. As originally enacted in 1980, Section 22.1 contained just what we now know as (a), with subsections (1) through (10), and then the "reasonable fee" clause. In 1991, Section 22.1 was modified to turn what was then subsection (10) into standalone section (b), and then to add new section (c), which requires unit owners to timely inform the Board about any new mortgagor. P.A. 87-692 (eff. Sept. 23, 1991). The "reasonable fee" clause ended up

A. Implied Cause of Action

The central legal question is whether Plaintiffs have the right to sue for such a statutory violation. The Act does not explicitly provide for a right of action. Courts may read an implied cause of action into a statute, but such a cause of action is dependent on a four-point test:

> (1) whether the plaintiff is within the class of persons the statute is designed to protect;
> (2) whether implying the cause of action is consistent with the underlying purpose of the act;
> (3) whether the plaintiff's injury is one the statute was designed to prevent; and
> (4) whether implying a cause of action is necessary to effectuate the purpose of the act.

Nikolopulos v. Balourdos, 245 Ill. App. 3d 71, 77 (Ill. 1993) (citing *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 470 (Ill. 1989)).

Two Illinois cases have read a cause of action into Section 22.1, both on the buyer's behalf. *Nikolopulos* held that a prospective buyer in receipt of Section 22.1 documents has "the right to terminate the contract within a reasonable time after being furnished information revealing previously undisclosed material expenses," and may sue to accomplish such termination. *Id.* at 77.

Nearly twenty years later, *D'Attomo* held that a prospective buyer has a right to terminate, even after the closing date, where the seller concealed material facts that should have been disclosed in the Section 22.1 documents. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶39.

Defendant makes much of the fact that both cases imply a cause of action in favor of the buyer. But the courts in those cases were only asked to determine whether a buyer has a cause of action. Indeed, *D'Attomo* explicitly recognized that there was "no language in *Nikolopulos* that limits a buyers's [sic.] implied remedies" and that it "addressed only pre-closing remedies because, in that case, the nondisclosure was discovered prior to the closing." *Id.* at ¶38.

By that same token, the Court notes that neither *Nikolopulos* nor *D'Attomo* says anything about limiting Section 22.1 to *buyers*, because the question of sellers simply did not arise. Though both cases are instructive, neither resolves whether Section 22.1 is designed to protect sellers as well as buyers.

B. The Act's Purposes

On this point, Plaintiff's exhortation to examine the Act through a broader lens comes into play. Viewed as a whole, the Act protects buyers and sellers alike.

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getting punted to the end of the revised statute, trailing subsection (c). It probably could have been turned into a standalone subsection (d). All this is to say that the Court finds no substantial benefit from a review of the statutory history of the provision at issue.

And why would it not? Today's buyer becomes tomorrow's seller, and both roles are incentivized to comply with the Act's provisions when each has the means to keep the other in line. Indeed, Section 22.1 itself reflects this reality: it imposes substantial obligations on sellers to secure the provision of certain documents from management, but in turn offers them a shred of protection against price-gouging.

This is consistent with the remainder of the Act. After all, a seller is also definitionally a unit owner. And unit owners may bring other implied statutory causes of action. *E.g.*, *Boucher v. 111 E. Chestnut Condo. Ass'n*, 2018 IL App (1st) 162233, ¶20 (establishing cause of action by unit owner against association for violation of First Amendment rights).

And, this conclusion is wholly consistent with the legislative history. Plaintiffs have provided excerpts from that history on their Response, and it is telling that Defendant does not seriously question the statements therein.[2] The Act protects both sellers and buyers, and was meant to from the start. The fact that those protections take different forms is a simple function of the parties' different roles in a sales transaction, rather than any indication of deliberate omission.[3]

The Court concludes that Section 22.1 was designed to protect sellers, as well as buyers. Given this conclusion, the remainder of the four-part test for an implied cause of action falls into place. Because (1) Section 22.1 is designed to protect sellers, the Court easily finds that (2) implying a cause of action against the imposition of unreasonable fees is consistent with the purpose of Section 22.1, given that Section 22.1(c) explicitly prohibits the imposition of unreasonable fees; (3) charging an unreasonable fee is exactly the type of injury a statutory prohibition against unreasonable fees is designed to prevent; and (4) establishing a cause of action is the only method to enforce the statutory requirement.

The Court therefore concludes that Section 22.1 permits a cause of action to be brought by a unit owner for the imposition of unreasonable fees in connection with the provision of Section 22.1 documents.

C. The Federal Authorities

Defendant makes much of the federal caselaw on this point. While Illinois courts of review have yet to address the private-right-of-action issue, federal courts have made their position well-known. The leading case is *Horist*, which provides in no uncertain terms that there is no such cause of action. Reviewing *Nikolopulos* and

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[2] The Court notes that the legislative history in question dates to the late '70s, and as such the Court is unable to easily secure full copies of the transcripts or amendments in question. What is quoted, however, is unambiguous and speaks for itself.

[3] The Court notes that references to the Uniform Condominium Property Act are only distantly useful as a matter of statutory construction. The UCPA itself contains a similar provision to our Section 22.1 in its Section 4-109, but that section does *not* contain a "reasonable fee" provision. Comment 2 to Section 4-109 provides that the association may charge a reasonable fee in accordance with Section 3-102, which is in turn the general provision for powers of the association. Because the UCPA itself does not contemplate the assigning out of Section 22.1 authority, its provisions are not directly analogous. Court decisions interpreting other analogues of the UCPA, however, are quite useful for determining the *intent* of those statutes—and, by reflection, Section 22.1 itself.

D'Attomo in a somewhat cursory fashion, the *Horist* court reached a clear-cut conclusion: "The unmistakable takeaway from these two decisions is that section 22.1 is designed to protect the interests of condominium purchasers, not condominium sellers. That's enough to defeat the plaintiffs' argument for an implied right of action." *Horist v. Sudler & Co.*, 941 F.3d 274, 279 (7th Cir. 2019).

The Court respectfully disagrees. *Horist* reads *Nikolopulos* and *D'Attomo* as exhaustive statements as to what Section 22.1 is, permitting no other purpose to be read into the statute. But neither *Nikolopulos* nor *D'Attomo* purports to close out the scope of Section 22.1, such that it would protect buyers *only*, or otherwise say anything about sellers. And reading the Act as a whole—inclusive of the legislative history and its other protections to unit owners—it seems apparent that Section 22.1 was intended to protect sellers and buyers alike.

Furthermore, as Plaintiffs consistently note, this Court is not bound by federal decisions, even Seventh Circuit ones, interpreting Illinois law. Beyond simply not being bound, however, the Court observes that it is long-established policy in the Seventh Circuit that "plaintiffs desirous of succeeding on novel state law claims [must] present those claims initially in state court." *Birchler v. Gehl Co.*, 88 F.3d 518, 521 (7th Cir. 1996). Reading a seller's implied cause of action into Section 22.1 is indeed a novel claim. And to whatever extent the novelty may limit the relief available in federal court, it is of no consequence here. Plaintiffs have stated a claim, and may proceed on it.

