No. 132101

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

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

BRIEF AND APPENDIX OF PLAINTIFF-PETITIONER DEBORAH GREENSWAG

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NATURE OF THE CASE

Defendant-respondent Lieberman Management Services, Inc. ("Defendant" or "Lieberman"), an Illinois corporation, is a condominium association management company that, with the authorization of the applicable Condominium Association and/or its Board of Managers, manages and provides the records that a condominium seller must legally disclose pursuant to Section 22.1 ("Section 22.1") of the Illinois Condominium Property Act (the "Condo Act"). 765 ILCS 605/22.1(a). (C. 353, 357.)

Plaintiff-petitioner Deborah Greenswag ("Plaintiff" or "Greenswag") as successor Trustee of the Franklin P. Friedman Living Trust, upon the death of original Trustee Franklin P. Friedman, brought this suit on behalf of herself and a similarly situated class of individuals who, when selling their condominium units, were compelled to pay Defendant's unreasonable and excessive fees to obtain copies of certain records that Section 22.1 requires condominium sellers to provide upon a condominium purchaser's demand. 765 ILCS 605/1 *et seq.*[1] Count II of the operative complaint, Plaintiff's Second Amended Class Action Complaint at Law (the "Second Amended Complaint"), alleged that Defendant engaged in unfair and oppressive

1 On or about December 17, 2019, the Franklin P. Friedman Living Trust filed the Second Amended Class Action Complaint at Law as plaintiff individually, and on behalf of similarly situated class members. (C. 955.) On or about April 4, 2020, Dr. Franklin P. Friedman, the then trustee of the Franklin P. Friedman Living Trust, passed away. (*Id.*) Greenswag, the successor trustee of the Franklin P. Friedman Living Trust, subsequently moved for substitution of herself as trustee to be the plaintiff in this lawsuit and, on September 10, 2020, the circuit court granted that motion. (C. 1002.)

business acts and practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA") when it charged Friedman and each Class member excessive and unreasonable fees to produce the necessary Section 22.1 disclosure documents and that this conduct was the actual and proximate cause of injury to Friedman and each member of the plaintiff class. (C. 373-377.)

On February 7, 2020, pursuant to Section 2-615 of the Illinois Code of Civil Procedure ("Section 2-615"), Defendant moved to dismiss the Second Amended Complaint. (C. 538-667.) On April 1, 2021, the circuit court granted the motion to dismiss in part and denied it in part. (C. 1087-1093.) To this end, the circuit court dismissed counts I and IV with prejudice, C. 1090 and 1092, and it had previously dismissed count III with prejudice on June 14, 2017. (C. 101, 115.) As a result, on April 1, 2021, the circuit court entered an order that dismissed counts I, III and IV but denied Defendant's motion to dismiss Plaintiff's ICFA claim in count II ("Count II"). (C. 1090-1091; Appendix at A14-A15.)

Plaintiff then asked the circuit court to make a Rule 304(a) finding as to the dismissal of count I for the purpose of making that dismissal immediately appealable. (C. 1095-1124.) On May 17, 2021, the circuit court entered that Rule 304(a) finding and found that "there [was] no just reason to delay enforcement of or appeal from its Order of April 1, 2021 dismissing counts I and IV of the Plaintiff's Second Amended Complaint with prejudice,

and the prior dismissal with prejudice of count III of the original Complaint in the Court's Order of June 14, 2017." (C. 1157.) Plaintiff filed a notice of appeal of the dismissal of counts I, III and IV. (C. 1159-1171.)

While that appeal was pending, on November 28, 2002, this Court decided *Channon v. Westward Management, Inc.*, 2022 IL 128040. Thereafter, Plaintiff filed an agreed motion to dismiss the appeal in *Greenswag v. Lieberman Management Services, Inc.*, No. 1-21-0614 and, on February 15, 2023, the appellate court dismissed that appeal. (C. 1182.) In accordance with that order, counts I, III and IV of the Second Amended Complaint were no longer at issue. The only count that remained was Count II of the Second Amended Complaint ("Count II"), the ICFA claim alleging that Defendant engaged in an unfair and oppressive business act or practice in the course of commerce. *See* 815 ILCS 505/2.

Defendant filed a motion to reconsider the circuit court's April 1, 2021 order denying Defendant's motion to dismiss Count II pursuant to Section 2-615. (C. 1198-1233.) Subsequent to briefing, on January 26, 2024, the circuit court granted the motion to reconsider and dismissed Count II with prejudice. (C. 1265-1266; Appendix at A18-A19.)

On February 7, 2024, Greenswag filed a timely notice of appeal. (C. 1267-1276; Appendix at A23-A32.)

On June 25, 2025, the Illinois Appellate Court, First District, affirmed the circuit court's decision granting Defendant's motion to reconsider and

dismissing Count II with prejudice. (Appendix, A1-A10.) Greenswag filed a petition for leave to appeal that this Court allowed on September 24, 2025. *See Greenswag v. Lieberman Management Services*, ____ N.E.3d ____ (September 24, 2025).

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit and appellate courts failed to properly apply the three factors from this Court's decision in *Robinson v. Toyota Motor Credit Corp.*, 201 Ill.2d 403 (2002) when they decided, as a matter of law, that Plaintiff's allegations in Count II did not state a claim under the ICFA for damages and other relief based on injuries from an unfair and oppressive business practice predicated in part on a violation of Section 22.1.

2. Whether the circuit court erred when it applied legislative amendments to Section 22.1 retroactively.

3. Whether the circuit court's retroactive application of the legislative amendments to Section 22.1 improperly decided a question of fact on a Section 2-615 motion to dismiss on Plaintiff's ICFA claim seeking damages and other relief for injuries resulting from Defendant's unfair business practices.

4. Whether the circuit court erred when it held that the phrase "a reasonable fee," as used in Section 22.1 prior to the legislative amendments that went into effect on January 1, 2023, was ambiguous.

STATEMENT OF JURISDICTION

The appellate court issued its opinion on June 25, 2025. (Appendix at A1-A10.) On July 30, 2025, Greenswag filed her petition for leave to appeal to this Court pursuant to Illinois Supreme Court Rule 315. On September 24, 2025, this Court granted the petition. *Greenswag v. Lieberman Management Services*, ____ N.E.3d ____ (September 24, 2025). This Court has jurisdiction over Greenswag's appeal pursuant to Illinois Supreme Court Rule 315.

STATUTES INVOVLED

5 ILCS 70/4

> No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect. This section shall extend to all repeals, either by express words or by implication, whether the repeal is in the act making any new provision upon the same subject or in any other act.

765 ILCS 605/22.1
(in effect prior to January 1, 2023)

> (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.

765 ILCS 605/22.1
(in effect after January 1, 2023)

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

815 ILCS 505/1

Sec. 1. (a) The term "advertisement" includes the attempt by publication, dissemination, solicitation or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise and includes every work device to disguise any form of business solicitation by using such terms as "renewal", "invoice", "bill", "statement",

or "reminder", to create an impression of existing obligation when there is none, or other language to mislead any person in relation to any sought after commercial transaction.

(b) The term "merchandise" includes any objects, wares, goods, commodities, intangibles, real estate situated outside the State of Illinois, or services.

(c) The term "person" includes any natural person or his legal representative, partnership, corporation (domestic and foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

(d) The term "sale" includes any sale, offer for sale, or attempt to sell any merchandise for cash or on credit.

(e) The term "consumer" means any person who purchases or contracts for the purchase of merchandise not for resale in the ordinary course of his trade or business but for his use or that of a member of his household.

(f) The terms "trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

(g) The term "pyramid sales scheme" includes any plan or operation whereby a person in exchange for money or other thing of value acquires the opportunity to receive a benefit or thing of value, which is primarily based upon the inducement of additional persons, by himself or others, regardless of number, to participate in the same plan or operation and is not primarily contingent on the volume or quantity of goods, services, or other property sold or distributed or to be sold or distributed to persons for purposes of resale to consumers. For purposes of this subsection, "money or other thing of value" shall not include payments made for sales demonstration equipment and

materials furnished on a nonprofit basis for use in making sales and not for resale.

815 ILCS 505/2

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

815 ILCS 505/10a(a)

Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper . . .

815 ILCS 505/10a(c)

Except as provided in subsections (f), (g), and (h) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

STATEMENT OF FACTS

Greenswag appeals the circuit court's order granting Defendant's Section 2-615 motion to dismiss Count II. (C. 1267-1276.) As a result, for

purposes of this appeal, all well pled facts are taken as true. *Jackson Generation, LLC v. County of Will*, 2024 IL App (3d) 220328, ¶42, *citing Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶31 ("[w]hen ruling on a motion pursuant to section 2-615, a court must accept as true all well-pled facts and any reasonable inferences therefrom"). Greenswag will set forth the well pled allegations from Count II as well the procedural history of this litigation.

A. Background Facts.

Requirements in the Condo Act Regarding Section 22.1 Documents

Condominium sellers are statutorily required to obtain disclosure documents from their condominium association board of managers or its managing agent, which in this case is Defendant Lieberman, by paying them a reasonable fee to cover the direct out-of-pocket cost of providing the documents. (C. 350-351.) When a condominium unit is to be resold, Section 22.1 requires that the seller must obtain certain disclosure documents ("Section 22.1 documents") from the condominium association and then provide these documents to the prospective purchaser. (C. 351.)

Section 22.1 documents are the homeowner association's governing documents, financial statements setting forth various aspects of the association's financial condition, and other records 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. 765 ILCS 605/22.1(a)(1)-(9). (C. 352.)

The version of Section 22.1 in effect prior to January 1, 2023 stated that a condominium association is permitted to charge the condominium seller a "reasonable fee covering the direct out-of-pocket cost[s]" to recoup the costs of providing these documents. 765 ILCS 605/22.1(c). (C. 351.) The relevant time period in this litigation is December 8, 2016 to the present.

Rather than simply recouping its direct out-of-pocket costs for providing such information, Defendant, a condominium association management company, charged condominium sellers fees well in excess of the statutorily limited, direct out-of-pocket costs to obtain the legally required documents. (*Id.*) Greenswag has alleged that these fees exceeded the statutory "reasonable fee covering the direct out-of-pocket cost" provision in Section 22.1(c), *id.*, and that by charging such fees to Plaintiff and all others similarly situated, Lieberman engaged in an unfair business practice in violation of the ICFA because there was no alternative source to obtain the disclosure documents. (C. 373-377.)

Defendant Charged Plaintiff and Other Class Members an Unreasonable Fee For Section 22.1 Documents

Plaintiff was for several years until October 7, 2016 the owner of a condominium unit in Northbrook, Illinois, which was part of the Mission Hills Condominium Association (the "HOA"). Defendant was the management agent for the HOA throughout the entire duration of the events set forth herein. (C. 358.)

The HOA compensated Defendant for assuming a number of duties -- including managing and providing disclosure documents to condominium sellers. The management contract is between the HOA and Defendant -- not between individual condominium owners and Defendant. (C. 354.) Defendant is the HOA's "other officer as is specifically designated" under Section 22.1(b) and charged with the responsibility to both manage and provide disclosure documents to condominium sellers upon demand. (C. 355.)

