

YES NO

EXHIBITS

CASE NO. 2021 L 1740

DATE: 2/16/2021

CASE TYPE: Class Action

PAGE COUNT: 13

CASE NOTE

**IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION**

**MICHELLE WEISBERG, individually and
on behalf of a class of similarly situated
individuals,**)

Plaintiff,)

v.)

**STRS OHIO IL REAL ESTATE
INVESTMENTS, L.L.C., d/b/a THE
STREETER, a Delaware limited
liability company, and VILLAGE GREEN
MANAGEMENT COMPANY, LLC, a
Delaware limited liability corporation,**)

Defendants.)

Case No. 2021L001740

CLASS ACTION COMPLAINT

NOW COMES the Plaintiff, MICHELLE WEISBERG, individually and on behalf of a class of similarly situated individuals, by and through her attorneys, GORDON LAW OFFICES, LTD. and CARLSON LYNCH, LLP, and for her Class Action Complaint against the Defendants, STRS OHIO IL REAL ESTATE INVESTMENTS, L.L.C., d/b/a THE STREETER, a Delaware limited liability company, and VILLAGE GREEN MANAGEMENT COMPANY, LLC, a Delaware limited liability corporation, alleges as follows:

THE PARTIES

1. At all times relevant hereto Plaintiff, Michelle Weisberg, was a resident of Chicago, Cook County, Illinois.
2. At all times relevant hereto, Defendant, Strs Ohio IL Real Estate Investments, L.L.C. d/b/a The Streeter, was a Delaware limited liability company with its principal place of business in Chicago, Cook County, Illinois.

3. At all times relevant hereto, Defendant, Village Green Management Company, LLC, was a Delaware limited liability corporation transacting business in Chicago, Cook County, Illinois.

FACTUAL ALLEGATIONS

A. VILLAGE GREEN MANAGEMENT COMPANY LLC

4. Village Green manages approximately 40,000 apartment homes within 50 cities, along with integrated mixed-use retail spaces that include restaurants, coffee shops and markets.

5. In Illinois, Village Green manages eighteen properties, eight of which are located in Chicago, Cook County, Illinois, including an apartment building owned by The Streeter and located at 345 East Ohio Street, Chicago, Cook County, Illinois.

6. All Village Green properties in Chicago offer common area amenities that include, but are not limited to: 24-hour fitness centers; business centers; conference rooms; hot tubs; resident events; fire pits; libraries; media rooms; outdoor grilling and dining areas; resort-style pools and spas; complimentary Starbucks coffee and tea bars; basketball courts; fitness classes; locker rooms; steam rooms and saunas; outdoor heated pools; wrap-around sun decks; indoor lobbies with seating and reading materials; and billiards tables.

7. The common area amenities provided by Village Green at its Chicago properties qualify as part of the “dwelling unit” as defined by the Chicago Residential Landlord Tenant Ordinance, as discussed herein.

8. Every Village Green resident in Chicago pays a premium in their lease for access to these common area amenities.

B. VILLAGE GREEN COVID REPOSE

9. On March 13, 2020, in response to the Covid pandemic, Village Green closed the majority of common areas to all their Chicago properties and suspended all resident events and classes.

10. By closing the common areas to all Chicago properties, Village Green constructively forced all tenants to vacate their “dwelling units” as defined by the Residential Landlord Tenant Ordinance, Ill. Municipal Code Chapter 5-12 (“RLTO”).

11. On or about June 26, 2020, Village Green opened some but not all common areas in its Chicago Buildings, including The Streeter, to limited capacities and limited solely to residents and excluding resident guests, trainers and other non-residents with permission; i.e., lessors and sub-lessors.

12. As of the date of the filing of this complaint, some Village Green common areas, including those in The Streeter, remain closed, and others remain restricted.

13. Village Green remains in exclusive possession and control of its property management agreements with The Streeter and other similarly situated buildings that it manages. However, on information and belief, Village Green has been enriched through the savings of money and resources traditionally outlaid in the management, maintenance and upkeep of buildings like The Streeter, including but not limited to reduction in supply purchases, reduction in staffing costs, reduction of resident events, and reduction of resident services.