D. Agency Arguments

Finally, Defendant raises arguments grounded in agency law. On a Motion to Dismiss, the Court takes Plaintiffs' allegations as true. Plaintiffs have thoroughly alleged not only that Defendant is an agent of Kenmore Club, but that Kenmore Club does not have either the Section 22.1 documents or the means to obtain them. In other words, with respect to Section 22.1, Defendant is both the beginning and end of the equation, and Kenmore has handed over *every* aspect of its Section 22.1 duties—and Defendant accepted those duties.[4] On the allegations, Defendant took on the Section 22.1 duty owed to Plaintiffs.

Defendants appear to be arguing—though it is not entirely clear—that Kenmore Club retains the duty, though Defendant actually discharges it by assembling and tendering requested documents. The Court is not convinced at this stage that there is sufficient authority to support such a split duty. Perhaps Kenmore Club *also* has an obligation to ensure its agents do not charge unreasonable fees. But whether Kenmore Club is on the hook or not, Plaintiffs have alleged that Defendant is directly responsible for its actions.

Regardless of where duties originate, or where they may be owed, Plaintiffs finally point to *Landau* for the proposition that an agent is liable for a duty owed by

[4] Presumably, the contract between Defendant and Kenmore Club might shed more light on this. But it is not in the record and not public record, and Plaintiffs have not attached a copy to their Complaint. But at this point the Court takes the allegations as true.

the principal where the agent "takes some active part in violating some duty the principal owes to a third person." *Landau v. Landau*, 409 Ill. 556, 564 (Ill. 1951).

Landau may be seventy years old, but the Court has seen no indication that this core rule is no longer good law. And Plaintiffs here squarely allege facts within the *Landau* rule: to whatever extent the duty to not charge unreasonable fees remains on Kenmore Club's shoulders, Defendant is the one charging the fees—and, on the allegations, Defendant is the *only* party who can assemble or otherwise provide the document.

E. *Friedman*

As a final note, the Court must acknowledge the proverbial elephant in the room: Justice Walker's dissent in *Friedman*. *Friedman v. Lieberman Mgmt. Servs.*, 2019 IL App (1st) 180059-U, ¶¶18–45. The precedential value of a *dissent* to a *Rule 23* opinion is, of course, nil. The Court takes care to note that, though it agrees with much of the *Friedman* reasoning, it has reached its own conclusion based on the arguments presented to it.[5]

II. Count II: Illinois Consumer Fraud Act

Count II seeks recovery of the same fees under the Illinois Consumer Fraud Act. 815 ILL. COMP. STAT. 505/2. Specifically, Plaintiffs charge that the imposition of unreasonable fees under Section 22.1 is actionable. ICFA claims come in two main flavors, based on whether the targeted practice is deceptive or unfair; Plaintiffs have brought their claim on the unfairness prong only.[6]

A. Unfairness

An ICFA claim premised on unfair conduct has five elements: (1) an unfair practice (2) defendant intended plaintiff to rely on (3) in the course of trade or commerce (4) proximately causing (5) actual damages. *E.g.*, *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶56.

Defendant does not particularly challenge the sufficiency of the allegations as to most of those points. The parties' real dispute is with the sufficiency of that first point: whether charging allegedly unreasonable fees is, in fact, an unfair practice.

Unfairness is measured on a three-point balancing test of whether the practice (1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) causes substantial injury. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417–18 (Ill. 2002). "All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Id.* at 418 (numerous nested quotations omitted).

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[5] Whether the Appellate Court has an appetite for this issue might well be relevant in other procedural postures. *See, e.g.*, ILL. SUP. CT. R. 308. But that question is not before the Court today.

[6] And it is well they did, because there is nothing deceptive about what Defendant are alleged to have done.

Here, and at the pleadings stage, all three prongs line up in Plaintiffs' favor.

1. Policy

Regardless of whether Section 22.1 contains an implied right of action, it certainly prohibits the imposition of reasonable fees. Because Section 22.1 explicitly establishes a directly applicable standard of conduct, *viz.* fees chargeable for Section 22.1 documents, it is an expression of policy. *See, e.g., Boyd v. U.S. Bank, N.A.*, 787 F. Supp. 2d 747, 752 (N.D. Ill. 2011) (ICFA unfairness claim can hinge on otherwise unactionable violation of statutory policy). Violation of Section 22.1 is therefore a violation of policy within the meaning of the first prong.

2. Oppressiveness

Plaintiffs' allegations go into some detail about the level of control Defendant exercised over the Section 22.1 documents. Specifically, they allege that Kenmore Club's had no control over the documentation, would be unable to provide it if requested, and relied entirely on Defendant for the documents.

Whether that is true is a question for another day. For now, however, Plaintiffs have alleged they had no choice but to comply with Defendant's procedures and pay the requested fees. Their failure to do so would—allegedly—result in an inability to ever secure the requested documents.[7] The alternative would be to never sell, which is no alternative at all.

3. Substantial Injury

Despite having a dollar amount attached to it—$245—the nature of the injury is unclear. What would a *reasonable* fee be? If $240 were reasonable, the injury could hardly be said to be substantial. (Of course, if $240 were reasonable, the claims would have other issues to work through, but the point stands.)

For now, Plaintiffs have alleged the imposition of an unreasonable fee, one that is higher than what it should have cost, and one which they could not have otherwise avoided. *See Ciszewski v. Denny's Corp.*, 2010 U.S. Dist. LEXIS 55903, at **9–11 (characterizing *Robinson* as adopting *Montes* test, under which injury is substantial if it is (a) is more harmful than any benefits the act produces, and (b) could not reasonably be avoided; *see Cheshire Mortg. Serv. v. Montes*, 223 Conn. 80, 113 (Conn. 1992)).

Plaintiffs have alleged that the fees are unreasonable. Whether those fees are *unconscionably high*, and whether that alone is sufficient, are beyond the present pleadings challenge. *See Robinson*, 201 Ill. 2d at 418 ("charging an unconscionably high price generally is insufficient to establish a claim for unfairness"). For now, however, Plaintiffs need not make out a definitive case on all three points, and the question of injury is best left as a question of fact—at least, for now.

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[7] Whether Section 22.1(b) requires that Defendant turn over the documents within 30 days regardless of payment, and whether sellers could sue to enforce *that* provision, are questions not presented in this case. For now, suffice it to say that such litigation would quite likely, and quite reasonably, scare off any potential buyer, defeating the purpose of the sale.

Because Plaintiffs have alleged facts going to all three of the prongs on which an unfairness claim is assessed, the Court holds the allegations sufficient to establish an ICFA claim for unfair conduct.

B. Voluntary Payment Doctrine

The voluntary payment doctrine provides that "money voluntarily paid with full knowledge of the facts cannot be recovered on the ground that the claim for payment was illegal." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶2; *accord id.* at ¶¶18–31 (comprehensive overview of doctrine). Defendant's argument on this point is simple: because the fees were fully disclosed, and Plaintiffs chose to pay them, they cannot now quibble about the amount paid.[8]

"To avoid application of this long-standing doctrine, it is necessary to show not only that the claim asserted was unlawful but also that the payment was not voluntary, such as where there was some necessity that amounted to compulsion and payment was made under the influence of that compulsion." *Id.* at ¶23.

Plaintiffs have sufficiently alleged the duress exception to the voluntary payment doctrine. They allege that Kenmore Club did not have access to the Section 22.1 documents, and that Kenmore Club did not have the ability to generate them in any event. They have alleged, in other words, that their options were either to pay Defendant the asking price for the documents, or go without. Given the importance of Section 22.1 disclosures in the course of a condominium sale transaction, trying to go without is not a reasonable alternative. Plaintiffs' allegations are sufficient to plead the duress exception to the voluntary payment doctrine.