Although Section 22.1(c) of the Condo Act provides only that "[a] reasonable fee covering the direct out-of-pocket cost of copying and providing such information may be charged by the association or its board of directors to the unit seller for providing the information," Defendant charged condominium sellers, including Plaintiff, excessive and unreasonable fees to obtain disclosure documents under the guise that it had authority to do so via its contract or management agreement with the HOA and/or under Section 22.1(c). (*Id.*)

At most, Defendant was authorized to collect a reasonable fee to cover the reasonable direct out-of-pocket cost for providing the documents to condominium sellers. (*Id.*) Defendant had no authority to impose an unreasonable fee. (*Id.*)

Defendant has already prepared and maintained the HOA's governing documents and records in the regular course of its duties as the HOA's property manager, and had exclusive management and control of these documents and records (*i.e.*, budgets, minutes, declarations, financial reports, rules and regulations). (C. 356.) Consequently, Defendant did not prepare the HOA's governing documents and records for the sole purpose of providing them to Plaintiff or the Class upon their request for such documents and records.

In addition, Plaintiff and the Class had already paid Defendant for the preparation and maintenance of the same governing documents and records through the HOA fees (*i.e.*, regular condominium assessments). In effect, Defendant charging Plaintiff and the Class for the governing documents and records, when requesting them as part of their condominium sale transaction, constituted a double charge. (*Id.*)

Defendant charged Plaintiff and all Class members $470.00 for providing them with the necessary Section 22.1 disclosure documents. (C. 374.) $470.00 was not "a reasonable fee covering [Defendant's] direct out-of-

pocket cost for providing [the necessary 22.1 disclosure documents] and copying." 765 ILCS 605/22.1(c). (*Id.*)

On December 8, 2016, Plaintiff filed this class action against Defendant. (C. 28-44.)

B. Procedural History of this Litigation.

Plaintiff filed a four-count complaint against Defendant. (*Id.*) Count I asserted a private right of action against Defendant under Section 22.1. (C.362-372.) Count II asserted an ICFA claim against Defendant based on an unfair and oppressive business practice predicated on a violation of Section 22.1(c). (C.373-377.) Count III was an action for restitution and unjust enrichment. (C. 378-379.) Count IV alleged a different ICFA claim: that the HOA did not authorize Defendant's charging of fees for the necessary Section 22.1 disclosure documents in violation of Section 9.2 of the Condo Act. (C. 380-394.)

On June 14, 2017, the trial court denied Defendant's motion to dismiss Count I, dismissed Count II without prejudice with leave to replead and dismissed Count III with prejudice. (C. 101.) On July 12, 2017, Plaintiff filed the First Amended Complaint, which re-pled Count II. (C. 102-123.) Defendant filed a Rule 308 motion requesting that the circuit court certify two questions for appeal regarding the issue of whether an implied private right of action exists under Section 22.1 and, if so, the scope of that action. *Friedman v. Lieberman Mgmt. Servs., Inc.*, 2019 IL App (1st) 180059-U, ¶8.

While the appellate court initially accepted Defendant's Rule 308 appeal, the appellate court subsequently vacated its order granting Defendant's application for leave to appeal, dismissed the appeal and remanded the case to the circuit court. *Id.* at ¶16. Justice Walker dissented and stated that he would have answered both certified questions in the affirmative. *Id.* at ¶45.

Plaintiff then filed the Second Amended Complaint. (C. 350-534.) Defendant moved to dismiss the Second Amended Complaint. (C. 538-C667.) On April 1, 2021, the circuit court dismissed counts I and IV of the Second Amended Complaint but denied Defendant's motion to dismiss Count II. (C. 1087-1093.) (Appendix at A11-A17.)

On May 17, 2021, the circuit court entered a Rule 304(a) finding and found that "there [was] no just reason to delay enforcement of or appeal from its Order of April 1, 2021 dismissing counts I and IV of the Plaintiff's Second Amended Complaint with prejudice, and the prior dismissal with prejudice of count III of the original Complaint in the Court's Order of June 14, 2017." (C. 1157.) Plaintiff then filed a notice of appeal of the dismissal of counts I, III and IV. (C. 1159-1171.)

While that appeal was pending, on November 28, 2002, this Court decided *Channon v. Westward Management, Inc.*, 2022 IL 128040. Thereafter, Plaintiff filed an agreed motion to dismiss the appeal in *Greenswag v. Lieberman Management Services, Inc.*, No. 1-21-0614 and, on

February 15, 2023, the appellate court dismissed that appeal. (C. 1182.) In accordance with that order, Counts I, III and IV of the Second Amended Complaint are no longer at issue. The only count that remained was Count II.

Defendant filed a motion to reconsider the circuit court's April 1, 2021 order denying Defendant's motion to dismiss Count II. (C. 1198-1233.) On January 26, 2024, the circuit court granted the motion to reconsider and dismissed Count II with prejudice. (C. 1265-1266; Appendix at A21-A22.) On February 7, 2024, Greenswag filed a timely notice of appeal, C. 1267-1276, and appealed the dismissal of Count II.

On June 25, 2025, the Illinois Appellate Court, First District, affirmed the circuit court's decision granting Defendant's motion to reconsider and dismissing Count II with prejudice. (Appendix, A1-A10.) Greenswag filed a petition for leave to appeal that this Court allowed on September 24, 2025. *See Greenswag v. Lieberman Management Services*, ____ N.E.3d ____ (September 24, 2025).

STANDARD OF REVIEW

A motion to dismiss under Section 2-615 of the Illinois Code of Civil Procedure challenges the legal sufficiency of a complaint. *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶11. This Court "review[s] a circuit court's order disposing of a [Section 2-615] motion to dismiss *de novo*." *Id.*

ARGUMENT

In its April 1, 2021 order, the circuit court initially denied Defendant's motion to dismiss count II and, in doing so, stated:

> 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.

(C. 1091.) In this order, the circuit court got it exactly right. To be sure, the plain language of Section 22.1, Illinois case law construing the ICFA and the allegations in the Second Amended Complaint all point to one conclusion: Plaintiff stated a legally cognizable claim in Count II.

Unfortunately, in its January 26, 2024 order granting Defendant's motion to reconsider, the circuit court got it exactly wrong. It dismissed Count II because: (1) it misapplied the legal standard for an ICFA claim alleging that an unfair business practice caused injury, as set forth in *Robinson*, to Plaintiff's allegations in Count II and (ii) it retroactively applied the legislative amendments to Section 22.1 that went into effect on January 1, 2023 even though those amendments should only have been applied prospectively.

On appeal, the appellate court followed a different analytical path than the circuit court but also got this case wrong. In considering whether Plaintiff

properly alleged an ICFA claim for damages and other relief for injuries resulting from an unfair business practice predicated in part on a Section 22.1 violation, the appellate court erroneously applied the test for whether an implied private right of action under a statute exists. *See Greenswag v. Lieberman Management Servs., Inc.*, 2025 IL App (1st) 240289-U, ¶28, *citing Midwest Medical Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶42, *citing Marshall v. County of Cook*, 2016 IL App (1st) 142864, ¶12. This was simply the wrong test to apply. The appellate court should have analyzed and applied the three factors from *Robinson.* They did not do so and gave only a passing reference to them. *See Greenswag*, 2025 IL App (1st) 240289-U at ¶26, *citing Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶28, *citing Robinson*, 201 Ill. 2d at 417-418.

The appellate court essentially bypassed the three *Robinson* factors and opted instead to focus on case law pertaining to implied private rights of action based on a statute. As a result, the appellate court reached the baffling conclusion that because Section 22.1 did not create an implied private cause of action, Plaintiff could not bring an ICFA action for an unfair business practice predicated in part on a Section 22.1 violation. *Id.* at ¶¶28-30. This holding is erroneous.

Channon held that Section 22.1 "does not create an implied private right of action by a condominium unit seller against an agent of a condominium association or its board of managers for allegedly violating the

fee limitations set forth in section 22.1(c)." *Channon*, 2022 IL 128040 at ¶34. The fact that Section 22.1 does not create an implied private right of action does not negate the ICFA claim that the Legislature actually did create: a claim for damages for injuries that an unfair business practice predicated in part on a Section 22.1(c) violation caused. Put another way, *Channon* does not leave Greenswag without a legally viable remedy but, rather, points to the ICFA as her available remedy.

Count II states a cognizable cause of action under the ICFA. Consequently, and for the reasons set forth below, this Court should reverse the decisions of the circuit and appellate courts and remand the case for further proceedings.

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

As an initial matter, Section 10(a) of the ICFA creates a remedy for persons who suffer damage as a result of a violation of the Act that another person committed. *See Robinson*, 201 Ill.2d at 417; *see also* 815 ILCS 505/10a(a) (providing for the award of economic damages and other relief for actual damages). Section 10(a)(c) of the ICFA also states that courts may "grant injunctive relief where appropriate" and "may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party." *See* 815 ILCS 505/10a(c).

The ICFA, therefore, expressly provides a complete array of remedies for a claim that an unfair and oppressive business practice caused injury. In

order to state such a claim, a plaintiff must show that "the practice: (1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; (3) causes substantial injury to consumers." *Robinson*, 201 Ill.2d at 417-418, *citing Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n. 5 (1972). Illinois "courts liberally construe the Consumer Fraud Act to effectuate its purposes." *Ash v. PSP Distribution*, 2023 IL App (1st) 220151, ¶23, *citing Robinson*, 201 Ill.2d at 416-417.

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

In *Robinson*, this Court further observed:

> Although the holding in *Saunders* seems to suggest that all three prongs of the *Sperry* test must be met, that is not an accurate statement of plaintiffs' burden. As the Connecticut Supreme Court held in interpreting that state's unfair trade practices statute, all three of the criteria in *Sperry* do not need to be satisfied to support a finding of unfairness. *Cheshire Mortgage Service, Inc. v. Montes,* 223 Conn. 80, 106, 612 A.2d 1130, 1143 (Conn. 1992). The *Cheshire* court cited with approval and quoted the *Statement of Basis and Purpose, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,* 43 Fed. Reg. 59,614, 59,635 (1978), as follows:

> "`All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three.'" *Cheshire,* 223 Conn. at 106, 612 A.2d at 1143-44.
>
> We believe *Cheshire* expresses the correct standard and hereby adopt it as our own.

Robinson, 201 Ill.2d at 418. The unfairness of the defendant's business practice must be plead with specificity and particularity. *Id.* at 419. *Accord Longo Realty*, 2016 IL App (1st) 151231 at ¶28, *citing Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 20 (1st Dist. 2009) (stating that "not all three criteria need be met for a practice to be deemed unfair but the complaint has to include specific facts supporting each element of the claim").

Robinson shows that in the instant case, Plaintiff' has properly pled an unfair business practice claim under the ICFA with specificity and particularity. Plaintiff alleged that Defendant charged Plaintiff and class members $470.00 for providing them with the necessary Section 22.1 disclosure documents, even though Plaintiff and others similarly situated had already paid for the preparation of such documents:

> No actual preparation of the governing documents and records was required, needed or in fact performed when Friedman and the Class requested the documents and records, were provided the documents (provided to Friedman by email) and when they were charged $470.00 for the documents and records. Friedman and the Class had already paid for the preparation and maintenance of the same governing documents and records through the Association Fees (*i.e.*, regular condominium assessments). In effect, Lieberman charging Friedman and the

> Class for the governing documents and records, when requesting them as part of their condominium sale transaction, constituted a double charge.

(C. 365, Second Amended Complaint, ¶63.) Application of the three *Robinson* factors here shows that Plaintiff has alleged a cognizable ICFA claim for an unfair business practice causing consumers substantial injury.

With respect to the first *Robinson* factor, Plaintiff alleged that Defendant's business practice violated public policy. This Court has recognized the public policy underlying the last paragraph of Section 22.1(c):

> [Section 22.1](c) establishes a ceiling for the fee sellers may be charged to obtain that information (Section 22.1 documents). That fee must be "reasonable" and reflect the "direct out-of-pocket cost of providing such information and copying."