C. THE WEISBERG LEASE CONTRACT

14. On or about January 30, 2020, Weisberg entered into a Chicago Apartment Lease Contract with The Streeter, to rent apartment #4406 at 345 East Ohio Street, Chicago, Illinois 60611 (hereinafter “the Weisberg Lease Contract”). A true and accurate copy of the Weisberg Lease Contract is attached hereto as **Exhibit A**.

15. Upon information and belief, other residents of The Streeter signed substantially similar Apartment Lease Contracts.

16. At all times relevant hereto, Village Green acted as the management company for The Streeter.

D. THE CHICAGO LANDLORD TENANT ORDINANCE

17. The RLTO provides, in relevant part, the following definitions:

5-12-030 Definitions.

Whenever used in this chapter, the following words and phrases shall have the following meanings:

(a) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence or sleeping place by one or more persons who maintain a household, together with the common areas, land and appurtenant buildings thereto, and all housing services, privileges, furnishings and facilities supplied in connection with the use or occupancy thereof, including garage and parking facilities.

* * *

(e) “Premises” means the dwelling unit and the structure of which it is a part, and facilities and appurtenances therein, and grounds, areas and facilities held out for the use of tenants.

* * *

18. The RLTO further provides as follows as it relates to a landlord’s responsibilities:

5-12-070 Landlord’s responsibility of maintain.

The landlord shall maintain the premises in compliance with all applicable provisions of the municipal code and shall promptly make any and all repairs necessary to fulfill this obligation.

19. The RLTO further provides the following relevant tenant remedies in the event of landlord noncompliance with the Act.

5-12-110 Tenant remedies.

In addition to any remedies provided under federal law, a tenant shall have the remedies specified in this section under the circumstances set forth.

* * *

Failure to maintain the dwelling unit and common areas in a fit and habitable condition.

* * *

(d) *Failure to Maintain.* If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, the tenant may notify the landlord in writing of the tenant’s intention to withhold from the monthly rent an amount which reasonably reflects the reduced value of the premises due to the material noncompliance. If the landlord fails to correct the condition within 14 days after being notified by the tenant in writing, the tenant may, during the time such failure continues, deduct from the rent the stated amount. A tenant shall not withhold rent under this subsection if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant’s family, or other person on the premises with the tenant’s consent.

(e) *Damages and Injunctive Relief.* If there is material noncompliance by the landlord with the rental agreement or with Section 5-12-070, the tenant may obtain injunctive relief, and/or recover damages by claim or defense. This subsection does not preclude the tenant from obtaining other relief to which he may be entitled under this chapter.

* * *

(g) *Fire or Casualty Damage.* If the dwelling unit or common area are damaged or destroyed by fire or casualty to an extent that the dwelling unit is in material noncompliance with the rental agreement or with Section 5-12-070, the tenant may:

* * *

(2) If continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in

which case the tenant’s liability for rent is reduced in proportion to the reduction in the fair market rental value of the dwelling unit;

* * *

. . . Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty. . .

20. The RLTO additionally provides as follows:

5-12-140 Rental agreement.

Except as otherwise specifically provided by this chapter, no rental agreement may provide that the landlord or tenant:

(a) Agrees to waive or forego rights, remedies or obligations provided under this chapter;

* * *

(c) Agrees to the limitation of any liability of the landlord or tenant arising under law;

* * *

A provision prohibited by this section included in a rental agreement is unenforceable. The tenant may recover actual damages sustained by the tenant because of the enforcement of a prohibited provision. If the landlord attempts to enforce a provision in a rental agreement prohibited by this section the tenant may recover two months’ rent.

21. Per the provisions of the RLTO, each Village Green tenant impacted by the closure of common area amenities in each Village Green building located in Chicago, including The Streeter, are entitled to a refund of the portion of the rent for these closures due to the casualty.