III. Orders

Defendant's Motion to Dismiss is denied. Defendant is directed to Answer within 28 days.

Plaintiffs' Motion for Class Certification is entered and continued generally.

This matter is set for status on **Thursday, December 3, 2020, at 10:00 a.m.**

ENTERED:

Judge Anna M. Loftus
OCT 27 2020
Circuit Court- 2102

/s/ *Anna M. Loftus*
Judge Anna M. Loftus, No. 2102

[8] Defendant alleges the application of the voluntary payment doctrine to both Counts, though because it fits more logically in the ICFA context, the Court has only discussed it here. The Court's conclusion is applicable to both claims.

EXHIBIT B

2019 IL App (1st) 180059-U

FIRST DIVISION
March 25, 2019

No. 1-18-0059

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

FRANKLIN P. FRIEDMAN, as Trustee of the Franklin P. Friedman Living Trust, Individually, and on Behalf of All Others Similarly Situated, Plaintiff-Appellee, v. LIEBERMAN MANAGEMENT SERVICES, INC., Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County No. 16 CH 15920 The Honorable Thomas R. Allen, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justice Griffin concurred in the judgment.
Justice Walker dissented.

ORDER

¶ 1 *Held:* We vacate our order granting defendant's Supreme Court Rule 308 application for leave to appeal, dismiss this appeal, and remand to the circuit court.

¶ 2 This appeal is before us on two substantially similar questions of law certified by the circuit court under Illinois Supreme Court Rule 308 (eff. July 1, 2017). The questions ask whether a condominium seller can sue a third-party management company, acting as an agent for a condominium board, for charging an allegedly excessive fee for furnishing disclosure

documents, in violation of section 22.1(c) of the Condominium Property Act (Act) (765 ILCS 605/22.1 (West 2016)). After careful consideration of the limited record before us, we find that the certified questions are improper in form, and answering the questions would not materially advance the litigation toward termination. For the reasons that follow, we find that defendant's application for leave to appeal pursuant to Rule 308 was improvidently granted. We therefore vacate our order granting leave to appeal, dismiss this appeal, and remand this cause to the circuit court for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff's operative complaint alleges that Franklin P. Friedman decided to sell his condominium unit in the Mission Hills Condominiums in Northbrook, Illinois. The Mission Hills Condominiums Association (Association) retained defendant Lieberman Management Services, Inc., a for-profit property management company, to provide property management services. Plaintiff went to defendant's website and submitted a request for certain disclosure documents set forth in section 22.1(a) of the Act (765 ILCS 605/22.1(a) (West 2016)), so that plaintiff could give those documents to the potential condominium purchaser. Defendant furnished the documents requested and charged plaintiff a $220 fee. Plaintiff also requested a paid assessment letter. Defendant furnished the paid assessment letter and charged plaintiff a separate $250 fee, which included a rush fee and a buyer's transfer fee.

¶ 5 Plaintiff, as trustee of the Franklin P. Friedman Living Trust, individually, and on behalf of all others similarly situated, filed this action in the circuit court of Cook County against defendant. The Association was not named as a defendant. In relevant part, count I of plaintiff's complaint asserted that defendant "is a condominium association management company that, with the authorization of the applicable Condominium Association and/or its Board of Managers,

provides [section 22.1 disclosure documents] that a prospective condominium seller must, upon demand from the prospective purchaser, legally disclose[.]" Plaintiff alleged that defendant violated section 22.1(c) of the Act by charging an excessive fee to furnish copies of the section 22.1 disclosure documents. Plaintiff alleged that he "could not obtain [the disclosure documents] from any other source but the [d]efendant."[1] The only exhibits attached to plaintiff's complaint were copies of the order forms for the disclosure documents that were downloaded from defendant's website and the paid assessment letter.

¶ 6 Defendant did not answer the complaint. Rather, defendant moved to dismiss count I of plaintiff's complaint due to a failure to state a cause of action pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). Defendant argued that section 22.1 of the Act does not apply to third-party property management companies because, by its own terms, section 22.1 only applies to "the association or its Board of Managers." 765 ILCS 605/22.1(c) (West 2016). Defendant further argued that the Act does not provide an express private right of action in favor of a condominium unit seller against a third-party property management company, and that no private right of action could be implied because the purpose of the Act is to protect condominium unit purchasers, not condominium unit sellers. Plaintiff's response asserted, in part, that an agent may be held liable for a principal's breach of a duty if the agent took an "active part" in violating the principal's duty. Defendant's reply asserted, in part, that plaintiff's complaint "does not plead that [defendant] was the agent of the [Association] for the

[1]At oral argument, we asked plaintiff's counsel whether plaintiff ever sought the disclosure documents directly from the Association. Plaintiff's counsel responded that plaintiff was "directed to the property management company." When asked again whether the plaintiff asked the Association for the disclosure documents, plaintiff's counsel answered "yes," and she "believed" that was set forth in the complaint. The complaint is devoid of any allegations that plaintiff ever sought the disclosure documents directly from the Association at any time, or that the Association directed plaintiff to obtain the documents from defendant.

purpose of providing documents referenced in section 22.1 [of the Act]." After briefing and oral argument, the circuit court denied defendant's motion to dismiss.

¶ 7 Defendant then filed a motion to certify a question for interlocutory appeal pursuant to Rule 308. Plaintiff did not oppose defendant's request for a Rule 308 finding, but sought to ensure that additional documents—which were not before the circuit court when it ruled on the motion to dismiss—would be included in the supporting record that would accompany defendant's Rule 308 application for leave to appeal. Both parties proposed different formulations of the questions to be certified. Both parties proposed certified questions that asked whether a cause of action existed under section 22.1 of the Act in favor of a unit seller against a third-party management company based on the fee it charged for section 22.1 disclosure documents. Defendant's proposed questions, however, did not presume or assert the existence of an agency relationship between the third-party management company and a condominium association or its board of directors, whereas plaintiff's proposed questions presumed or asserted that the third-party management company was acting as "agent" or "express agent" for a condominium association or its board of managers.

¶ 8 Defendant's reply in support of its motion for a Rule 308 certification specifically objected to plaintiff's attempts to include language in the certified questions that assumed the existence of an agency relationship between defendant and the Association. The record does not indicate that the circuit court heard argument on how to phrase the certified questions.[2] In a written order, the circuit court granted defendant's motion and certified two questions of law:

> "(1) Whether [section 22.1 of the Act] allows a cause of action to be brought by a condominium unit seller against a property management company,

[2]The only report of proceedings that appears in the record is for the circuit court's hearing on defendant's motion to dismiss.

acting as an agent for the Condominium Board of Managers and/or the 'Unit Owners' Association, with respect to the fees charged by the property management company to the condominium unit seller for the documents described in Section 22.1(a) of the Act?

(2) Whether a private cause of action can be implied on behalf of a condominium unit seller and against a property management company, under Section 22.1 of the Act *** where the property management company is acting as agent for the Condominium Board of Managers and/or the 'Unit Owners' Association, with respect to the fees charged by the property management company to the condominium unit seller for the documents described in Section 22.1(a) of the Act?"