Channon, 2022 IL 128040 at ¶19. When it charged $470.00 for the Section 22.1 disclosure documents, Defendant violated this Illinois public policy because under Section 22.1(c), the fee charged for such documents should be limited to reasonable fees covering the direct out-of-pocket cost and the fee here far exceeded such costs. Plaintiff's allegations satisfy the first *Robinson* factor.

Under the second *Robinson* factor, Plaintiff must allege that the business practice at issue was "immoral, unethical, oppressive, or unscrupulous." Here, Plaintiff alleged that Defendant's acts are immoral, unethical, oppressive and unscrupulous because "Plaintiff and each Class member who wanted to sell their respective condominium units had no choice but to obtain the Section 22.1 disclosure documents from Defendant in

exchange for an excessive and unreasonable fee of $470.00." (C. 374, Second Amended Complaint, ¶¶102 and 104.) In other words, Plaintiff and all those similarly situated were captive consumers who had to pay Defendant's exorbitant charge of $470.00 for the Section 22.1 documents. (*Id.*) These allegations satisfy the second *Robinson* factor.

With regard to the third *Robinson* factor, Plaintiff must allege that the business practice caused substantial injury to consumers and Plaintiff has done so here. Plaintiff alleged that "Defendant's acts cause[d] substantial injury to consumers because Friedman and each Class member are forced to pay unreasonable fees that are several hundred dollars in excess of Defendant's `direct out-of-pocket costs of providing such information and copying'" and that Plaintiff and each Class member paid Defendant's excessive and unreasonable fees under the assumption and in reliance that Defendant's fees for producing the necessary [Section] 22.1 disclosure documents covered Defendant's actual direct out-of-pocket expenses. (C. 375-376.)

Moreover, Plaintiff and the Class had already paid for the preparation and maintenance of the Section 22.1 disclosure documents through HOA fees that paid for governing documents and records. (C. 356.) In other words, Defendant charged Plaintiff and the Class for the governing documents and records twice when they charged $470 for Section 22.1 documents as part of their condominium sale transaction. (*Id.*) The allegation of this double charge

establishes injury and buttresses the allegations satisfying the third *Robinson* factor.

While "[a]ll three criteria do not need to be satisfied to support a finding of unfairness [and 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,' *Robinson*, 775 N.E.2d at 961, *citing Cheshire,* 223 Conn. at 106, 612 A.2d at 1143-44, Greenswag has alleged facts to satisfy all three criteria. In Illinois, "`[d]ismissal pursuant to section 2-615 is inappropriate where the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.'" *Sharp v. Baldwin*, 2020 IL App (2d) 181004, ¶8, *citing Oliver v. Pierce,* 2012 IL App (4th) 110005, ¶11.

Although Plaintiff properly pled an ICFA claim in Count II upon which relief could be granted, the circuit court granted Defendant's motion to reconsider and dismissed Count II. That decision was in error and should be reversed.

II. The Circuit Court Erroneously Dismissed Count II.

The circuit court's decision to dismiss Count II rested on two legal errors: (1) applying the January 1, 2023 amendment to Section 22.1 retroactively and (2) mis-applying *Robinson* to Plaintiff's allegations in Count II. (C. 1264-1266.) Plaintiff will address both errors.

A. The Circuit Court Misinterpreted Section 22.1.

Prior to January 1, 2023, Section 22.1(c) stated, in 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). Section 22.1(c) was amended effective January 1, 2023, as follows:

> A reasonable fee, **not to exceed $375**, covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.
> ***
> **An association may charge an additional $100 for rush service completed within 72 hours.**

765 ILCS 605/22.1(c) (emphasis added to indicate amendment).

When it dismissed Plaintiff's ICFA claim in Count II, the circuit court held that the amendment allowed a property manager to charge a fee of up to $475 for providing Section 22.1 disclosure documents, regardless of the amount of its reasonable, direct out-of-pocket costs to do so. (C. 1264-1265.) In so holding, the circuit court improperly read the phase "reasonable fee, not to exceed $375, covering the direct out-of-pocket cost" out of Section 22.1(c), found that the language of the amendment clarified a purported ambiguity in the Condo Act where none existed and without any legal basis, applied the amendment to Section 22.1 retroactively to a transaction that occurred over six years before the effective date of the amendment.

The circuit court's reading of Section 22.1 is in error.

B. The Circuit Court Read The Phrase "Reasonable Fee Covering Direct Out-Of-Pocket Cost" Out of Section 22.1(c).

In earlier briefing in the appellate court in this case, Defendant acknowledged some of the basic principles of statutory construction. (C. 718.) Defendant, for example, noted that:

> [t]he cardinal rule of statutory construction is to "ascertain and give effect to the true intent and meaning of the legislature." *Kunkel v. Walton*, 179 Ill. 2d 519, 533 (1997). The language of the statute itself is the best indication of the legislature's intent, and if the statutory language is clear, its plain language shall apply. *Metzger v. DaRosa*, 209 Ill. 2d 30, 36 (2004). A court cannot "read into a statute words which are not within the plain meaning of the legislature as determined from the statute itself." *Petalino v. Williams*, 2016 IL App (1st) 151861, ¶ 24. "Courts are not at liberty to depart from the plain language and meaning of a statute by reading into it exceptions, limitations or conditions that the legislature did not express.' *Illinois State Treasurer v. Illinois Workers' Comp. Comm'n*, 2015 IL 117418, ¶ 21."

(C. 718.)

Plaintiff would add that "[e]ach word, clause and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Prazen v. Shoop*, 2013 IL 115035, ¶21, *citing Chicago Teachers Union, Local No. 1 v. Bd. of Education*, 2012 IL 112566, ¶21 (2012). Moreover, "[t]he most reliable indicator of legislative intent is the statutory language, which must be given its plain and ordinary meaning." *Rushton v. Dep't of Corrections*, 2019 IL 124552, ¶14 (internal citations omitted).

Courts cannot add language to statutes, *see Suburban Cook County Regional Office of Educ. v. Cook County Board*, 282 Ill. App. 3d 560, 566 (1st

Dist. 1996) (holding that courts cannot affix funding responsibilities to public bodies where the Legislature failed to do so and noting that if there are cracks in legislation, "the grout is in the hands of the legislature"), and courts cannot delete language from a statute. *See Petersen v. Wallach*, 198 Ill.2d 439, 447 (2002) (Illinois courts "can neither restrict nor enlarge the meaning of an unambiguous statute" and cannot "ignore the plain language of a statute based on conjecture").

In short, "[i]t is a cardinal rule of statutory construction that [courts] cannot rewrite a statute, and depart from its plain language, by reading into it exceptions, limitations or conditions not expressed by the legislature." *People ex rel. Birkett v. Dockery*, 235 Ill.2d 73, 81 (2009), *citing In re Michelle J.*, 209 Ill.2d 428, 437 (2004). That is precisely what the circuit court did here.

Both prior to and subsequent to the legislative amendments, Section 22.1(c) limited homeowner associations, their board of managers or their agents to charging no more than a reasonable fee covering the direct out-of-pocket cost for providing Section 22.1 disclosure documents to condominium sellers. The only difference after the amendment is that Section 22.1(c) set forth an "outer limit" of $475 as the amount of direct out-of-pocket costs. Importantly, the Legislature did not remove "direct out-of-pocket cost" as the maximum amount for what homeowner associations, their board of managers

or their agents could charge condominium sellers for Section 22.1 disclosure documents.

Section 22.1 that was in effect prior to January 1, 2023 is the applicable statute for all times relevant in the Second Amended Complaint. But under either version of the statute -- the one in effect before January 1, 2023 or the one in effect after January 1, 2023 -- the term "direct out-of-pocket" should be read as a fixed charge that accords with reason and that is not extreme or excessive. The circuit court did not employ such a reading and ignored the question of Defendant's out-of-pocket costs. Instead, the Court simply found with no factual basis that a $470.00 charge for the Section 22.1 disclosure documents complied with the statute. That finding was erroneous.

The circuit court ignored the plain language of the Condo Act regarding the "direct out-of-pocket costs" incurred. The amendment allows a provider of Section 22.1 disclosure documents to charge "[a] reasonable fee, not to exceed $375, **covering the direct out-of-pocket cost of providing such information . . . [plus] an additional $100 for rush service completed within 72 hours**." 765 ILCS 605/22.1(c) (emphasis added). This language does not mean that a fee of $375 is automatically allowed; rather, it limits the fee to the provider's "direct out-of-pocket cost of providing such information" which, as of January 1, 2023, cannot exceed $375.

Ultimately, a defendant would have to prove that the fee it charges condominium sellers for providing condominium documents is no more than

its "direct out-of-pocket cost." That is a question to be addressed during discovery and at trial and certainly not at the pleadings stage. *See Gress v. Lakhani Hosp., Inc.*, 2018 Ill. App. (1st) 170380, ¶33 (finding that issues of disputed material facts "should not be decided on a motion to dismiss"). Allowing a property manager to charge a $375 fee as a matter of course would render the phrase "direct out-of-pocket cost" in Section 22.1 meaningless and superfluous. That is not how Illinois courts should construe statutes. *See Prazen*, 2013 IL 115035 at ¶21. As a result, the circuit court erred as a matter of law when it held that the fee the defendant charged was not excessive under ICFA simply because it was less than the amount set forth as a ceiling in the amended Section 22.1.

Likewise, the circuit court erred in finding that the rush fee charged was appropriate. Again, the issue should not have been decided at the pleadings stage. Even if it had been properly considered, the record is devoid of evidence that Defendant earned the $100 expedited fee by providing the Section 22.1 disclosure documents within 72 hours -- the circuit court incorrectly made that assumption. The allegations in the Second Amended Complaint show that Plaintiff requested the documents on September 27, 2016, and did not receive the documents until at least six days later, on October 3, 2016. (C. 359.)

Thus, Defendant had no legitimate basis to charge a "rush fee." The circuit court erred when it refused to accept Plaintiff's well-pled allegations

regarding Defendant's actual out of pocket costs incurred, as well as the validity of the rush fee charged, as true. *Jackson Generation, LLC*, 2024 IL App (3d) 220328 at ¶42 (stating that all well pled facts are to be taken as true).

At a minimum, the question of whether Defendant charged Plaintiff and class members no more than "the direct out-of-pocket cost" of providing Section 22.1 disclosure documents was a question of fact for the jury. It should not have been decided on a Section 2-615 motion to dismiss. The circuit court committed error when it ignored Plaintiff's well pled facts and decided that a $470.00 charge complied with the mandate of Section 22.1(c).

C. The Circuit Court Improperly Applied the Legislative Amendments to the Condo Act Retroactively.

Another reason the circuit court misconstrued Section 22.1 was its decision to apply the legislative amendments to Section 22.1 passed in 2022 and effective January 1, 2023 retroactively.

In Illinois, when the legislature has not clearly defined the temporal reach of a statute, Section 4 of the Statute on Statutes, 5 ILCS 70/4, controls. *Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation*, 2014 IL 116023, ¶24, *citing Caveney v. Bower*, 207 Ill. 2d 82, 92-93 (2003). Section 4 of the Statute on Statutes states:

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

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

5 ILCS 70/4. Thus, an Illinois statute can be applied retroactively *only* when the Legislature expressly says so. *See Caveney*, 207 Ill. 2d at 94 (noting that with respect to a statutory amendment or repeal, Illinois courts need only "ascertain whether the legislature has clearly indicated the temporal reach of the amended statute").