22. At no point has Village Green or any of its agents offered any rent discount, abatement, concession, or refund for the closure of common areas in any of its Chicago buildings, including at The Streeter.

23. At all times relevant, Village Green has continued to collect full rent from its Chicago tenants, including those at The Streeter, as if all common area amenities remained open and available for use.

24. As to partially opened common areas with limited capacities, such occupancy limits further prevent residents from accessing common areas as paid for in their lease agreements.

CLASS ALLEGATIONS

25. **Class Definition:** Plaintiffs bring this action pursuant to 735 ILCS 5/2-801, individually and on behalf of a class of similarly situated individuals, defined as follows (the “Class”):

All individuals who entered into a lease with Defendants to rent a unit at one of Defendants’ properties in Chicago, Illinois, and were charged money for the use of and access to the common areas of those properties on or after March 13, 2020.

26. The following are excluded from the Class: (1) any Judge presiding over this action and members of his or her family; (2) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which Defendants have a controlling interest (as well as current or former employees, officers and directors); (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendants’ counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

27. **Numerosity:** The number of persons within the Class is substantial, believed to amount to thousands of persons. It is, therefore, impractical to join each member of the Class as named plaintiffs. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action

mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation.

28. **Commonality and Predominance:** There are well-defined common questions of fact and law that exist as to all members of the Class and that predominate over any questions affecting only individual members of the Class. These common legal and factual questions do not vary from Class member to Class member and may be determined without reference to the individual circumstances of any class member.

29. **Adequate Representation:** Plaintiff has retained and is represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this class action. Neither Plaintiff nor counsel have any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff is able to fairly and adequately represent and protect the interests of such a Class. Plaintiff has raised viable statutory claims of the type reasonably expected to be raised by members of the Class and will vigorously pursue those claims. If necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to include additional Class representatives to represent the Class or additional claims as may be appropriate.

30. **Superiority:** A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is impracticable. Even if every member of the Class could afford to pursue individual litigation, the Court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous cases would proceed. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same

factual issues. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and of the court system and protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. Class-wide relief is essential to compel compliance with the RLTO.

COUNT I - FRAUDLUENT CONCEALMENT
(against Defendants on behalf of the Class)

31. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

32. Defendants concealed from and failed to disclose to Plaintiff and the Classes that their collection of rent from March 2020 through the date of the filing of this Complaint and beyond was a violation of the RLTO.

33. Defendants were under a duty to disclose to Plaintiff and members of the Classes that the RLTO required that Defendants not collect rent on common areas that were closed or restricted due to the Covid pandemic.

34. As set forth *supra*, Defendants knew or should have known that they could not collect rent on common areas that were closed or restricted due to the Covid pandemic.

35. Defendants' misrepresentations that they could collect rent on common areas that were closed or restricted due to the Covid pandemic were material, because any reasonable tenant would have considered that they had to pay the rent agreed to on their rental agreement.

36. Plaintiff and the Class justifiably relied on the omissions of Defendants to their detriment and have suffered as a direct and proximate result of Defendants' conduct actual damages in that they have paid monthly rent for access to common areas that are closed or

restricted due to the Covid pandemic when in fact, they should have received a credit for the value of the loss of use of such common areas.

37. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs and any other just and proper relief available under the laws.

**COUNT II - UNJUST ENRICHMENT
(against Defendants on behalf of the Class)**

38. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

39. Substantial benefits have been conferred on Defendants by Plaintiff and the Class though the continued payment of rent subsequent to March 13, 2020, despite the closure of common areas by Defendant. Defendants knowingly and willingly accepted and enjoyed these benefits.

40. Defendants either knew or should have known that the payments rendered by Plaintiff were given and received with the expectation that such rents were due and owing, as represented by Defendants. As such, it is inequitable for Defendants to retain the benefit of the payments under these circumstances.

41. Defendants' acceptance and retention of these benefits under the circumstances alleged herein make it inequitable for Defendants to retain the benefits without payment of the value to Plaintiff and the Class.