¶ 9 We granted defendant's application for leave to appeal. However, for the reasons that follow, we find that our earlier order granting defendant leave to appeal was improvidently granted, and we decline to answer the certified questions. We vacate our order granting defendant's application for leave to appeal, dismiss this appeal, and remand to the circuit court for further proceedings.

¶ 10 II. ANALYSIS

¶ 11 Illinois Supreme Court Rule 308 allows a circuit court to make an otherwise interlocutory order immediately appealable upon a finding that the order involves a question of law as to which there is substantial ground for a difference of opinion and an appeal may materially advance the ultimate termination of the litigation. Ill. S. Ct. R. 308(a) (eff. July 1, 2017). Whether to grant a Rule 308 application for leave to appeal is within our discretion. *Id.* Our review is generally confined to the certified questions. *De Bouse v. Bayer AG*, 235 Ill. 2d 544,

550 (2009); *Cincinnati Insurance Co. v. Chapman*, 2012 IL App (1st) 111792, ¶ 21. Certified questions under Rule 308 involve questions of law, and our review is *de novo*. *Yarbrough v. Northwestern Memorial Hospital*, 2017 IL 121367, ¶ 21. Our supreme court has cautioned, however, that if answering a certified question "will result in an answer that is advisory or provisional, the certified question should not be reached." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21. Additionally, "if an answer to a certified question is dependent upon the underlying facts of a case, the certified question is improper." *Id.* Certified questions, as required by the rule, must be framed in such a manner as to materially advance the ultimate termination of the litigation, and must address the underlying disputed question of law so as to avoid a situation where we are asked to render an advisory opinion on matters unrelated to the case before us. *Id.*

¶ 12 We find the two certified questions are improper in form because the underlying facts of the operative complaint do not allege or otherwise establish the existence of an agency relationship between the defendant and the Association or its board of managers, a relationship that forms the basis of both certified questions. There are two major flaws with the certified questions: each question contains an assumption that an agency relationship in fact exists between defendant and the Association or its board of managers. First, plaintiff's complaint does not allege the existence of an agency relationship. Plaintiff merely alleged that defendant "is a condominium association management company that, with the authorization of the applicable Condominium Association and/or its Board of Managers, provides [section 22.1 disclosure documents] that a prospective condominium seller must, upon demand from the prospective purchaser, legally disclose[.]" Critically, plaintiff did not plead the existence of an agency relationship. It is well established that the existence of a principal-agent relationship is ordinarily a question of fact, and that it is the plaintiff's burden to "plead facts, which, if true, could

establish the existence of an agency relationship." *Knapp v. Hill*, 276 Ill. App. 3d 376, 382 (1995). Merely alleging that defendant was authorized by the Association or its board of managers to provide section 22.1 disclosure documents is insufficient to establish the existence of an agency relationship, as it says nothing about the nature of the relationship between the defendant and the non-party condominium association.

¶ 13 Furthermore, because defendant has not admitted that it is in fact the Association's agent in providing the section 22.1disclosure documents, we reviewed the briefing on the motion to dismiss and the briefing on the motion to certify a question of law under Rule 308 filed in the circuit court. Our review makes clear that defendant did not admit or concede that it acted as an agent of the Association or its board of managers in providing the section 22.1disclosure documents, or that any agency relationship existed with either entity. Although the defendant did produce its management agreement with the Association and the management agreement does refer to defendant as the Association's agent for purposes of the agreement, notably there is no duty under the agreement that requires the defendant to provide section 22.1 disclosure documents on the Association's behalf; the capacity in which defendant provided the section 22.1 disclosure documents has not been established, either in the pleadings or by way of concession or an admission. Thus, defendant's management agreement with the Association does not established whether defendant was providing the section 22.1 disclosure documents as an agent of the Association. Defendant consistently urged the circuit court not to formulate any certified question that assumed an agency relationship with the Association as a factual matter. Therefore, we find that the certified questions ask us to answer questions that apply to an assumed agency relationship that has not been adequately pleaded, admitted, or otherwise established. As such, any answer to the certified questions as formulated would be advisory.

¶ 14 Second, because the existence of an agency relationship was not pleaded and is not yet at issue, an answer to the certified questions would be provisional and would not lead to the ultimate termination of this lawsuit. For example, assume that plaintiff properly pleaded that defendant acted as the Association's agent when it provided the section 22.1 disclosure documents, and that defendant answered by denying that it acted as the Association's agent. In that hypothetical situation, any answer to either certified question would not assist in the ultimate termination of this lawsuit because the question of agency would first need to be resolved; if that question of fact was resolved by finding that defendant did not act as an agent, our answers to the certified questions before us would have no connection to the case and would be advisory and provisional.

¶ 15 III. CONCLUSION

¶ 16 Given our review of the pleadings and filings in the circuit court, as well as the form of each certified question, we vacate our order granting defendant's application for leave to appeal pursuant to Rule 308, dismiss this appeal, and remand this cause to the circuit court for further proceedings.

¶ 17 Appeal dismissed; cause remanded.

¶ 18 JUSTICE WALKER, dissenting.

¶ 19 I respectfully dissent. The majority chooses to not answer the certified question, finding that the answer will not avoid protracted litigation. Because one possible answer to the certified question would cause immediate dismissal of the lawsuit, the majority effectively concedes that the correct answer to the certified question is "Yes."

¶ 20 After the circuit court did not rule in its favor on a motion to dismiss, the defendant asked the circuit court to certify a question that involved application of the law to the specific facts,

effectively asking this court to resolve the factual issue of whether defendant acted as agent for the Association. Because questions of fact are not proper for certification, the circuit court instead properly certified two questions of law, which collapse to a single question because the Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2016)) does not expressly provide for any cause of action when a party violates section 22.1 of Act (765 ILCS 605/22.1 (West 2016)). The Condominium Property Act does not explicitly create a cause of action, and a cause of action is allowed "if and only if" a private cause of action can be implied *** under Section 22.1 of Act. See *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979). The circuit court asks only the legal question of whether a unit owner has a statutory cause of action against a managing agent for a condominium board, assuming the managing agent acted as agent for the board in providing the documents required under section 22.1 of the Condominium Property Act.

¶ 21 The certified question does not ask us to resolve any issue of fact. Cf. *De Bouse v. Bayer*, 235 Ill. 2d 544 (2009). If we answer "No" to the certified question, the plaintiff has no cause of action even if defendant acted as the board's agent. Defendant would have no need to persuade the circuit court that, although it signed a contract to act as the board's agent, and the board directed the plaintiff to obtain, from defendant, documents needed to complete the sale of his unit, the defendant still did not act as the board's agent when it supplied the necessary documents to plaintiff. The circuit court's certified question presents a question of law.

¶ 22 Rule 308 provides:

> "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may

> materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. *** The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308 (eff. July 1, 2017).

¶ 23 Our supreme court modeled Rule 308 on the federal jurisdictional statute codified at 28 U.S.C. § 1292 (b) (2000). *Voss v. Lincoln Mall Management Co.*, 166 Ill. App. 3d 442 (1988). As with section 1292(b), Rule 308 serves the purpose of "facilitat[ing] disposition of the action by getting a final decision on a controlling legal issue sooner, rather than later" in order to "save the courts and the litigants unnecessary trouble and expense." *United States v. Adam Bros. Farming*, 369 F. Supp. 2d 1180, 1182 (C.D. Cal. 2004), *quoting John v. United States*, 247 F.3d 1032, 1051 (9th Cir.2001)(en banc)(J. Rymer, special statement). "[T]he central purpose of both provisions is to promote greater judicial efficiency." *Castle v. Sherburne Corp.*, 446 A.2d 350, 353 (Vt. 1982).