In *Perry v. Dept. of Fin. & Prof'l Reg.*, 2018 IL 122349, this Court set forth an extensive history and analysis of "Illinois's retroactivity jurisprudence," including *Caveney*:

> In *Commonwealth Edison Co.* v*. Will County Collector*, 196 Ill. 2d 27 (2001), this court adopted the United States Supreme Court's retroactivity analysis as set forth in *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). *Commonwealth Edison Co.*, 196 Ill. 2d at 39. We adopted the *Landgraf* analysis "with its focus on legislative intent, because we believed it provided the appropriate framework for evaluating whether a new law should apply to existing controversies." *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 411 (2009). Thus, with our adoption of the *Landgraf* approach, we "switched the focus of the first step of the retroactivity analysis from 'vested rights' to legislative intent." *Id.*
>
> Under step one of *Landgraf*, a court first determines whether the legislature has "'expressly prescribed'" the temporal reach of

> the new law. *See Commonwealth Edison Co.*, 196 Ill. 2d at 39-40 (quoting *Landgraf*, 511 U.S at 280). If the legislature has clearly indicated the temporal reach, then such temporal reach must be given effect unless to do so would be constitutionally prohibited. *Id.* at 42-43.
>
> However, in *Caveney v. Bower*, this court subsequently explained that, in light of section 4 of the Statute on Statutes, Illinois courts need not go beyond step one of the *Landgraf* approach. 207 Ill. 2d 82, 94, 797 N.E.2d 596, 278 Ill. Dec. 1 (2003). Step two of *Landgraf* is triggered where the legislature's intent as to temporal reach is not clear. But, as has repeatedly been explained, if the temporal reach has not been clearly indicated within the text of the new law, then the legislature's intent as to temporal reach is provided by default in section 4. [citations].
>
> Moreover, where the legislature has not expressly indicated its intent as to temporal reach, "a presumption arises that the amended statute is not to be applied retroactively." [*People ex rel. Madigan* v.] *J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 34.

Perry, 2018 IL 122349 at ¶¶39-42 (certain internal citations omitted). Thus, if the Legislature expressed its intent to apply an amendment prospectively or did not express its intent at all, then the amendment cannot be applied retroactively. *Caveney*, 207 Ill. 2d at 94.

With respect to Section 22.1, the Governor signed Public Act 102-0976, the bill that amended 765 ILCS 605/22.1, on May 27, 2022. The effective date of the amendment was January 1, 2023. 765 ILCS 605/22.1. Illinois courts "have held that the legislature's postponement of an effective date is direct evidence that a retroactive application was not intended." *People v. Blanks*, 361 Ill. App. 3d 400, 410 (1st Dist. 2005), *citing People v. Ramsey*, 192 Ill. 2d 154, 183 (2000).

The transaction at issue in the Second Amended Complaint occurred on approximately October 3, 2016 -- over six years prior to the date the amendment went into effect. The amendment contains no language that states or even suggests it was to be applied retroactively to transactions that occurred prior to its effective date. And the bill that the Governor signed into law on May 27, 2022 did not go into effect until January 1, 2023.

Here, Defendant cannot seriously dispute that the Legislature indicated its intent as to the temporal reach of the amendment to the Condo Act. The amendment became effective on January 1, 2023. Nothing suggests that the Legislature intended the amendment to have any retroactive effect, particularly because the amendment was enacted on May 22, 2022 (*see* 2022 P.A. 102-976, 2021 Ill. HB 5246) but did not become effective until over six months later, on January 1, 2023. *See People ex rel. Alvarez v. Howard,* 2016 IL 120729, ¶ 23 ("[A] statute that has an express delayed implementation date but is otherwise silent as to temporal reach will be applied prospectively."); *see also Gilmore v. Carey*, 2017 IL App (1st) 153263, ¶39 (quoting *Howard* and holding that a statutory amendment was not intended to be retroactive where it did not become effective until six months after it was enacted).

The circuit court, therefore, erred when it ignored the legislative intent underlying the amendment to the Condo Act and applied it retroactively. *See Perry*, 2018 IL 122349 at ¶66 ("we note that the legislature is undoubtedly

aware of how to clearly indicate its intent that a statute apply to causes of action currently pending in the courts."). This Court should reverse course from the circuit court and find that the legislative amendments to Section 22.1 were only intended to apply prospectively.

D. The Circuit Court Improperly Concluded That Section 22.1(c) Was Ambiguous.

Although the circuit court decided to apply the legislative amendments to Section 22.1 retroactively, it did not include any discussion of *Perry* in its analysis of retroactivity. That was not only improper but it led to a second fundamental error: its finding of an ambiguity that did not, in fact, exist.

Oddly, the circuit court relied on two cases decided before *Perry* for the proposition that "where a statutory provision is ambiguous 'and the amendment merely clarifies existing law,' the general rule against retroactive application does not apply and the court may consider the amendment to determine the meaning of the ambiguous provision." (C. 1265 citing *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 567-68 (1st Dist. 1994) and *People v. Askew*, 341 Ill. App. 3d 548, 552 (1st Dist. 2003)). The circuit court used this principle to support its finding that the original statutory language in the Condo Act was ambiguous and that the 2023 amendment "simply clarifies" that ambiguity:

> Without the amended language, the statute is ambiguous because what constitutes a "reasonable fee" is capable of being understood in a multitude of senses. The amended language "not to exceed $375" simply clarifies that a reasonable fee is less than $375 plus $100 for any rush services. Thus, this Court

> properly considers the amended language in resolving Defendant's Motion to Reconsider.

(C. 1265.)

The circuit court erred because it never should have examined whether the statute was ambiguous in the first place.[2] The Legislature had already made the temporal scope of the amendment clear when it set forth its effective date, thereby precluding any retroactive application of its language. Under *Caveney* and *Perry*, the circuit court's inquiry should have ended there. It should not have analyzed the retroactive effect of the amendment, including whether its purpose was to clarify any purported ambiguity in the statute.

It is axiomatic that "[a] statute is ambiguous if it is capable of two reasonable and conflicting interpretations." *Paciga v. Property Tax Appeal Board*, 322 Ill. App.3d 157, 161 (2nd Dist. 2001), *citing Tri-State Coach Lines, Inc. v. Metropolitan Pier & Exposition Authority*, 315 Ill. App.3d 179, 190 (1st Dist. 2000). *Accord Advincula v. United Blood Services*, 176 Ill. 2d

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2 While courts must apply unambiguous language in a statute regardless of whether it leads to an unwise or unintended result, *see In re Marriage of Murphy*, 203 Ill.2d 212, 219 (2003) ("[n]or, under the guise of statutory interpretation, can we `correct' an apparent legislative oversight by rewriting a statute in a manner inconsistent with its clear and unambiguous language"), a proper application of the unambiguous phrase "reasonable fee covering the direct out-of-pocket cost" would actually lead to the fair result that the Legislature intended -- it would protect condominium sellers from paying a windfall for Section 22.1 documents as opposed to paying only actual out-of-pocket costs. It is, ironically, the manufactured "ambiguity" that the circuit court found that would cause a harsh and unjust result here, not the actual, unambiguous language.

1, 18 (1996) ("[a] statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different senses"). "Where the words employed in a legislative enactment are free from ambiguity or doubt, they must be given effect by the courts even though the consequences may be harsh, unjust, absurd or unwise." *Petersen*, 198 Ill.2d at 447.

Significantly, the circuit court identified an alleged ambiguity in Section 22.1 prior to the legislative amendment even though this Court in *Channon* did not do so:

> Finally, subsection (c) establishes a ceiling for the fee sellers may be charged to obtain that information. That fee must be "reasonable" and reflect the "direct out-of-pocket cost of providing such information and copying."

Channon, 2022 IL 128040, ¶19.

In short, the language in Section 22.1 authorizing the charging of "direct out-of-pocket" cost is not capable of multiple interpretations and is, therefore, not ambiguous. The circuit court erred in finding that the original language of Section 22.1(c) was ambiguous. Indeed, "direct out-of-pocket cost" is capable of only one meaning: its common, ordinary and plain meaning. *See Rushton*, 2019 IL 124552 at ¶14.

The circuit court erred in considering and relying on the 2023 amendment to the Condo Act as a basis to dismiss Plaintiff's ICFA claim in this case. This Court should not follow suit.

E. With Respect to Plaintiff's ICFA Claim, The Circuit Court Improperly Applied *Robinson* To Plaintiff's Allegations In Count II.

The circuit court acknowledged that a plaintiff "may predicate an ICFA unfairness claim on violations of other statutes that do not allow for a private right of action." C. 1264, citing *Clayborn v. Walter Investment Management Corp.*, No. 18-cv-3452, 2019 U.S. Dist. LEXIS 34707, *14 (N.D. Ill. March 5, 2019) (Dow, J.) and *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1st Dist. 1996). The circuit court also acknowledged that Plaintiff alleged that Defendant engaged in an unfair business practice when it charged an excessive fee for the Section 22.1 disclosure documents. Nonetheless, the circuit court concluded that this did not save Count II on the grounds that "the Illinois Supreme Court has noted that `charging an unconscionably high price generally is insufficient to establish a claim for unfairness' under the ICFA." (C. 1275 *citing Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418 (2002).)

For several reasons, this approach misapplies *Robinson*. In *Robinson*, this Court did state that an allegation of unconscionably high price by itself is generally insufficient to establish a claim for unfairness." *Robinson*, 201 Ill. 2d at 418. However, *Robinson* recognized three elements of an ICFA claim for an unfair and oppressive business practice: (1) offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; (3) causes substantial injury to consumers. Moreover, "[a]ll 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.'" *Robinson*, 201 Ill.2d at 418, *citing Cheshire,* 223 Conn. at 106, 612 A.2d at 1143-44.

As previously discussed, *supra,* in Section I of the Argument at pages 21-26, Plaintiff pled facts to satisfy all three of the *Robinson* factors, so it is not necessary to consider "the degree to which it meets one of the criteria or because to a lesser extent it meets all three." *Id.* In light of those allegations of fact, the circuit court should not have dismissed Count II.

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

Like the circuit court, the appellate court recognized that Illinois "[c]ourts have held that a plaintiff may predicate a consumer fraud claim on violation of other statutes or regulations which do not themselves allow for a private right of action." *Greenswag*, 2025 IL App (1st) 240289-U at ¶27, *citing Gainer Bank, N.A.*, 284 Ill. App. 3d at 503 (holding that plaintiff may predicate a consumer fraud claim on violation of the Illinois Motor Vehicle Retail Installment Sales Act, which itself does not allow for a private right of action) and *Boyd v. U.S. Bank, N.A. ex rel. Sasco Aames Mortg. Loan Trust Series 2003-1*, 787 F. Supp. 2d 747, 752 (N.D. Ill. 2011) (Feinerman, J.) (plaintiff predicated consumer fraud claim on violation of the Home Affordable Modification Program). Nonetheless, the appellate court refused to give effect to an ICFA claim predicated in part on a violation of Section

22.1, a statute that does not allow for a private right of action. *See Channon*, 2022 IL 128040 at ¶34.

Consequently, when applied in conjunction with this Court's opinion in *Channon*, the appellate court decision below places Plaintiff and similarly situated condo sellers into a "Catch-22" situation: such sellers cannot bring an implied private right of action for a Section 22.1 violation but also cannot bring a cause of action that the Legislature has actually provided -- *i.e.*, an ICFA claim for an unfair business practice predicated in part on a Section 22.1 violation that caused injury -- because no implied, private right action exists under Section 22.1.

