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IN THE

COURT OF APPEALS OF MARYLAND

September Term 2021

Misc. No. 11

ALISON ASSANAH-CARROLL,

Appellant

V.

LAW OFFICES OF EDWARD J. MAHER, P.C., ET AL.,

***Appellees*.**

On Certification of Legal Question from the United States District Court of Maryland
The Honorable Catherine C. Blake

REPLY BRIEF OF APPELLANT

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INTRODUCTION

The central question presented in this case is whether Maryland's consumer protection statutes require a Maryland tenant to allege some additional damages beyond a showing that a business collected an amount it is explicitly prohibited from collecting or retaining under a valid local ordinance. Perhaps realizing that the answer to that question must be "no" in light of the broad remedial goals and plain language of the Maryland Consumer Debt Collection Act (the "MCDCA") and the Maryland Consumer Protection Act (the "MCPA"), Appellees E.T.G. Associates '94 LP ("E.T.G.") and Roizman Development, Inc. ("Roizman"), as well as *amicus* Maryland Multi-Housing Association, Inc. ("MMHA"), attack the premise, arguing that the ordinance in question, Baltimore City Code, Art. 13 § 5-4, does not in fact prohibit the collection or retention of rent for a unlicensed period, and that if it did, it would be unconstitutional.

Unfortunately for E.T.G., Roizman, and MMHA, the plain language of § 5-4(a)(2) could not be clearer. It unambiguously prohibits anyone from collecting or retaining rent "unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing [the] occupancy." E.T.G., Roizman, and MMHA do not even attempt to provide a contrary interpretation of this language, instead simply choosing to ignore that it even exists.

The attack by E.T.G., Roizman, and MMHA on the constitutionality of § 5-4(a)(2) is similarly flawed, as they ignore long-settled law that shows that a licensing requirement such as this one is valid. As explained in detail below:

- there is no takings clause violation because the Baltimore City Ordinances do not require landlords to allow a physical intrusion, the license requirement does not deprive the property of all economic use, and landlords do not have a legitimate business expectation that they will still be able to use unlicensed properties as rentals;
- there is no contracts clause violation for numerous reasons, including that the lease at issue in this case began after § 5-4(a)(2) was passed and multifamily properties were already subject to a licensing requirement even before the amendments adding § 5-4(a)(2), and
- this Court has long-recognized the authority of local governments to regulate landlord/tenant relationships.

Returning, then, to the central question of this case of whether a Maryland consumer must allege additional damages beyond a showing that a business collected an amount it is explicitly prohibited from collecting or retaining under a valid local ordinance, this Court has recently stated that "the remedial nature of the MCDCA requires [the Court to] interpret § 14- 202(8) broadly to reach any claim, attempt, or threat to enforce a right that a debt collector knows does not exist." *Chavis v. Blibaum & Assocs., P.A.*, 476 Md. 534, __, 264 A.3d 1254, 1269 (2021). That is precisely what occurred here; the people of Baltimore City, through their elected representatives, have prohibited an unlicensed landlord from collecting or retaining rent for the period that the landlord was unlicensed. E.T.G. and Roizman are currently violating that law by attempting to collect rent for the period they were unlicensed and retain rental payments by Appellant Alison Assanah-Carroll

("Assanah-Carroll") and other tenants for that period. This ongoing violation of law directly damaged and continues to damage Assanah-Carroll and the other tenants of 2601 Madison Ave, Baltimore, MD 21217 (the "Property"), because if E.T.G. and Roizman followed the law, they would not have taken that illegal rent from their tenants and would not be retaining the illegal rent that they did collect.

ARGUMENT

I. Baltimore City Code, Art. 13 § 5-4(a)(2) Unambiguously Prohibits the Collection or Retention of Rent for Any Period in Which the Landlord was Unlicensed, Even if the Landlord Later Becomes Licensed.