42. Plaintiff and the Class are entitled to recover from Defendants all amounts wrongfully collected and improperly retained by Defendants, plus interest thereon.

43. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the law.

**COUNT III – VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND
DECEPTIVE PRACTICES ACT (815 ILCS 505/2)
(against Defendants on behalf of the Class)**

44. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein, to the extent not inconsistent with the claims asserted in this Count.

45. Plaintiff is a consumer within the meaning of 815 ILCS 505/1.

46. Defendants misrepresented to Plaintiff and the Class that they were legally permitted to collect rent from March 2020 through the date of the filing of this Complaint in violation of governing law, specifically the RLTO. Defendants also concealed from and failed to disclose to Plaintiff and the Class that their collection of rent from March 2020 through the date of the filing of this Complaint and beyond was a violation of the RLTO.

47. Defendants were under a duty to disclose to Plaintiff and members of the Class that the RLTO required that Defendants not collect rent on common areas that were closed or restricted due to the Covid pandemic, and not to misrepresent that they could continue to collect such rent.

48. As set forth *supra*, Defendants knew or should have known that they could not collect rent on common areas that were closed or restricted due to the Covid pandemic.

49. Defendants' misrepresentations that they could collect rent on common areas that were closed or restricted due to the Covid pandemic, and failure to disclose that such rent collection was not in fact permitted under the RLTO, were material because any reasonable tenant would have considered that they had to pay the rent agreed to on their rental agreement.

50. Plaintiff and the Class justifiably relied on the misrepresentations and omissions of Defendants to their detriment and have suffered as a direct and proximate result of Defendants' conduct actual damages in that they have paid monthly rent for access to common areas that are

closed or restricted due to the Covid pandemic when in fact, they should have received a credit for the value of the loss of use of such common areas.

51. Defendants' actions and omissions were both deceptive, in that they are untrue as a matter of law, and unfair under the ICFA in that the collection of rents in violation of governing landlord tenant law, while representing that such rent was proper and failing to disclose that it is illegal, offends the public policy in Illinois of protecting renters, is immoral, unethical, oppressive, *and* unscrupulous, and causes substantial injury to consumers in the form of rents paid above and beyond what is permitted by law.

52. Plaintiff and the Class seek actual damages, injunctive and declaratory relief, attorneys' fees, costs, and any other just and proper relief available under the law.

WHEREFORE, the Plaintiff, MICHELLE WEISBERG, individually and on behalf of a class of similarly situated individuals, prays for judgment against the Defendants. STRS OHIO IL REAL ESTATE INVESTMENTS, L.L.C., d/b/a THE STREETER, a Delaware limited liability company, and VILLAGE GREEN MANAGEMENT COMPANY, LLC, a Delaware limited liability corporation, as follows:

- A. An order declaring this action to be a proper class action, appointing Plaintiff and her counsel to represent the Class, and requiring Defendants to bear the costs of class notice;
- B. An order enjoining Defendants from collecting further rent for common areas that are either completely closed or only open at a limited capacity;
- C. An order awarding declaratory relief, and any further retrospective or prospective injunctive relief permitted by law or equity, including enjoining Defendants from continuing the unlawful practices alleged herein, and injunctive relief to remedy Defendants' past conduct;
- D. An order requiring Defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, or a violation of Illinois law, plus pre- and post-judgment interest thereon;

- E. An order requiring Defendants to disgorge or return all monies, revenues and profits obtained by means of any wrongful or unlawful act or practice;
- F. An order requiring Defendants to pay all actual and statutory damages permitted under the counts alleged herein.
- G. An order awarding attorneys' fees and costs, including the costs of pre-suit investigation, to Plaintiff and the Class; and
- H. An order for all other such equitable relief as the Court may find just and fit under the circumstances.

Respectfully submitted:

MICHELLE WEISBERG, individually and on behalf of a class of similarly situated individuals

By:  _____
One of Her Attorneys

Dated: February 15, 2021

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