Through its misapplication of the ICFA, this Court's decisions in *Robinson* and *Channon* and its misreading of the plain language of Section 22.1, the appellate court decision makes it impossible for condo sellers to recover unreasonably excessive overcharges for Section 22.1 documents. This is why Plaintiff and similarly situated condo sellers[3] face a Catch-22 problem now: while an implied private right of action is not available under Section

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3 This is not an isolated case. At least six lawsuits have been filed in the Circuit Court of Cook County alone alleging that condominium property managers and/or associations violated the ICFA by charging excessive fees well beyond "reasonable out-of-pocket costs" for Section 22.1 documents. *See Brown v. GNP Management Group LLC*, 2029 CH 06868 (dismissed by stipulation of the parties); *Channon v. Westward Management, Inc.*, 2019 CH 04869 (pending); *Greenswag v. Lieberman Management Services, Inc.*, 2016 CH 15920 (this case); *Karlins v. Berkson & Sons LTD*, 2021 CH 05793 (pending); *Ogoy v. American Community Management, Inc.*, 2022 CH 00145 (pending); *Pak v. Advantage Management, Inc.*, 2021 CH 06393 (settlement pending).

22.1, *Channon*, 2022 IL 128040 at ¶34, the ICFA still provides condo sellers with an express, statutory remedy but, according to the appellate court below, that statutory remedy is also not available because neither an express nor implied right of action exists under Section 22.1. *Greenswag v. Lieberman Mgmt. Servs., Inc.*, 2025 IL App (1st) 240289-U, ¶¶28-30. In other words, the decision below erroneously created a circular conundrum that leaves wronged condo sellers without any available remedy to recover unreasonably excessive overcharges for Section 22.1 documents, particularly the remedy under the ICFA that the Legislature provided. Such a conundrum subverts the law and should not be countenanced.

As the appellate decision has no durable legal basis, this Court should reverse both the circuit and appellate courts and relieve condo sellers like Plaintiff and members of the plaintiff class from the needless "Catch-22" position that the appellate decision has created.

A. The Appellate Court Misconstrued And Misapplied This Court's Decision In *Channon*.

In finding that Plaintiff did not state a cognizable ICFA claim because no express or implied cause of action exists under Section 22.1, see *Greenswag*, 2025 IL App (1st) 240289-U at ¶29, the appellate court cited and relied on *Channon*. The appellate court's reliance on *Channon* is misplaced.

Channon did not address the ICFA but rather held that Section 22.1 did not create an implied private right of action for sellers for a violation of that statute. *See Channon*, 2022 IL 128040 at ¶31 ("we conclude the

legislature did not intend Section 22.1 to imply a private right to relief for unit sellers such as the Channons"). From this narrow holding, the appellate court leapfrogged to the conclusion that the ICFA offers neither a cause of action nor a remedy where a homeowners' association or its management agent engages in an unfair business practice, here charging condominium sellers or prospective condominium sellers an excessive and unreasonable fee for Section 22.1 documents. No legal basis exists for such a conclusion.

The appellate court apparently found that because this Court *expressly* held that an implied private right of action for a condominium seller does not exist under Section 22.1, it also *implicitly* held that the cause of action that the legislature actually did create -- an ICFA claim for engaging in an unfair and oppressive business practice, namely property managers charging $470.00 for Section 22.1 documents that cost virtually nothing to prepare and doing so in a manner that is unscrupulous and against public policy -- also does not exist. Not so.

The fact that Section 22.1 does not confer an implied, private of action, *see Channon*, 2022 IL 128040 at ¶31, simply does not matter here because the ICFA provides an express cause of action and a remedy for unfair and oppressive conduct predicated in part on a violation of Section 22.1(c). Furthermore, as *Metzger* shows, one of the factors courts apply when considering whether an implied, private statutory cause of action exists is whether it is even necessary. *See Metzger*, 209 Ill.2d at 36. The ICFA shows

that an implied cause of action was not necessary for Plaintiff to seek redress for the injury that the conduct alleged against Defendant caused.

Not insignificantly, at the 32 minute 5 second mark of the video of the oral argument in *Channon*, then Justice Robert Carter, the author of *Channon*, stated the following to the defendant's counsel in connection with the need for an implied private right of action under Section 22.1: "I've been checking for [the four *Metzger*] factors, whether there was an adequate remedy at law, there were adequate remedies at law that were not followed through with, correct? There was a cause of action that deals with the Consumer Fraud Act."[4] Justice Carter also engaged in the following colloquy with the defendant's counsel at the 12 minute 34 second mark:

> Justice Carter: Here, there is an action under the Consumer Fraud Act, right? There could be an action under the Consumer Fraud Act.
>
> Defendant's counsel: And they're bringing it. Plaintiff brought an action under the Consumer Fraud Act against Westward Management. So, that by itself is an adequate remedy. They're going under the Consumer Fraud Act.

The fourth *Metzger* factor in determining the existence of an implied private right of action under a statute is whether "it is necessary to imply a private right of action to provide an adequate remedy for the statutory violation."

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4 See https://www.illinoiscourts.gov/courts/supreme-court/oral-argument-audio-and-video/ for *Channon v. Westward Management, Inc.*, No. 128040 argued on September 21, 2022.

Channon, 2022 IL 128040, ¶7, *citing Metzger*, 209 Ill. 2d at 36. At the *Channon* oral argument, Justice Carter focused on this fourth factor and noted that the existence of an express remedy under the ICFA obviated the need to imply a private right of action under Section 22.1.

Instead of applying *Midwest Medical Records Ass'n* and *Marshall* -- the progeny of *Metzger* and *Fisher v. Lexington Health Care, Inc.,* 188 Ill. 2d 455, 460 (1999)[5] -- to determine whether Plaintiff stated an ICFA claim predicated in part on a Section 22.1 violation, the appellate court should have applied *Robinson* instead and should have reversed the trial court's dismissal of Count II.

When the appellate court applied the wrong legal test for determining whether Plaintiff properly stated an ICFA claim in Count II, it committed error and this error was not harmless. It took away an express, statutory cause of action from Plaintiff and, indeed, all condo sellers, who have been subject to the unfair and oppressive business practice of being charged $470.00 for Section 22.1 documents, where the actual cost is, at most, *de minimis*. (C. 356.) There are hundreds of thousands of condo owners in Illinois. The decision below, if not reversed, would lead to ongoing consumer harm, as it would leave such condo owners without any viable legal remedy to address this injury.

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5 In *Metzger*, 209 Ill. 2d at 36, this Court applied the four-factor test previously set out in *Fisher*, 188 Ill. 2d at 460, to determine the existence of an implied, private right of action for a statutory violation. *See also Channon*, 2022 IL 128040, ¶7 (same).

Channon is not the litigation equivalent of the "Get Out of Jail Free card" from the Monopoly board game that property managers can deploy to avoid liability under the ICFA when charging a sum that far exceeds a reasonable fee covering the direct out-of-pocket cost for Section 22.1 documents. *Channon* cannot bear the weight that the appellate court placed upon it.

B. The Appellate Court Effectively Read The Phrase "Reasonable Fee Covering The Direct Out-Of-Pocket Cost" Out Of Section 22.1.

Like the circuit court, the appellate court not only mis-read Section 22.1 but also read the phrase "a reasonable fee covering the direct out-of-pocket cost" out of Section 22.1(c) altogether.

In this regard, the appellate court stated, "we also note that the legislature amended section 22.1(c) by changing the phrase "a reasonable fee" to "a reasonable fee not to exceed $375" and provided that a condominium association could charge unit sellers an additional $100 for rush service. This amendment clarifies what constitutes a "reasonable fee" under section 22.1(c)." *Greenswag*, 2025 IL App (1st) 240289-U at ¶30. The legislative amendment did not deem $375 to be a "reasonable fee for out-of-pocket costs" in all circumstances and, in so finding, the appellate court erred.

In order to avoid needless repetition, Plaintiff incorporates and re-states her arguments, *supra*, at Section II(B) of the Argument at pages 28-32 that:

1. Courts cannot add or subtract language to statutes.

2. Courts must give effect to the plain language of statutes.

3. The term "reasonable fee" should be read as a fixed charge that accords with reason and that is not extreme or excessive.

4. The term "direct out-of-pocket cost" is limited to the actual out of pocket cost that Defendant incurred.

5. The inclusion of $375 as a ceiling for the fees charged for Section 22.1 documents does not negate the inclusion of the phrase "reasonable fee covering the direct out-of-pocket cost" in Section 22.1(c).

6. The question of what constitutes "a reasonable fee covering the direct out-of-pocket cost" in Section 22.1(c) is one to be addressed during discovery and at trial and certainly not at the pleadings stage on a motion to dismiss.

7. The question of what constitutes "a reasonable fee covering the direct out-of-pocket cost" in Section 22.1(c) is a question of fact for the finder of fact and is not one for the court on a Section 2-615 motion to dismiss.

In sum, due its misreading of the ICFA, Section 22.1, *Robinson* and principles of statutory interpretation, including when statutory amendments are retroactive or prospective, and its resolution of jury issues on a motion to dismiss, the circuit court issued a decision that is legally untenable and cannot stand. Based on its misapplication of *Channon* and misreading of Section 22.1 and the ICFA, the appellate court issued a decision affirming the circuit court that also cannot stand.

For her ICFA unfair business practice claim predicated in part on a Section 22.1(c) violation, the ICFA provides Greenswag with an express

remedy of economic damages and other relief. *See* 815 ILCS 505/10a(a) and 815 ILCS 505/10a(c). In light of the holding in *Channon* that Section 22.1 does not provide an implied, private right of action, it is incumbent for this Court to give effect to the cause of action that the Legislature has expressly provided in the ICFA, such as the one that Greenswag pled in Count II.

The decisions of the circuit and appellate courts should be reversed.

CONCLUSION

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

Respectfully submitted

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

By: *s/Paul A. Castiglione*
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CERTIFICATION OF COMPLIANCE

I, Paul A. Castiglione, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 49 pages.

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

CERTIFICATE OF SERVICE

I, Kasif Khowaja, an attorney, hereby certifies that on November 19, 2025, a true and correct copy of the Plaintiff-Petitioner's Brief was served via Odyssey eFileIL, an approved electronic filing service provider, pursuant to Illinois Supreme Court Rule 11(c), upon the following counsel of record:

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

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No. 132101

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

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

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2025 IL App (1st) 240289-U

No. 1-24-0289

Order filed June 25, 2025

THIRD DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

DEBORAH GREENSWAG, AS SUCCESSOR TRUSTEE OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, individually and on behalf of all similarly situated individuals,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 16 CH 15920
LIEBERMAN MANAGEMENT SERVICES, INC., an Illinois Corporation,	)	Honorable Caroline K. Moreland, Judge Presiding.
Defendant-Appellee.	)	

JUSTICE MARTIN delivered the judgment of the court.
Justices Reyes and D.B. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's judgment dismissing the consumer fraud claim in count II of the second amended class action complaint.

¶ 2 Plaintiff, Deborah Greenswag, as successor trustee of the Franklin P. Friedman Living Trust, individually, and on behalf of all others similarly situated, appeals from an order of the trial court dismissing count II of her second amended class action complaint. The count asserted a claim

for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2018)). The consumer fraud claim was predicated on allegations that the defendant, Lieberman Management Services, Inc. (Lieberman Management), acted unfairly by charging owners engaged in selling their condominium units unreasonable and excessive fees to obtain statutorily required disclosure documents. For the reasons that follow, we affirm.[1]

¶ 3 I. BACKGROUND

¶ 4 In October 2016, Franklin P. Friedman contracted to sell his unit located in the Mission Hills Condominiums in Northbrook, Illinois. As a condition of sale, Friedman was required to provide the prospective buyer with disclosure documents as specified in section 22.1(a) of the Condominium Property Act (Act) (765 ILCS 605/22.1(a)(1)-(9) (West 2016)). Section 22.1(a) requires a seller of a condominium to "give the prospective buyer a copy of the condominium declaration and bylaws, the condominium association's rules, and an array of other documents bearing on the current financial status of the property." *Horist v. Sudler & Co.*, 941 F.3d 274, 276 (7th Cir. 2019) (citing 765 ILCS 605/22.1(a) (West 2016)).