The unambiguous language of § 5-4(a)(2) prohibits a landlord from collecting or retaining rent for a period where the landlord was unlicensed, even if the landlord later obtains a license. As this Court has stated:

> Our review of local laws and ordinances is governed by the same principles as our review of State statutes. The cardinal rule of construction is to ascertain and effectuate the actual intent of those who enacted or adopted the law or ordinance. In divining this intent, a court must read the language of the law or ordinance in context and in relation to all of its provisions, and, additionally, must consider its purpose. Where legislative language is unambiguous, and expresses a definite meaning consonant with the ordinance's purpose, courts must not delete or insert words to make the statute express an intention different from its clear meaning.

F.D.R. Srour P'ship v. Montgomery Cty., 407 Md. 233, 245, 964 A.2d 650, 656-57 (2009) (citations omitted).

Baltimore City Code, Art. 13 § 5-4(a) provides that no person may:

> (1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or

> (2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

Accordingly, under the plain language of § 5-4(a)(2), a person is prohibited from collecting or retaining any rental payment unless that person was licensed both at the time of offering to provide and the time of providing the occupancy. This prohibition against charging or retaining rent is determined by the licensing status at the time that the occupancy occurred, not at the time the landlord is seeking to collect the rent, so a subsequent acquisition of a license does not allow a landlord to go back and collect rent for a period that the landlord was unlicensed, nor allow the landlord to retain rent that the landlord illegally collected while unlicensed. This result is entirely consistent with the legislative purpose behind Baltimore City Council Bill 18-0185 (the "Ordinance"); it promotes wide compliance with the licensing requirements of the ordinance by providing a powerful financial disincentive for violators.

The Ordinance also made another critical change that shows how it was passed to add consequences for landlords who ignored the law. Under Baltimore City Code, Art. 13 § 5-6 (6), a license can only be renewed if the property does not have any housing code violations that have been open for at least 90 days. Before the changes made by the Ordinance, the restriction on a new license was only for buildings with an "unsafe structure" violation. Baltimore City Council Bill 18-0185, at p. 10-11. Indeed, an open housing code violation is exactly why it took E.T.G. and Roizman so long to obtain a license after an inspection was performed. App. 6. As alleged in the Complaint, "the

Property itself remained in such a state of disrepair that it could not meet the health and safety requirements necessary to obtain a new license. The elevators constantly broke down, the water pressure and plumbing problems persisted, and numerous problems with individual units went unaddressed." *Id*.[1] The inclusion of a provision denying licenses to landlords who allow building code violations to linger at their properties further shows how § 5-4(a)(2) is consistent with the Baltimore City Council's intention to hold non-compliant landlords accountable.

Yet without any attempt to so much as provide an explanation for how the plain language of § 5-4(a)(2) could support their proposed interpretation, E.T.G. and Roizman, as well as MMHA, urge this Court to interpret § 5-4(a)(2) to impose numerous restrictions that are not found in the ordinance, in direct violation of the rule that "courts must not delete or insert words to make the statute express an intention different from its clear meaning." *F.D.R. Srour P'ship,* 407 Md. at 245, 964 A.2d at 657. For example, E.T.G. and Roizman write: "Nowhere in the Code's text or in any of the legislative materials is there any reference to or contemplation of a refund or disgorgement of

[1] The investigation by MMHA into this case led it to the same conclusion, as it states in its brief that the delay in the issuance of a new license was due to an open code violation. MMHA Brief at 10 n. 4. Despite this, E.T.G. and Roizman claim that they still do not have an explanation for why their license was allowed to expire without renewal. Appellees' Brief at 6 n. 5. The fact that they take this position, despite over a year having passed since this lawsuit was filed, demonstrates the exact type of lack of responsiveness and accountability in landlords that was injuring the housing stock in Baltimore City and that the Baltimore City Council passed the Ordinance in order to deter.

payments collected for rents during an unlicensed period. Nor is there any indication that the Code was meant to change the requirement that rental payments for an unlicensed period are still owed and could be collected upon reinstatement of the license." Appellees' Brief at 8-9. Yet by prohibiting the retention or collection of rental payments "unless person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy," that is exactly what the text of § 5-4(a)(2) provides. It is difficult to conceive of a way that a legislature can more clearly provide "any indication" than the plain, unambiguous language of the law it passes, yet E.T.G. and Roizman simply ignore it. Similarly, MMHA admits that it did support the Ordinance, but claims that it would not have if it had thought that § 5-4(a)(2) prohibits the collection or retention of rent for a period of time that the landlord was not licensed, without any explanation for how the unambiguous language of § 5-4(a)(2) could mean anything else. Brief of MMHA at 7.