¶ 24 Rule 308 sets out the criteria for its application. First, the order must "involve[] a question of law." Ill. S. Ct. R. 308 (eff. July 1, 2017). "Certified questions must not seek an application of the law to the facts of a specific case." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 21.

¶ 25 Second, the court must certify a question "as to which there is substantial ground for difference of opinion." Ill. S. Ct. R. 308 (eff. July 1, 2017). The federal district court for the Northern District of Illinois, in three separate cases, found that no Illinois case had addressed the issue raised here, and in all three cases, the court answered "No" to the certified question. *Horist v. Sudler & Co.*, 17 C 8113 (N.D. Ill. 2018); *Ahrendt v. Condocerts.com, Inc.*, 17-CV-8418 (N.D. Ill. 2018); *Murphy v. Foster Premier, Inc.*, 2018 WL 3428084. The circuit court agreed with the

federal courts that Illinois courts had not addressed the issue, but the circuit court did not agree with the inconsistent reasoning of the three federal cases or their resolution of the question. Therefore, the circuit court correctly found that the certified question involved an issue "as to which there is substantial ground for difference of opinion." Ill. S. Ct. R. 308 (eff. July 1, 2017).

¶ 26 Third, the circuit court should not certify a question for a Rule 308 appeal unless "an immediate appeal from the order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308 (eff. July 1, 2017). If this court were to agree with the federal courts, the litigation would immediately terminate with dismissal of the complaint. Thus, the certified question here meets the criteria for resolution through a Rule 308 appeal.

¶ 27 Some courts have stressed that the appellate court need not accept jurisdiction in all cases that meet the requirements of Rule 308. In *Voss*, the court noted that federal courts applying section 1292(b) have refused to answer certified questions where the parties expected only short trials if the case proceeded without an appellate answer to the certified questions. *Voss*, 166 Ill. App. 3d at 447-48. The use of Rule 308 appeals, like section 1292(b) appeals, "is reserved for those cases where an intermediate appeal may avoid protracted litigation." *Koehler v. Bank of Bermuda Ltd.*, 101 F.3d 863, 865–66 (2d Cir. 1996).

¶ 28 Here, if we refuse to answer the certified question, the parties will need to resolve issues concerning agency, the class certification plaintiff seeks, and possibly extensive accounting for damages to all members of the class. The parties and the circuit court all seek resolution of the legal issue because "early appellate review might avoid protracted and expensive litigation." *North Carolina ex rel. Howes v. W.R. Peele, Sr. Trust*, 889 F. Supp. 849, 851-52 (E.D.N.C. 1995). Answering the certified question meets the criteria and serves the purpose of the rule.

¶ 29 The circuit court asks us whether the courts can imply a private cause of action for violation of the Condominium Property Act by a condominium unit owner against a property management company if the property management company acts as agent for the condominium board and charges fees in excess of the fees permitted by the Condominium Property Act for providing the documents required for sale of the condominium unit. To determine whether a statute implies a private cause of action, courts consider "(1) whether the plaintiff is within the class of persons the statute was designed to protect, (2) whether implying the cause of action is consistent with the underlying purpose of the Condominium Property Act, (3) whether the plaintiff's injury is one the statute was designed to prevent, and (4) whether implying a cause of action is necessary to effectuate the purposes of the [A]ct." *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 470 (1989).

¶ 30 In support of the amendment to the Condominium Property Act that included the language at issue here, a representative asserted that the amendment would be "consistent with the Uniform Condominium Property Act (Uniform Act)." 82nd Ill. Gen. Assem., House Proceedings, May 23, 1979, at 8. The Uniform Act serves the purpose of "specifying certain rights, duties, responsibilities and liabilities of lenders, unit owners, developers, and other persons and organizations having interests in condominiums; *** [and] specifying rights and duties of buyers and sellers of condominium units." *Anderson v. Council of Unit Owners of Gables on Tuckerman Condominium*, 948 A.2d 11 (Md. Ct. App. 2008). The Uniform Act protects both potential purchasers and owners, even owners who may later become sellers. *State v Rupe*, 428 S.E.2d 480, 488 (N.C. App. 1993); James H. Jeffries IV, Note, *North Carolina Adopts the Uniform Condominium Act*, 66 N.C.L. Rev. 199, 221 (1987). The Uniform Act "was enacted *** to make unit holders' 'bundle of rights' more uniform." *Plano v. Parkway Office*

Condominiums Bever Properties, LLC, 246 S.W.3d 188 (Tex. Ct. App. 2007). In accord with the Uniform Act, the Condominium Property Act "provides the necessary protections to the seller." 77th Ill. Gen. Assem., House Proceedings, May 9, 1972, at 33. Plaintiffs, "as [condominium] owners and sellers, therefore fall within a class for whose benefit the statute was enacted." *Murphy*, 2018 WL 3428084, at *3.

¶ 31 The specific provision at issue limits the amount charged for the documents every owner must "obtain from the [condominium's] Board of Managers" before sale of the owner's unit. (765 ILCS 605/22.1(a) (West 2016)). As the Condominium Property Act specifies that the owner must pay the charge (765 ILCS 605/22.1(c) (West 2016)), the limitation of the charge protects the owner who seeks to sell his unit. Plaintiffs fall within the class of persons the legislature intended to protect when it adopted the provision.

¶ 32 Implying a cause of action for charging an amount in excess of the "reasonable fee covering the direct out-of-pocket cost of providing such information and copying," (765 ILCS 605/22.1(c) (West 2016)), serves the statutory purpose of limiting the fees charged for the required documents. See *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 523-24 (1990).

¶ 33 In one of the three cases in which the District Court for the Northern District of Illinois addressed the issue of whether the courts need to imply a private cause of action under section 22.1(c), the court implausibly concluded that Condominium Property Act protects only prospective purchasers, not unit owners seeking to sell, and therefore a cause of action in favor of owners would not serve the Condominium Property Act's purposes. *Horist v. Sudler & Co.*, 17 C 8113 (N.D. Ill. 2018). The *Horist* court disregarded the relationship between the Condominium Property Act and the Uniform Act, and the court did not address the many provisions throughout the Condominium Property Act that protect owners, not prospective

purchasers. See, e.g., 765 ILCS 605/18.4 (West 2016); *Boucher v. 111 East Chestnut Condominium Association, Inc.*, 2018 IL App (1st) 162233, ¶¶ 14-38 (specifying some of the owners' rights protected by Act). In the second case, the court found Illinois decisions insufficient and deferred to the *Horist* court. *Ahrendt v. Condocerts.com, Inc.*, 17-CV-8418 (N.D. Ill. 2018).