¶ 5 Friedman requested the disclosure documents from Lieberman Management, who had been retained by the Mission Hills Condominium Association to act as its agent in managing the condominium property. Lieberman Management provided, through their vendor condocerts.com, the requested disclosure documents and other materials to Friedman at a cost of $445.[2]

¶ 6 Friedman believed he had been overcharged for the documents. On December 8, 2016, as trustee of the Franklin P. Friedman Living Trust, on behalf of himself and all others similarly

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[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon entry of a separate written order.

[2]This cost encompassed various fees, including condocerts.com service fees.

situated, Friedman filed a three-count class action complaint against Lieberman Management. Count I alleged that Lieberman Management violated section 22.1(c) of the Act by charging unit sellers unreasonable fees to obtain the disclosure documents. At that time, section 22.1(c) provided in relevant 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). Count II alleged that the violation of section 22.1(c) constituted an unfair business practice in violation of section 2 of the Consumer Fraud Act (815 ILCS 505/2 (West 2016)). Count III alleged a claim for restitution/unjust enrichment and was pled in the alterative to counts I and II.

¶ 7 Lieberman Management filed a motion to dismiss the class action complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). In an order entered on June 14, 2017, the trial court denied dismissal of the section 22.1(c) claim in count I; dismissed the consumer fraud claim in count II, with leave to replead; and dismissed the restitution/unjust enrichment claim in count III, with prejudice.

¶ 8 On July 12, 2017, Friedman filed a first amended class action complaint, which included a re-pled consumer fraud claim in count II. Lieberman Management moved to dismiss. It also filed a motion pursuant to Illinois Supreme Court Rule 308(a) (eff. July 1, 2017), asking the trial court to certify certain questions of law for appellate review. The trial court granted the motion and certified the following two questions for interlocutory review:

1. "Whether *** [section 22.1] of the Illinois Condominium Property Act (the 'Act') allows a cause of action to be brought by a condominium unit seller against a property management company, 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 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?"

¶ 9 The trial court stayed the proceedings pending resolution of Lieberman Management's application to our court for leave to appeal. We initially entered an order granting the application. However, upon reconsideration, we concluded that the order was "improvidently" granted, as there were no allegations or underlying facts in the complaint demonstrating the existence of an agency relationship between Lieberman Management and the Condominium Association. See *Friedman v. Lieberman Management Services, Inc.*, 2019 IL App (1st) 180059-U. As a result, we elected not to answer the certified questions on the ground that answering them "would not materially advance the litigation toward termination." *Id.* We vacated our order granting the application for leave to appeal, dismissed the appeal, and remanded the matter for further proceedings. *Id.*

¶ 10 In December 2019, Deborah Greenswag, as successor trustee of the Franklin P. Friedman Living Trust, individually, and on behalf of all others similarly situated, filed a second amended complaint against Lieberman Management. The second amended class action complaint included the same counts as the first amended class action complaint but added a count IV alleging an alternative theory of consumer fraud. Lieberman Management again moved to dismiss pursuant to section 2-615 of the Code.

¶ 11 On April 1, 2021, the trial court dismissed count I with prejudice, finding that section 22.1(c) did not provide an implied cause of action in favor of a condominium seller against a property manager. The court also denied dismissal of the consumer fraud claim in count II, and dismissed the alternative consumer fraud claim in count IV with prejudice.

¶ 12 Greenswag requested a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) regarding the dismissal of the section 22.1(c) claim in count I. In support of the request, Greenswag noted that the relevant issue was pending before the appellate court in *Channon v. Westward Management, Inc.*, 2019 CH 4869.

¶ 13 On May 17, 2021, the trial court granted Greenswag's request for a Rule 304(a) finding. The trial court found there was no just reason to delay enforcement of or appeal from its dismissal of the section 22.1(c) claim in count I; dismissal of the alternative consumer fraud claim in count IV; and dismissal of the restitution/unjust enrichment claim in count III. Greenswag appealed from these dismissals.

¶ 14 On December 7, 2021, the appellate court in *Channon* issued its opinion finding that section 22.1(c) provides an implied cause of action in favor of a unit seller against a property manager based on allegations of excessive fees. *Channon v. Westward Management, Inc.*, 2021 IL App (1st) 210176, ¶¶ 38-39. The Illinois Supreme Court subsequently granted a petition for leave to appeal in *Channon* and this appeal was stayed pending the supreme court's resolution.

¶ 15 In an opinion filed on November 28, 2022, the Illinois Supreme Court reversed the appellate court in *Channon*. *Channon v. Westward Management, Inc.*, 2022 IL 128040. The Illinois Supreme Court concluded that "section 22.1 of the Condominium Property Act does not create an implied private right of action by a unit seller against an agent of a condominium association or its board of managers for allegedly violating the fee limitations set forth in section 22.1(c)." *Id.* ¶ 34.

No. 1-24-0289

¶ 16 While the matter was pending before this court, the legislature amended section 22.1(c). The amended version provides in relevant part that:

> "A reasonable fee, not to exceed $375, covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information. *** An association may charge an additional $100 for rush service completed within 72 hours." 765 ILCS 605/22.1 (West 2024) (text as amended by Public Act 102-976, § 5, eff. Jan. 1, 2023).

¶ 17 Following the statute's amendment, Lieberman Management filed a motion to reconsider, asking the trial court to reconsider its decision denying dismissal of the consumer fraud claim in count II, in light of the Illinois Supreme Court's decision in *Channon*.

¶ 18 Upon reconsideration, the trial court entered a memorandum opinion and order on January 26, 2024, dismissing the consumer fraud claim by retroactively applying the amended version of section 22.1(c). The trial court compared the prior and amended versions of the statute and concluded that the prior version was ambiguous as to what constituted a "reasonable fee."

¶ 19 The trial court found that the amended language "not to exceed $375" resolved the ambiguity by clarifying "that a reasonable fee is less than $375 plus $100 for any rush services." The trial court determined that the 2023 amendment simply clarified existing law, and therefore the amended version of section 22.1(c) could be applied retroactively without violating the general prohibition against retroactive application of statutory provisions.

¶ 20 The trial court concluded that the allegations against Lieberman Management were insufficient to establish a consumer fraud claim premised on unfairness, where the statute upon which the claim was predicated expressly allowed a condominium association to charge condominium sellers a maximum fee of $475—and Friedman was charged a total of $445. The

trial court granted Lieberman Management's motion for reconsideration and dismissed the consumer fraud claim in count II, with prejudice, pursuant to section 2-615 of the Code, effectively dismissing the entire action. The trial court stated that its order was final and appealable. This timely appeal followed.

¶ 21 II. ANALYSIS

¶ 22 We recognize that Greenswag raises several issues on appeal. However, we need only address one, as it is dispositive. We must determine whether the allegations against Lieberman Management are sufficient to state a cause of action for consumer fraud predicated on the purported violation of section 22.1(c) of the Act. The trial court dismissed the claim with prejudice pursuant to section 2-615 of the Code.

¶ 23 A motion to dismiss under section 2-615 challenges the legal sufficiency of a complaint by alleging defects apparent on its face. 735 ILCS 5/2-615 (West 2022); *Bowes v. Alvarez*, 2024 IL App (1st) 230749, ¶ 18. In reviewing the sufficiency of the complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts, and we construe the allegations in the light most favorable to the plaintiff. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The critical question in reviewing the motion "is whether the allegations of the complaint, taken as true and construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Berry v. City of Chicago*, 2020 IL 124999, ¶ 25. We review a trial court's grant of a section 2-615 motion *de novo*. *Id.* In addition, this case involves an issue of statutory construction, which we also review *de novo*. *Sweeney v. City of Decatur*, 2017 IL App (4th) 160492, ¶ 13.

¶ 24 The cardinal rule in construing a statute is to ascertain and give effect to the intent of the legislature. *In re Jarquan B.*, 2017 IL 121483, ¶ 22. "The most reliable indicator of that intent is

the plain and ordinary meaning of the statutory language itself." *Id.* "If the language of a statute is clear and unambiguous, we will give effect to the statute's plain meaning without resort to other aids of statutory construction." *Id.*

¶ 25 "The Consumer Fraud Act is a regulatory and remedial statute intended to protect consumers, borrowers, and businesspersons against fraud, unfair methods of competition, and other unfair and deceptive business practices." *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 416-17 (2002). Our courts have determined that:

> "In order to plead a private cause of action for a violation of the Consumer Fraud Act, a plaintiff must allege '(1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception.' " *Flores v. Aon Corp.*, 2023 IL App (1st) 230140, ¶ 41 (quoting *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002)).

¶ 26 Here, no deception is alleged. Instead, Greenswag contends charging what she describes as excessive fees is unfair. A business practice may be found unfair "if it (1) offends public policy; (2) is so oppressive that the consumer has little alternative but to submit; and (3) causes substantial injury to consumers." *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 28.

¶ 27 Greenswag's consumer fraud claim is predicated on alleged violations of section 22.1(c) of the Act. Courts have held that a plaintiff may predicate a consumer fraud claim on violation of other statutes or regulations which do not themselves allow for a private right of action. See *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1996) (holding that plaintiff may predicate a consumer fraud claim on violation of the Illinois Motor Vehicle Retail Installment Sales Act, which itself does not allow for a private right of action); *Boyd v. U.S. Bank, N.A. ex rel. Sasco*

Aames Mortg. Loan Trust Series 2003-1, 787 F. Supp. 2d 747, 752 (N.D. Ill. 2011) (plaintiff predicated consumer fraud claim on violation of the Home Affordable Modification Program).

¶ 28 However, "[w]hen a plaintiff seeks to use a statutory enactment as a predicate for a tort action seeking damages, he must demonstrate that a private right of action is either expressly granted or implied in the statute." *Midwest Medical Records Association, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶ 42. At the time Greenswag filed her consumer fraud claim, section 22.1(c) provided in relevant 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). This section does not provide unit sellers with an express private right of action to challenge "fees" charged by property managers, such as Lieberman Management, acting on behalf of condominium associations. See *Channon*, 2022 IL 128040, ¶ 29 (noting federal case law has affirmed unit sellers have no express cause of action).

¶ 29 "When a statute prescribing or proscribing certain conduct does not expressly provide for a private right of action to redress violations of its provisions, a court will sometimes find an *implied* private right of action in that statute." (Emphasis in original.) *1541 North Bosworth Condominium Association v. Hanna Architects, Inc.*, 2021 IL App (1st) 200594, ¶ 34. Here, since section 22.1(c) does not provide condominium sellers with an express private right of action, Greenswag's consumer fraud claim is viable only if she can demonstrate that section 22.1(c) contains an implied private right of action for condominium sellers. Greenswag, however, cannot demonstrate this, as our supreme court has concluded that "section 22.1 of the of Condominium Property Act does not create an implied private right of action by a unit seller against an agent of a condominium association or its board of managers for allegedly violating the fee limitations set

forth in section 22.1(c)." *Channon*, 2022 IL 128040, ¶ 34.

¶ 30 Thus, following the guidance from our supreme court in *Channon*, we find that section 22.1(c) does not provide condominium sellers with either an express or implied private right of action to challenge "fees" charged by property managers acting on behalf of condominium associations or board of managers.[3] Relatedly, we also note that the legislature amended section 22.1(c) by changing the phrase "a reasonable fee" to "a reasonable fee not to exceed $375" and provided that a condominium association could charge unit sellers an additional $100 for rush service. This amendment clarifies what constitutes a "reasonable fee" under section 22.1(c) and it places a cap of $475 as the maximum fee a condominium association can charge unit sellers to obtain statutorily required disclosure documents.

