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Maryland Court of Appeals Rules that Consumer Protection Act Applies to Condominium Resale Disclosures

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In a unanimous opinion filed on April 30, 2012, the Maryland Court of Appeals has established that provisions of the Maryland Consumer Protection Act apply to the information contained in a condominium resale certificate. The court also held that a council of unit owners and property manager can be liable for unfair and deceptive trade practices if the information has a tendency to mislead the purchaser, even though they are not party to the sales contract, and even if they have otherwise complied with the condominium resale disclosure requirements contained in Section 11-135 of the Maryland Condominium Act.

In an earlier decision of the Court of Appeals in the case of *MRA Property Management, Inc., et al. v. Armstrong*, No. 93, Sept. Term 2007, filed on October 25, 2011, a majority of the Court held that the Maryland Consumer Protection Act applies to purchases of condominium units with respect to the information required to be provided by a council of unit owners in the resale certificate. The Court ruled that, where a council of unit owners and its property management company violate the resale certificate disclosure obligations imposed by Md. Real. Prop. Code Ann. Sec. 11-135, "they engage in unfair and deceptive trade practices 'in the sale of consumer realty.'" The Court specifically held that such a violation of the Consumer Protection Act can occur even though the defendants were not parties to the sale of the unit, and were not "merchants." Subsequently, however, in response to motions for reconsideration filed on behalf of both sides in the appeal, the Court withdrew and agreed to reconsider its opinion. Following re-argument, the Court has now issued its final opinion, holding that the statutory duties to provide the disclosure information required under Section 11-135 of the Condominium Act, "sufficiently implicated [the council and the property manager] in the entire transaction so as to impose liability under the Consumer Protection Act."

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In this case, 23 purchasers of units at Tomes Landing Condominium in Cecil County sued the Council and the condominium's management company for alleged misleading resale certificates. The certificates included an operating budget, and stated that there were no known violations of the building or health codes. Under Section 11-135 of the Condominium Act, the operating budget, including details of the reserve fund for repair and replacement, and knowledge of any health or building code violation, must be disclosed to a prospective unit purchaser. The subject units were purchased between January 5, 2000 and October 8, 2004. In December 2004, the owners were notified of a special assessment to fund a \$3,921,838 repair project to correct building defects. An August 1999 Replacement Reserve Study that identified problems with the condominium's retaining walls had not been disclosed to the owners prior to the purchase of their units. The suit included a claim that this failure to disclose constituted an unfair and deceptive trade practice under the Consumer Protection Act.

The trial court found that the resale certificate information, as a matter of law, had a tendency to mislead consumers in violation of the Act, and entered summary judgment in favor of the purchasers. Rather than proceed to trial on the issue of damages, the parties stipulated to a total of \$1 million in damages, and the condominium and managing agent took an appeal.

The Court of Appeals granted certiorari before the Court of Special Appeals ruled, and held in its prior opinion that, while the entry of summary judgment was improper, the unit owners had produced sufficient evidence that, if accepted by the trier of fact, "was sufficient to establish that [the council and management] had utterly failed to comply with the disclosure obligation imposed upon them by Section 11-135(a)(4)(x)." The failure to meet that disclosure obligation tends to deceive the purchaser, and amounts to an unfair and deceptive trade practice under the Consumer Protection Act.

The unit owners' request for reconsideration asked the Court to (1) clarify that a violation of the Consumer Protection Act can occur even if there has not also been a violation of the Condominium Act; and (2) modify the opinion to address the issue of whether a misrepresentation can occur by virtue of the inclusion of allegedly



misleading information in the condominium's operating budgets as opposed to the resale certificate. The management company's request for reconsideration focused on the issue of whether a condominium is required to disclose a building or health code violation in a resale certificate if there has been no violation citation issued by the code enforcement agency.

The new opinion makes clear that a violation of the Consumer Protection Act can occur if the operating budgets provided with the condominium resale certificate were deceptive within the meaning of the Consumer Protection Act. The Court specifically held that the Maryland Condominium Act requires disclosures, while the Consumer Protection Act mandates that those disclosures not be deceptive." Accordingly, because the operating budget, including details concerning the reserve fund for repair and replacement, must be disclosed under Section 11-135 of the Condominium Act, if that information is deceptive, it can constitute a violation of the Consumer Protection Act.

On the facts of this case, the Court held that whether the operating budget was deceptive within the meaning of the Consumer Protection Act could not be determined as a matter of law, and, therefore, the entry of summary judgment by the trial court was improper. As a result, the case was remanded to the trial court for further proceedings.

As to the issue of whether a condominium is required to disclose a building or health code violation in a resale certificate if there has been no violation citation issued by the code enforcement agency, the Court found that this was not a basis for the entry of summary judgment by the trial court, and, accordingly, the issue was not before the Court on appeal. The Court further noted that counsel for the unit purchasers had abandoned the issue. Nevertheless, in a footnote, the Court stated that, if it were required to consider the issue, it would hold that the "knowledge" required by the statute is "knowledge of a charged violation."

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