¶ 34 In the third case, the Northern District of Illinois acknowledged that the Condominium Property Act served the purpose of protecting owners, even when they sought to sell, but found no need to imply a private cause of action in favor of the owners for violations of section 22.1(c). *Murphy*, 2018 WL 3428084, at *7. The *Murphy* court suggested unit owners could simply charge purchasers higher amounts for their units to cover the document costs. *Id.* However, the purchaser could in turn reduce the offer to ensure that the seller pays the cost. When the market favors purchasers, the suggestion offers no help at all to the overcharged owner. Moreover, the court's suggestion only makes the buyer a new victim of the statutory violation. Without a private cause of action against the party who overcharges the unit owner for the documents, the document supplier keeps the amount it overcharges its victims.

¶ 35 The *Murphy* court also suggested the overcharged owner could protest the charges to the condominium board. In an *amicus* brief filed by the Community Associations Institute – Illinois Chapter (the Institute), the Institute said that if managing agents recover only a "reasonable fee covering the direct out-of-pocket cost of providing such information and copying," "there would be no business reason to assume the risk of liability. With the reduced involvement of property management companies, in turn, it is likely that associations will be unable to meet the deadline for providing the disclosure documents." The Institute added a further threat: if condominium associations or the courts disallow the excessive charges managing agents demand, "it may

logically be assumed that associations within Illinois will be required to incur additional expenses ***, or by paying additional management fees to the management companies."

¶ 36 The Institute admitted that its "1300 members includ[e] 250 businesses, 350 community association Board members and unit owners, and over 650 community association managers and management companies," assuring that managers and management companies support the threats in the Institute's brief. Thus, the managing agents threaten to increase fees and withhold the required documents, thus preventing sales, if the courts apply statutory fee limits to them. In view of such threats one might conclude that the vast majority of condominium boards will accede to the demands of the managing agents, and ignore the protest of the owner who pays the excessive fee only when he sells the unit, and thus only when the board expects the owner to no longer have any say in the government of the condominium association.

¶ 37 Therefore, if the courts do not imply a private right of action against the board for violations of the Condominium Property Act's limitation on charges for documents that the owner must "obtain from the [condominium's] Board of Managers" to sell the unit (765 ILCS 605/22.1(a) (West 2016)), the owner will have no recourse, and the limitation on fees will have no effect. Applying the *Board of Education* factors, I would find that, as the majority implicitly concedes, the Condominium Property Act implies a private cause of action for violation of the limitation on charges for the required documents.

¶ 38 The trial court here specifically asked whether the Condominium Property Act implies that the unit owner has a cause of action against "a property management company, acting as an agent for the Condominium Board of Managers." An agent may incur liability if "he takes some active part in violating some duty the principal owes to a third person." *Landau*, 409 Ill. at 564. The Condominium Property Act imposes a duty on unit owners to obtain required documents

from the condominium boards, and it imposes a duty on condominium boards to provide the documents for a limited fee. A board breaches that duty if it directs the owner to obtain the documents from the board's agent, and the agent charges a fee that is excessive. The agent takes an active part in violating the duty the board owes to the owner when it charges an excessive amount for the documents.

¶ 39 In *Ramirez v. Smart Corp.*, 371 Ill. App. 3d 797, 810 (2007), Ramirez asked Pekin Hospital for medical records concerning her treatment at the hospital. In accord with its contract with Pekin, Smart Corporation sent the requested records to Ramirez along with a bill for $34.78 for its services. Ramirez filed a class action complaint against Smart, alleging that Smart's charges exceeded the amount permitted under the Inspection of Hospital Records Act (Hospital Records Act) (735 ILCS 5/8-2001 (West 1998)). The circuit court granted Smart's motion for summary judgment. The appellate court found:

¶ 40 "Section 8-2001 of the Hospital Records Act obligates every hospital in Illinois to enable patients to obtain copies of their medical records. ***

¶ 41 The statute leaves implementation of that duty to those who are most intimately involved. It has been generally accepted that hospitals can compel a patient to obtain their records by paying an outside copying service. *Clay v. Little Company of Mary Hospital*, 277 Ill. App. 3d 175 (1995). In *Clay*, the court construed the statute to imply a reasonableness standard in both the charges to the patient as well as the manner of photocopying, finding that the intent of the statute could not be otherwise. Thus, in order to implement the Hospital Records Act, hospitals can use copying services, but they must act reasonably in its implementation. [Citation.] The purpose of section 8-2001, as construed, leads us to agree with *Pratt* [*v. Smart Corp.*, 968 S.W.2d 868 (Tenn. App. 1997)] that, like Tennessee, this state has an interest in transactions that

violate "statutorily-defined public policy." *Pratt*, 968 S.W.2d at 872. *** Here, if proved, Smart's allegedly excessive charges might well violate the intent of the Hospital Records Act, i.e., that a party must act reasonably when fulfilling its mandate." *Ramirez*, 371 Ill. App. 3d at 810.

¶ 42 The Condominium Property Act here establishes a public policy of limiting the charge for the documents required for sale to the amount set by the Condominium Property Act. Just as the allegations against Smart, if proven, could show a violation of the Hospital Records Act, the allegation against defendant here could show a violation of the Condominium Property Act.

¶ 43 Defendant argues that this court should not follow *Landau* because our supreme court erred when it held that a court could hold an agent liable if "he takes some active part in violating some duty the principal owes to a third person." *Landau*, 409 Ill. at 564. We lack the authority to overrule *Landau*, and we must follow that decision. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 28.

¶ 44 Moreover, *Landau* states a reasonable standard for liability of an agent. Defendant points out that the fees it charged to plaintiff could be charged to the Association, "and if passed through the Association to Plaintiff would comprise the Association's exact costs," so that the Condominium Property Act would permit the Association to recover the excessive charge from plaintiff. The Condominium Property Act's purpose of assuring that the owner can obtain the required documents at a limited price "would be completely defeated through a construction of Act that would allow [owners] to be charged more than the reasonable copying and mailing costs if the providers hire others to perform the task of supplying the records." *Cotton v. Med-Cor Health Information Solutions, Inc.*, 472 S.E.2d 92 (Ga. App. 1996). *Landau* establishes that the Condominium Property Act here, like the Hospital Records Act at issue in *Ramirez*, *Cotton*, and *Pratt*, "applies to independent entities that are retained to provide" the documents. *Pratt v. Smart*

Corp., 968 S.W.2d 868 (Tenn. App. 1997). With *Landau*'s appropriate assignment of liability to agents who actively overcharge for assuming the condominium board's statutory duty to supply the documents required for sale, the Condominium Property Act will effectively prevent overcharging for providing documents required for sale.

¶ 45 Thus, in accord with *Landau* and the purpose of the Act, this court should answer "Yes" to both of the circuit court's questions. The decision to not answer the certified question will have one obvious effect: managing agents will continue collecting excessive fees from condominium unit sellers, secure in the knowledge that many of their victims, leaving the condominiums, will not seek recompense even after the courts declare that the excessive fees violate the Condominium Property Act. The excessive fees will continue until Illinois law is made clear on this issue as explained here. Accordingly, I dissent from the decision to not answer the certified questions, and answer "Yes" a unit owner has a statutory cause of action against a managing agent for a condominium board, assuming the managing agent acted as agent for the board in providing the documents required under section 22.1 of the Act.