¶ 31 III. CONCLUSION

¶ 32 We find the trial court did not err in dismissing the consumer fraud claim with prejudice pursuant to section 2-615 of the Code. Accordingly, we affirm the trial court's decision.

¶ 33 Affirmed.

[3]Two Illinois federal district courts and the Seventh Circuit Court of Appeals have reached similar results. See *Horist v. Sudler & Co.*, 941 F.3d 274, 276 (7th Cir. 2019); *Murphy v. Foster Premier, Inc.*, No. 17 CV 8114, 2018 WL 3428084 (N.D. Ill. July 16, 2018); *Ahrendt v. Condocerts.com, Inc.*, No. 17 CV 8418, 2018 WL 2193140 (N.D. Ill. May 14, 2018).

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

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

DEBORAH GREENSWAG, AS SUCCESSOR TRUSTEE OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, individually and on behalf of all others similarly situated,	)	Case No. 16 CH 15920
	)	Hon. Caroline K Moreland
	)	Judge Presiding
	)	Cal. 10
Plaintiff,	)	
v.	)	
LIEBERMAN MANAGEMENT SERVICES, INC., an Illinois Corporation,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Motion to Reconsider this Court's April 1, 2021 Order (the "April 2021 Order") filed by Defendant Lieberman Management Services, Inc. ("Lieberman Management").

I. Background

In October 2016, Franklin P. Friedman ("Mr. Friedman") sold his condominium unit located in the Mission Hills development (the "Property"). On September 27, 2016, prior to the closing of the sale of the Property, Mr. Friedman agreed to provide to the buyer certain items of disclosure regarding the Property and the Mission Hills condominium association (the "Association") pursuant to Section 22.1 of the Illinois Condominium Act (the "Condo Act"). Section 22.1 allows an association to charge "a reasonable fee covering the direct out-of-pocket cost" of complying with the Section's disclosure requirements. Mr. Friedman also agreed to a closing date of October 4, 2016.

Plaintiff requested the required disclosure documents from Defendant Lieberman Management, a company retained by the Association to act as its agent in managing the development. Mr. Friedman then received the disclosure documents prior to the October 4, 2016 closing date. Plaintiff alleges he was charged $470 for the request which included a rush fee.

On December 17, 2019, Mr. Friedman filed a four-Count[1] Second Amended Class Action Complaint (the "Complaint") against Defendant Lieberman Management. Count I alleged that the $470 fee collected in connection with the disclosure documents and services is unreasonable under Section 22.1 of the Condo Act. Count II alleged that the fee constituted a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"). Count IV, pled in the alternative to all other Counts, alleged a violation of Section 9.2 of the Condo Act as a

[1] Count III of the Complaint was pled solely to preserve the issue for future appeal.

separate violation of the ICFA. Defendant subsequently moved to dismiss Counts I, II, and IV of the Complaint.

The April 2021 Order

On April 1, 2021, this Court granted Defendant's Motion to Dismiss Counts I and IV with prejudice. The Court denied Defendant's Motion as to Count II, reasoning that Count II was not properly dismissed because Plaintiff had sufficiently pled the required elements of an unfairness claim under the ICFA.

Defendant now moves the Court to reconsider its April 2021 Order as to Count II based on the Illinois Supreme Court decision in *Channon v. Westward Management* which held that Section 22.1 of Condo Act does not create a private right of action. 2022 IL 128040, ¶ 2. Defendant also moves the Court to reconsider its Order based on an amendment to Section 22.1 of the Condo Act, effective January 1, 2023, which clarified that associations and boards could charge no more than $475 including any rush fees in connection with producing the Section 22.1 disclosure documents.

II. Legal Standard

"The purpose of a motion to reconsider is to bring to a court's attention (1) newly discovered evidence, (2) changes to the law, and (3) errors in the court's previous application of existing law." *Jones v. Live Nation Entm't, Inc.*, 2016 IL App (1st) 152923, ¶ 29. "Legal theories and factual arguments not previously made are waived." *Id.*

III. Analysis

Defendant first argues that this Court should dismiss Count II of the Complaint because since its April 2021 Order denying Defendant's Motion to Dismiss Count II, the Illinois Supreme Court issued its opinion in *Channon v. Westward Management, Inc.* observing that condominium sellers are not members of the class that Section 22.1 of the Condo Act intended to protect. Defendant argues that Count II necessarily fails because it relies upon a finding that Defendant violated Section 22.1 of the Condo Act which, as held in *Channon*, is not intended to protect condominium sellers like Mr. Friedman.

However, Defendant misconstrues the reasoning and holding of *Channon*. The sole issue before the Supreme Court in *Channon* was whether Section 22.1 of the Condo Act created a private right of action. *Channon v. Westward Management*, 2022 IL 128040, ¶ 17. In determining whether the Condo Act created an implied private right of action, one of the factors the Court considered under the four-factor *Metzger* test was whether the plaintiffs were "members of the class the legislature intended to *primarily* benefit or if their receipt of a merely incidental benefit is sufficient to confer class status." *Id.* ¶ 22. The Court determined that Section 22.1 was not intended to primarily benefit condominium sellers. *Id.* ¶¶ 24-25.

In brief, the Supreme Court's determination that Section 22.1 was not intended to protect condominium sellers was only one factor in a four-factor test for determining whether a statute

implied a private right of action. It was this factor and the associated reasoning that led to the *Channon* Court's ultimate holding that Section 22.1 of the Condo Act did not create a private right of action. Courts have held, on the other hand, that plaintiffs "may predicate an ICFA unfairness claim on violations of other statutes that do not allow for a private right of action." *Clayborn v. Walter Investment Management Corp.*, No. 18-cv-3452, 2019 U.S. Dist. LEXIS 34707, at *14 (N.D. Ill. Mar. 5, 2019); *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1st Dist. 1996) (observing that a plaintiff may predicate an ICFA claim on defendant's violation of the Illinois Motor Vehicle Retail Installment Sales Act which does not itself provide for a private right of action). Thus, nothing in the *Channon* Court's holding or reasoning would prevent Plaintiff in this matter from bringing a claim under the ICFA despite only being incidentally benefitted by Section 22.1 of the Condo Act.

Defendant further argues that dismissal of Count II is proper because Section 22.1 has been amended since this Court's April 2021 Order to prohibit associations and boards from charging no more than $475 including any rush fees. According to Defendant, the fact that Plaintiff was only charged $450, less than the amended statutory maximum, shows that such fees are not against public policy which is one of the factors courts consider in determining whether conduct is unfair under the ICFA. The Court agrees.

Under the ICFA, a business practice is unfair if it: (1) offends public policy, (2) is immoral, unethical, oppressive, or unscrupulous, and (3) causes substantial injury to consumers. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417, 775 (2002). A practice may offend public policy if it violates a standard of conduct contained in an existing statute or common law doctrine that typically applies to such a situation. *Ekl v. Knecht*, 223 Ill. App. 3d 234, 242 (2nd Dist. 1991). As noted above, Plaintiff's claim under the ICFA is based on a purported violation of the Condo Act. Thus, we look to the standard of conduct set for in the Condo Act to evaluate Plaintiff's claim under the ICFA.

Here, Section 22.1(c) of the Condo Act was amended, effective January 1, 2023, as follows:

> A reasonable fee, **not to exceed $375**, covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.
>
> ***
>
> **An association may charge an additional $100 for rush service completed within 72 hours.**

765 ILCS 605/22.1(c) (emphasis added to indicate amendment). In short, Section 22.1 allows a condominium association to charge a reasonable fee, not to exceed $475, for rush service and expenses associated with the production and copying of certain disclosure documents required under the Condo Act.

Count II alleges that Defendant's charge of $470[2] for providing the necessary Section 22.1 disclosure documents was "excessive and unreasonable" under the Condo Act (Pl.'s 2nd Am. Compl., ¶¶ 104-05). The Complaint further alleges that Defendant's $470 charge is "unethical, oppressive, or unscrupulous" because Mr. Friedman and the other class members had no other option but to pay the fee to obtain the disclosure documents which are required by law to be provided to any potential buyers. (*Id.* ¶¶ 105-06). Last, Plaintiff alleges that Defendant's fee causes substantial injury because Mr. Friedman and the other class members were forced to pay fees that exceeded any out-of-pocket costs incurred by Defendant in the production of the required disclosure documents. (*Id.* ¶ 111). However, such allegations cannot amount to a claim under the ICFA when the statute upon which the ICFA claim is predicated expressly allows an association to charge a maximum fee, including any rush fee, of $475, and Plaintiff in this matter alleges he was charged $470.

Plaintiff, nonetheless, contends that the Court cannot retroactively apply the Section 22.1 amendment to this matter. "The general rule is that an amendment to a statutory provision can only be applied prospectively unless the legislature expressly provides that it is to have retroactive effect." *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 567-68 (1st Dist. 1994). However, where a statutory provision is ambiguous "and the amendment merely clarifies existing law," the general rule against retroactive application does not apply and the court may consider the amendment to determine the meaning of the ambiguous provision. *Id.* at 568. "An ambiguity exists when a statute is capable of being understood in two or more different senses by reasonably well-informed persons." *People v. Askew*, 341 Ill. App. 3d 548, 552 (1st Dist. 2003).

As observed above, the amendment to Section 22.1 added the language "not to exceed $375" following the phrase "reasonable fee." Without the amended language, the statute is ambiguous because what constitutes a "reasonable fee" is capable of being understood in a multitude of senses. The amended language "not to exceed $375" simply clarifies that a reasonable fee is less than $375 plus $100 for any rush services. Thus, this Court properly considers the amended language in resolving Defendant's Motion to Reconsider.

Moreover, the Illinois Supreme Court has noted that "charging an unconscionably high price generally is insufficient to establish a claim for unfairness" under the ICFA. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418 (2002).

For these reasons, Defendant's Motion to Reconsider is properly granted, and Count II of Plaintiff's Complaint is dismissed.

IV. Conclusion

1. Defendant's Motion to Reconsider is GRANTED.
2. Count II is dismissed with prejudice.

---

[2] Plaintiff appears to improperly calculate and allege the fee collected from Defendant to be $470. The exhibits attached to the Second Amended Complaint show that Mr. Friedman's attorney ordered a disclosure document package for $220 (including a $20 service fee to CondoCerts), a paid assessment letter for $150, and a rush service fee of $75 for a total of $445 paid by Mr. Friedman's attorney to Defendant. In any event, whether the fee was $445 as calculated by Defendant or $470 as alleged by Plaintiff, Defendant's Motion to Reconsider is properly granted because either fee amount falls below the maximum fee allowed for under Section 22.1 as amended.

3. This a final and appealable order.

Judge Caroline Kate Moreland
JAN 26 2024
Circuit Court - 2033

Dated

Judge Caroline Kate Moreland No. 2033

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT

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

Deborah Greenswag, as Successor Trustee of the Franklin P. Friedman Living Trust, individually and on behalf of all similarly situated individuals, Plaintiff-Appellant, v. Lieberman Management Services, Inc., an Illinois corporation, Defendant-Appellee.	2016 CH 15920 Honorable Caroline K. Moreland, Judge Presiding

NOTICE OF APPEAL

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Attorneys for Lieberman Management Services, Inc.