Had the Baltimore City Council intended to allow a landlord to collect or retain rent for an unlicensed period if it subsequently obtains a license, the Baltimore City Council could have easily done so, but no such exception was written into § 5-4(a)(2). Nor did the Baltimore City Council include an exception to the prohibition on the collection or retention of rent if the reason for a lack of license is something other than the full uninhabitability of the unit. E.T.G., Roizman, and MMHA are asking this Court to write in language and exceptions to § 5-4(a)(2) that the Baltimore City Council simply chose not to include.

II. Baltimore City Code, Art. 13 § 5-4(a)(2) Is Not Unconstitutional.

Although these issues were not raised in the prior briefing in this case or the certified questions to this Court, E.T.G., Roizman, and MMHA also make various allegations attacking the constitutionality of § 5-4(a)(2), without fully evaluating the elements of those constitutional provisions or the implications of their positions. For the reasons discussed below, none of their constitutional attacks have merit.

In evaluating each of the alleged constitutional infirmities presented by § 5-4(a)(2) below, it is also important to note that, even prior to the passage of the Ordinance, it was still a criminal misdemeanor for a person to operate a multi-family dwelling such as the apartment complex at issue in this case under the prior versions of Baltimore City Code, Art. 13 § 5-4 and § 5-24. *See* Baltimore City Council Bill 18-0185, at pp. 9, 20. In short, E.T.G. and Roizman cannot argue that they were able to rent unlicensed multi-family dwellings prior to the 2018 bill, and suddenly were rendered unable to do so. Instead, they are simply complaining that the Baltimore City Council chose to explicitly state that landlords could no longer profit from violating the law by renting a property without a license.

Finally, another important consideration in this case is that at least a full year passed between the effective date of the Ordinance and the time that E.T.G. and Roizman allowed their license to lapse. The Ordinance was approved by the Baltimore City Council on April 16, 2018 and signed by the Mayor on May 7, 2018. It had an effective date of August 1, 2018. E.T.G. and Roizman allowed their license to lapse more than a full year later, on August 15, 2019. App 5, at ¶ 13. As a result, § 5-4(a)(2) was currently

effective at the time any one-year lease had been entered into or renewed for anyone living under such a lease at the time E.T.G. and Roizman allowed their license to expire, including Assanah-Carroll's lease, which commenced April 1, 2019. App 7, at ¶ 26.

A. § 5-4(a)(2) Is Not a Takings Clause Violation

As the Supreme Court has stated, "[t]his Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982). *See also Yee v. City of Escondido, Cal.*, 503 U.S. 519, 527-28 (1992); *F.C.C. v. Fla. Power Corp.*, 480 U.S. 245, 252-53 (1987). Nevertheless, E.T.G., Roizman, and MMHA argue that prevention of unlicensed landlords from collecting or retaining illegal rent constitutes a taking of their property interests without just compensation. Appellees' Brief at 32-36; Brief of MMHA at 17-19. However, as explained below, numerous cases that were not cited by E.T.G. and Roizman or MMHA make it clear that § 5-4(a)(2) does not constitute a prohibited taking.

"[T]he Fifth and Fourteenth Amendments to the United States Constitution and Article III, § 40, of the Maryland Constitution have the same meaning and effect, and 'it is well established that the decisions of the Supreme Court are practically direct authorities' for both provisions." *Neifert v. Dep't of Env't*, 395 Md. 486, 516 n.33, 910 A.2d 1100, 1118 n.33 (2006). § 5-4(a)(2) survives each of the various ways that E.T.G., Roizman, and MMHA claim it violates the takings clause.

i. The Government Does Not ***Require*** a Permanent Physical Invasion of a Landlord's Property; It Is the Landlord's Choice to Lease the Property.

§ 5-4(a)(2) does not violate the rule set forth in *Loretto* that the government violates the takings clause when it requires an owner to suffer a permanent physical invasion, because, as clearly articulated in the subsequent cases of *Fla. Power Corp.* and *Yee*, the government is not *requiring* the landlord to rent the property.