EXHIBIT C

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SUE BROWN, individually and on behalf of all others similarly situated,	)	**PAGE 1 OF TWO PAGES**
Plaintiffs,	)	
v.	)	No. 2019 CH 06868
GNP MANAGEMENT GROUP, an Illinois Limited Liability Company,	)	Judge Eve Reilly
Defendant.	)	Court Room 2405

ORDER ON MOTION TO DISMISS

This cause coming to be heard on a zoom hearing on Defendant, GNP Management Group, LLC's ("GNP") Motion to Dismiss the First Amended Class Action Complaint of the Plaintiffs, due notice having been given, and the Court having read the pleadings and briefs of the parties and having heard argument from counsel for the parties and for the reasons as stated in the transcript of proceeding;

IT IS HEREBY ORDERED:

1) GNP's Motion to Dismiss Count I (Violation of Section 22.1 of the Illinois Condominium Property Act) and Count II (Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act) is DENIED.
2) GNP's Motion to Dismiss Count III, which was alleged in the alternative to Counts I and II, and, which also was brought under the Illinois Consumer Fraud and Deceptive Business Practices Act, is GRANTED.
3) GNP has to and including November 20, 2020, to Answer Counts I and II of the First Amended Class Action Complaint.
4) A zoom status hearing is set in this case for November 23, 2020 at 9:30 a.m. without

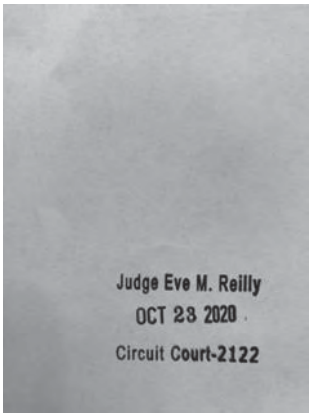
further notice.

5) Plaintiffs' Motion to Certify a Class is entered and continued to the November 23, 2020 status hearing at 9:30 a.m. without further notice.

DATED: October 23, 2020

ENTER:

HONORABLE JUDGE EVE REILLY



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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	No. 2019 CH 04869
v.	)	Judge Anna M. Loftus
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

NOTICE OF FILING

YOU ARE HEREBY NOTIFIED that December 21, 2020, we filed with the Clerk of the Circuit Court of Cook County, Chancery Division, **PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO CERTIFY QUESTION PURSUANT TO SUPREME COURT RULE 308,** a copy of which is attached hereto and hereby served upon you.

Dated: December 21, 2020

Respectfully submitted,

/s/Elizabeth M. Al-Dajani
Counsel for the Plaintiffs and the Putative Class

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CERTIFICATE OF SERVICE

The undersigned, Elizabeth M. Al-Dajani certifies that on December 21, 2020, she caused a copy of the attached ***Plaintiffs' Response to Defendant's Motion to Certify Question Pursuant to Supreme Court Rule 308*** to be served on the individuals listed below by sending the same by electronic mail to:

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Respectfully submitted,

By: /s/ Elizabeth M. Al-Dajani
Counsel for the Plaintiffs and the
Putative Class

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated, Plaintiff,	)	
v.	)	Cook County No. 2019CH04869
WESTWARD MANAGEMENT, INC., an Illinois Corporation, Defendant.	)	

DEFENDANTS' REPLY MEMORANDUM SUPPORTING ITS MOTION TO CERTIFY QUESTION PURSUANT RULE 308

The issue here is not whether the Appellate Court should grant leave to appeal. The Appellate Court is its own "gatekeeper" of what to accept for interlocutory review. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶23. The only issue is whether Westward has satisfied the three-prong standard for certification. It has.

1. Westward's question for certification presents a question of law.

Section 22.1(c) of the Condominium Act states in pertinent part:

> 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.
>
> 765 ILCS 605/22.1(c) (emphasis supplied).

The statute puts the obligation for imposing reasonable charges on the association or its board. It places on the "***principal officer***" of the association or on "***such other officer as is specifically designated***" the duty to furnish the information within 30 days of a written request. 765 ILSC 605/22.1(b) (emphasis supplied). Section 22.1 does not even mention property managers. So the duty to provide required information at a reasonable cost lies on the association—not on its property manager. An ***association*** must take the necessary actions to ensure that a unit owner

only pays a reasonable amount for collecting and copying information. Those actions may take different forms, but they must be taken by the association or its board because the statutory duty lies with them. So if plaintiffs have a valid claim, it may only be brought against the association and /or board.

Given the plain language of §22.1, Westward asks this Court to certify a controlling question of law under Count I:

> Does §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner ***against a property manager*** retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under §22.1 of the Act? (emphasis supplied).

Whether a cause of action exists is a question of law. *Simpkins v. CSX Transp., Inc.,* 2012 IL 110662, ¶14. The Condominium Act does not expressly authorize a cause of action against a property manager. Whether it arises by implication is a question of law.

Misreading *Friedman v. Lieberman Mgmt. Servs., Inc*., 2019 IL App (1st) 180059-U, plaintiffs wrongly try to create questions of facts (Resp. 3). *Friedman* may not be used even for persuasive value. The Illinois Supreme Court has amended Rule 23(e) effective January 1, 2021. Under the amended rule, only "a nonprecedential order entered under subpart (b) of this Rule ***on or after January 1, 2021***, may be cited for persuasive purposes" (emphasis supplied). The amended rule effectively overrules cases allowing citation of pre-2021 cases for their reasoning, *i.e*., persuasive value. *Friedman* predates the controlling date.

Besides, *Friedman* presents a different situation than is involved here. "Critically, plaintiff did not plead the existence of an agency relationship." *Friedman*, 2019 IL App (1st) 180059-U at ¶12. And the defendant in *Friedman* did not admit agency. *Id*. at ¶13. Without a factual representation from either plaintiff or defendant regarding agency, there was nothing for

the Appellate Court to accept as fact. Answering the certified question would have been "advisory." *Id.*

By contrast, plaintiffs' complaint here alleges that Westward was an agent for Kenmore Club Condominium Association (Compl. ¶6-7). It is irrelevant that Westward has not yet answered the complaint (Resp. 4). Westward's motion to dismiss admits all well-pleaded facts for purposes of the motion. *Simpkins* at ¶13; *Kedzie & 103rd Currency Exch. v. Hodge*, 156 Ill. 2d 112, 115 (1993); *Goldberg v. Ruskin*, 128 Ill. App. 3d 1029, 1032 (1st Dist. 1984) (Rule 308 appeal). So for purposes of the certified question, agency has been established. There is no need to conduct discovery on agency in order to certify the question here.

And given plaintiffs' allegation of agency, as a matter of law plaintiffs necessarily acknowledge that the association had a right to control Westward. *Eychaner v. Gross*, 202 Ill. 2d 228, 268-69 (2002) (right to control). As principal, the association had control over what Westward charged unit sellers. Under §22.1(b) of the Act, the association owed the duty to set reasonable charges for needed documentation. It could not pawn off its legal responsibility on a property manager. Plaintiffs were entitled to obtain documents directly from the association. 765 ILCS 605/22.1(b) ("The ***principal officer of the unit owner's association or such other officer*** as is specifically designated ***shall furnish the above information*** when requested to do so in writing and within 30 days of the request") (emphasis supplied). So plaintiffs may not contend that they could only get documents from Westward.

Plaintiff argues that Westward's question is improper because it does not mention agency (Resp. 5). Because a trial court, not the parties, certifies a question, this Court may revise Westward's question if a change is needed. Given plaintiffs' allegation of agency—a fact admitted for purposes of the motion to dismiss—the question should be sufficient.