Please take notice that the Plaintiff-Appellant, DEBORAH GREENSWAG, as Successor Trustee of the Franklin P. Friedman Living Trust ("Greenswag" or "Plaintiff-Appellant"), individually and on behalf of all similarly situated individuals, by her attorneys, JAMES X. BORMES

and CATHERINE SONS of the Law Office of James X. Bormes, P.C., THOMAS M. RYAN of the Law Office of Thomas M. Ryan, P.C., and KASIF KHOWAJA and PAUL A. CASTIGLIONE of the Khowaja Law Firm, LLC, pursuant to Illinois Supreme Court Rules 301 and 303, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the following Order of the Circuit Court of Cook County: the order entered on January 26, 2024 that: (1) granted the motion to reconsider that defendant Lieberman Management Services, Inc., an Illinois corporation filed, (2) dismissed Count II of Plaintiff-Appellant's Complaint and (3) dismissed the lawsuit. A copy of the January 26, 2024 order is attached hereto as Exhibit A.

On appeal, Plaintiff-Appellant Greenswag requests that the Appellate Court reverse the Circuit Court's January 26, 2024 order granting the motion to reconsider, dismissing Count II of the Complaint and dismissing the lawsuit. Greenswag further requests that this Honorable Court remand the case for further proceedings.

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

By: *Kasif Khowaja*
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on February 7, 2024, he caused a true and correct copy of the foregoing to be served upon the following parties by email through the electronic filing system of the Clerk of the Circuit Court of Cook County:

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Dated: February 7, 2024

s/ Kasif Khowaja

Exhibit A

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

DEBORAH GREENSWAG, AS SUCCESSOR TRUSTEE OF THE FRANKLIN P. FRIEDMAN LIVING TRUST, individually and on behalf of all others similarly situated,	)	Case No. 16 CH 15920
	)	Hon. Caroline K Moreland
	)	Judge Presiding
	)	Cal. 10
Plaintiff,	)	
v.	)	
LIEBERMAN MANAGEMENT SERVICES, INC., an Illinois Corporation,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the Motion to Reconsider this Court's April 1, 2021 Order (the "April 2021 Order") filed by Defendant Lieberman Management Services, Inc. ("Lieberman Management").

I. Background

In October 2016, Franklin P. Friedman ("Mr. Friedman") sold his condominium unit located in the Mission Hills development (the "Property"). On September 27, 2016, prior to the closing of the sale of the Property, Mr. Friedman agreed to provide to the buyer certain items of disclosure regarding the Property and the Mission Hills condominium association (the "Association") pursuant to Section 22.1 of the Illinois Condominium Act (the "Condo Act"). Section 22.1 allows an association to charge "a reasonable fee covering the direct out-of-pocket cost" of complying with the Section's disclosure requirements. Mr. Friedman also agreed to a closing date of October 4, 2016.

Plaintiff requested the required disclosure documents from Defendant Lieberman Management, a company retained by the Association to act as its agent in managing the development. Mr. Friedman then received the disclosure documents prior to the October 4, 2016 closing date. Plaintiff alleges he was charged $470 for the request which included a rush fee.

On December 17, 2019, Mr. Friedman filed a four-Count[1] Second Amended Class Action Complaint (the "Complaint") against Defendant Lieberman Management. Count I alleged that the $470 fee collected in connection with the disclosure documents and services is unreasonable under Section 22.1 of the Condo Act. Count II alleged that the fee constituted a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"). Count IV, pled in the alternative to all other Counts, alleged a violation of Section 9.2 of the Condo Act as a

[1] Count III of the Complaint was pled solely to preserve the issue for future appeal.

separate violation of the ICFA. Defendant subsequently moved to dismiss Counts I, II, and IV of the Complaint.

The April 2021 Order

On April 1, 2021, this Court granted Defendant's Motion to Dismiss Counts I and IV with prejudice. The Court denied Defendant's Motion as to Count II, reasoning that Count II was not properly dismissed because Plaintiff had sufficiently pled the required elements of an unfairness claim under the ICFA.

Defendant now moves the Court to reconsider its April 2021 Order as to Count II based on the Illinois Supreme Court decision in *Channon v. Westward Management* which held that Section 22.1 of Condo Act does not create a private right of action. 2022 IL 128040, ¶ 2. Defendant also moves the Court to reconsider its Order based on an amendment to Section 22.1 of the Condo Act, effective January 1, 2023, which clarified that associations and boards could charge no more than $475 including any rush fees in connection with producing the Section 22.1 disclosure documents.

II. Legal Standard

"The purpose of a motion to reconsider is to bring to a court's attention (1) newly discovered evidence, (2) changes to the law, and (3) errors in the court's previous application of existing law." *Jones v. Live Nation Entm't, Inc.*, 2016 IL App (1st) 152923, ¶ 29. "Legal theories and factual arguments not previously made are waived." *Id.*

III. Analysis

Defendant first argues that this Court should dismiss Count II of the Complaint because since its April 2021 Order denying Defendant's Motion to Dismiss Count II, the Illinois Supreme Court issued its opinion in *Channon v. Westward Management, Inc.* observing that condominium sellers are not members of the class that Section 22.1 of the Condo Act intended to protect. Defendant argues that Count II necessarily fails because it relies upon a finding that Defendant violated Section 22.1 of the Condo Act which, as held in *Channon*, is not intended to protect condominium sellers like Mr. Friedman.

However, Defendant misconstrues the reasoning and holding of *Channon*. The sole issue before the Supreme Court in *Channon* was whether Section 22.1 of the Condo Act created a private right of action. *Channon v. Westward Management*, 2022 IL 128040, ¶ 17. In determining whether the Condo Act created an implied private right of action, one of the factors the Court considered under the four-factor *Metzger* test was whether the plaintiffs were "members of the class the legislature intended to *primarily* benefit or if their receipt of a merely incidental benefit is sufficient to confer class status." *Id.* ¶ 22. The Court determined that Section 22.1 was not intended to primarily benefit condominium sellers. *Id.* ¶¶ 24-25.

In brief, the Supreme Court's determination that Section 22.1 was not intended to protect condominium sellers was only one factor in a four-factor test for determining whether a statute

implied a private right of action. It was this factor and the associated reasoning that led to the *Channon* Court's ultimate holding that Section 22.1 of the Condo Act did not create a private right of action. Courts have held, on the other hand, that plaintiffs "may predicate an ICFA unfairness claim on violations of other statutes that do not allow for a private right of action." *Clayborn v. Walter Investment Management Corp.*, No. 18-cv-3452, 2019 U.S. Dist. LEXIS 34707, at *14 (N.D. Ill. Mar. 5, 2019); *Gainer Bank, N.A. v. Jenkins*, 284 Ill. App. 3d 500, 503 (1st Dist. 1996) (observing that a plaintiff may predicate an ICFA claim on defendant's violation of the Illinois Motor Vehicle Retail Installment Sales Act which does not itself provide for a private right of action). Thus, nothing in the *Channon* Court's holding or reasoning would prevent Plaintiff in this matter from bringing a claim under the ICFA despite only being incidentally benefitted by Section 22.1 of the Condo Act.

Defendant further argues that dismissal of Count II is proper because Section 22.1 has been amended since this Court's April 2021 Order to prohibit associations and boards from charging no more than $475 including any rush fees. According to Defendant, the fact that Plaintiff was only charged $450, less than the amended statutory maximum, shows that such fees are not against public policy which is one of the factors courts consider in determining whether conduct is unfair under the ICFA. The Court agrees.

Under the ICFA, a business practice is unfair if it: (1) offends public policy, (2) is immoral, unethical, oppressive, or unscrupulous, and (3) causes substantial injury to consumers. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417, 775 (2002). A practice may offend public policy if it violates a standard of conduct contained in an existing statute or common law doctrine that typically applies to such a situation. *Ekl v. Knecht*, 223 Ill. App. 3d 234, 242 (2nd Dist. 1991). As noted above, Plaintiff's claim under the ICFA is based on a purported violation of the Condo Act. Thus, we look to the standard of conduct set for in the Condo Act to evaluate Plaintiff's claim under the ICFA.

Here, Section 22.1(c) of the Condo Act was amended, effective January 1, 2023, as follows:

> A reasonable fee, **not to exceed $375**, covering the direct out-of-pocket cost of providing such information and copying may be charged by the association or its Board of Managers to the unit seller for providing such information.
>
> ***
>
> **An association may charge an additional $100 for rush service completed within 72 hours.**

765 ILCS 605/22.1(c) (emphasis added to indicate amendment). In short, Section 22.1 allows a condominium association to charge a reasonable fee, not to exceed $475, for rush service and expenses associated with the production and copying of certain disclosure documents required under the Condo Act.

Count II alleges that Defendant's charge of $470[2] for providing the necessary Section 22.1 disclosure documents was "excessive and unreasonable" under the Condo Act (Pl.'s 2nd Am. Compl., ¶¶ 104-05). The Complaint further alleges that Defendant's $470 charge is "unethical, oppressive, or unscrupulous" because Mr. Friedman and the other class members had no other option but to pay the fee to obtain the disclosure documents which are required by law to be provided to any potential buyers. (*Id.* ¶¶ 105-06). Last, Plaintiff alleges that Defendant's fee causes substantial injury because Mr. Friedman and the other class members were forced to pay fees that exceeded any out-of-pocket costs incurred by Defendant in the production of the required disclosure documents. (*Id.* ¶ 111). However, such allegations cannot amount to a claim under the ICFA when the statute upon which the ICFA claim is predicated expressly allows an association to charge a maximum fee, including any rush fee, of $475, and Plaintiff in this matter alleges he was charged $470.

Plaintiff, nonetheless, contends that the Court cannot retroactively apply the Section 22.1 amendment to this matter. "The general rule is that an amendment to a statutory provision can only be applied prospectively unless the legislature expressly provides that it is to have retroactive effect." *Cella v. Sanitary District Employees' & Trustees' Annuity & Benefit Fund*, 266 Ill. App. 3d 558, 567-68 (1st Dist. 1994). However, where a statutory provision is ambiguous "and the amendment merely clarifies existing law," the general rule against retroactive application does not apply and the court may consider the amendment to determine the meaning of the ambiguous provision. *Id.* at 568. "An ambiguity exists when a statute is capable of being understood in two or more different senses by reasonably well-informed persons." *People v. Askew*, 341 Ill. App. 3d 548, 552 (1st Dist. 2003).

As observed above, the amendment to Section 22.1 added the language "not to exceed $375" following the phrase "reasonable fee." Without the amended language, the statute is ambiguous because what constitutes a "reasonable fee" is capable of being understood in a multitude of senses. The amended language "not to exceed $375" simply clarifies that a reasonable fee is less than $375 plus $100 for any rush services. Thus, this Court properly considers the amended language in resolving Defendant's Motion to Reconsider.

Moreover, the Illinois Supreme Court has noted that "charging an unconscionably high price generally is insufficient to establish a claim for unfairness" under the ICFA. *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 418 (2002).

For these reasons, Defendant's Motion to Reconsider is properly granted, and Count II of Plaintiff's Complaint is dismissed.

IV. Conclusion

1. Defendant's Motion to Reconsider is GRANTED.
2. Count II is dismissed with prejudice.

---

[2] Plaintiff appears to improperly calculate and allege the fee collected from Defendant to be $470. The exhibits attached to the Second Amended Complaint show that Mr. Friedman's attorney ordered a disclosure document package for $220 (including a $20 service fee to CondoCerts), a paid assessment letter for $150, and a rush service fee of $75 for a total of $445 paid by Mr. Friedman's attorney to Defendant. In any event, whether the fee was $445 as calculated by Defendant or $470 as alleged by Plaintiff, Defendant's Motion to Reconsider is properly granted because either fee amount falls below the maximum fee allowed for under Section 22.1 as amended.

3. This a final and appealable order.

Judge Caroline Kate Moreland
JAN 26 2024
Circuit Court - 2033

Dated

Judge Caroline Kate Moreland No. 2033

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