2. There is substantial ground for difference of opinion.

The rules of statutory construction apply to Supreme Court rules. *People v. Roberts*, 214 Ill. 2d 106, 116 (2005). A court must "not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that are in conflict with the express legislative intent." *Id.* Here, plaintiffs misapply the plain language of Rule 308. It does not require a "conflict between appellate districts or with the Illinois Supreme Court" (Resp. 6). In *Luccio v. Rao (Estate of Luccio)*, 2012 IL App (1st) 121153, ¶18, the Appellate Court accepted a Rule 308 appeal involving "a case of first impression."

Nor does the plain language of Rule 308 require that a difference of opinion must only involve state court decisions. *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, does not make Rule 308 inapplicable to disagreements arising out of federal court interpretations of Illinois law. Under their diversity jurisdiction, federal courts often interpret Illinois law. The whole purpose of Rule 308 is to resolve disagreements on questions of Illinois law. Federal cases addressing Illinois law may serve as persuasive authorities. *Axion RMS, Ltd. v. Booth*, 2019 IL App (1st) 180724, ¶21, n.6. Rule 308 allows an Illinois reviewing court to consider them in interpreting state law. The Supreme Court's motto is "*audi alteram partem*"—hear the other side. illinois courts.gov/SupremeCourt/. It speaks volumes about the breadth of Rule 308. The rule allows courts to consider all viewpoints—federal ones included.

Plaintiffs argue that three circuit court decisions support their position (Resp. 6). However persuasive, none is precedential. *Delgado v. Bd. of Elect. Comm'rs*, 224 Ill. 2d 481, 488 (2007). Plaintiffs note that two Illinois appellate decisions interpreting § 22.1 do not precisely answer the question here [Resp. 7, citing *Nikolopulos v. Balourdos*, 245 Ill. App. 3d 71, 77 (1st Dist. 1993), and *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 37]. But "the substantial grounds for difference of opinion prong in Rule 308 has been satisfied in instances

where the question of law had not been directly addressed by the appellate or supreme court." *Rozsavolgyi,* 2017 IL 121048, ¶32. And the three federal decisions add to the disagreement among courts. *Horist v. Sudler & Co.*, 941 F.3d 274 (7th Cir. 2019); *Ahrendt v. Condocerts.com, Inc*., 2018 U.S. Dist. LEXIS 80935, *4-6 (N.D. Ill.); *Murphy v. Foster Premier, Inc*., 2018 U.S. Dist. LEXIS 117781, *4-7 n.4 (N.D. Ill.). Substantial ground for difference of opinion does exist.

3. An Appellate Court decision favoring Westward may materially advance the ultimate termination of the litigation.

An appellate decision in Westward's favor will resolve plaintiff's Condominium Act claim. Rule 308 does not require that a favorable ruling ends the entire case. *Davis v. Loftus*, 334 Ill. App. 3d 761, 769 (1st Dist. 2002); *See*, *Rozsavolgyi*, 2017 IL 121048, ¶61 (Burke, Freeman, and Thomas, J.J., *dissenting*) ("Removing an entire category of damages from consideration obviously advances the course of litigation, and it is disingenuous to pretend otherwise").

There is a difference between plaintiffs' claims as to the measure of damages. Under the Condominium Act, charges for the § 22.1 documents must be "reasonable." 765 ILCS 605/22.1(c). Under the Consumer Fraud Act, "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) (emphasis supplied). By eliminating the Condominium Act count, plaintiffs are confronted with a different hurdle than reasonableness. It may make them reassess how long they litigate, and so advance the end of the case.

The reviewing courts here may rule as a matter of law on the sufficiency of the consumer fraud count. Rule 308 allows for resolution of non-certified questions. *Schrock v. Schumaker*, 159 Ill. 2d 533, 537 (1994); *Cincinnati Ins. Co. v. Chapman*, 2012 IL App (1st) 111792, ¶21. Plaintiffs have alleged that they were charged only: (1) $20 for a year-to-date income statement and budget, (2) $75 for a "Condo Questionnaire Disclosure Statement/22.1," (3) $150 for a "Paid

Assessment Letter," and (4) $0 for insurance contact information (Compl. Ex. C at 2). By comparison, the circuit court charges $388 for filing a chancery complaint and $212.50 for filing a jury demand—even where no *voir dire* is ever conducted. http://www.cookcountyclerkofcourt.org/Forms/pdf_files/CCCH0607.pdf. And plaintiffs did not allege that they asked for a reduction of the fee or an adjustment by the association. Given the allegations, the reviewing courts may be willing to resolve both counts of the complaint.

In the end, Westward has met the standard for certification of its question.

CONCLUSION

Defendant Westward Management, Inc. asks this Court to certify the following question, or an appropriately revised form of the question, for immediate review pursuant to Supreme Court Rule 308(a):

> Does §22.1 of the Illinois Condominium Property Act (765 ILCS 605/22.1) provide an implied cause of action in favor of a condominium unit seller/owner against a property manager retained by a condominium association or board of managers based on allegations that the property manager charged excessive fees for the production of information required to be disclosed to a prospective buyer under §22.1 of the Act?

Dated: January 13, 2021

Respectfully submitted,

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

HARRY CHANNON and DAWN CHANNON, individually and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	Cook County No. 2019CH04869
WESTWARD MANAGEMENT, INC., an Illinois Corporation,	)	
Defendant.	)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that on the 13th day of January 2021, we filed with the Clerk of the Circuit Court of Cook County, Illinois, **Defendant Westward Management, Inc.'s Reply Memorandum Supporting Its Motion to Certify Question Pursuant Rule 308**, a copy of which is attached and served upon you herewith.

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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that on January 13, 2021, she electronically filed **Defendant Westward Management, Inc.'s Reply Memorandum Supporting Its Motion to Certify Question Pursuant Rule 308** with the Clerk of the Circuit Court of Cook County, Illinois, using the www.fileandserveillinois.com system, which sent notification of such filing to the parties who are registered participants with the System.

/s/ Patricia M. Kebr

Channon v. Westward Management, Inc.
Case No: 2019CH04869
CM File No. 29 64 20 00 3

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No. 128040

IN THE SUPREME COURT OF ILLINOIS

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

Plaintiffs-Respondents,

v.

WESTWARD MANAGEMENT, INC.,

Defendant-Petitioner.

Petition for Leave to Appeal from the Illinois Appellate Court, First District, No. 1-21-0176. There Heard on a Rule 308 Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 19 CH 4869.
Honorable Anna M. Loftus, Judge Presiding.

NOTICE OF FILING AND CERTIFICATE OF SERVICE

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

PLEASE TAKE NOTICE that on the 4th day of May, 2022, we electronically filed with the Clerk of the Illinois Supreme Court, the Brief and Argument of Defendant-Appellant Westward Management, Inc. and Appendix to the Brief and Argument of Westward Management, Inc.

/*s*/ Paul V. Esposito

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CERTIFICATE OF SERVICE

The undersigned, a non-attorney, hereby certifies that on May 4, 2022, he electronically filed the foregoing Brief and Argument of Defendant-Appellant Westward Management, Inc., and Appendix to the Brief and Argument of Westward Management, Inc. with the Clerk of the Illinois Supreme Court, using the www.FileandServeIllinois.com system, which sent notification of such filing to the parties who are registered participants with the System.

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

/s/ Thomas McCabe

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