In *Loretto*, the Supreme Court ruled that a New York statute that required an owner of rental property to allow the installation of cable television facilities on the landlord's property constituted a taking because it required the landlord to suffer a permanent physical invasion of the landlord's property. *Loretto*, 458 U.S. at 440. However, the Court noted:

> Our holding today is very narrow. We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. We do not, however, question the equally substantial authority upholding a State's broad power to impose appropriate restrictions upon an owner's use of his property.

Id. at 441.

Subsequently, the Supreme Court in *Fla. Power Corp.* and *Yee* made clear that *Loretto* is limited to situations where the intrusion is required by the government, not when the government regulates the landlord/tenant relationship that a landlord voluntarily enters. In *Fla. Power Corp.*, the respondent had voluntarily leased space on its utility poles to a cable television company for the installation of cables. *Fla. Power Corp.*, 480

U.S. at 252. The Federal Government, exercising its statutory authority to regulate pole attachment agreements, substantially reduced the annual rent, yet the Court rejected the pole owner's argument that "it is a taking under *Loretto* for a tenant invited to lease at a rent of $7.15 to remain at the regulated rent of $1.79." *Id*. at 252. The Court emphasized that "it is the invitation, not the rent, that makes the difference. The line which separates [this case] from *Loretto* is the unambiguous distinction between a ... lessee and an interloper with a government license." *Id*. at 252-53.

The Supreme Court again ruled in *Yee* that regulation of the landlord-tenant relationship does not amount to a *per se* taking. *Yee*, 503 U.S. at 527-28. In that case, the Court ruled that a regulation that set maximum rents for land rented to mobile home owners was not a *per se* taking under *Loretto* because "Petitioners voluntarily rented their land to mobile home owners[,] no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government." *Id*. at 527-28. Thus, the Court ruled that "[w]hen a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge[.]" *Id*. at 529.

Like the laws at issue in *Fla. Power Corp.* and *Yee*, nothing in the Baltimore City Code required E.T.G. and Roizman to rent the Property out for residential purposes. To the extent that allowing their license to expire after having entered into leases with tenants left E.T.G. and Roizman in a tough position, that is a mess entirely of their own doing; they rented out properties in Baltimore City knowing that the Baltimore City Code prohibited unlicensed rentals of multifamily dwellings such as the Property both before

and after the Ordinance was passed in 2018. It is quite a position for a party engaging in illegal conduct to argue that its inability to profit from its illegal conduct constitutes a taking, and *Fla. Power Corp.* and *Yee* make it clear that a landlord's voluntary decision to rent a property out cannot render the consequences thereof a *per se* taking under *Loretto*.

ii. § 5-4(a)(2) Does Not Deprive Landlords of All Economically Beneficial Use of Their Properties

§ 5-4(a)(2) does not constitute a *per se* regulatory taking under *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 (1992). As the Supreme Court has stated, "[i]n the *Lucas* context, of course, the complete elimination of a property's value is the determinative factor." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005). Here, the Property remained valuable at all times despite § 5-4(a)(2). Most obviously, E.T.G. and Roizman could have preserved their intended use of the Property by complying with the Baltimore City Code and obtaining a license as required. If E.T.G. and Roizman felt they were unable to comply with that requirement, they could have sold the Property to someone who is capable of complying with the licensing requirements, or used the building for purposes other than residential rental. As the Supreme Court has noted, "'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated." *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 130 (1978). Thus, their focus on the interreference E.T.G. and Roizman's own failures to secure a license caused their intended use of the Property is too narrow, as there are numerous other valuable uses for the Property other than as an unlicensed multifamily dwelling.

iii. § 5-4(a)(2) Does Not Constitute a Regulatory Taking Under *Penn Central*

E.T.G. and Roizman's last takings clause argument is that § 5-4(a)(2) constitutes a taking pursuant to *Penn Central*. Appellees' Brief at 35-36. Under *Penn Central*, there are a number of factors that a court must consider to determine whether a regulatory action is a "functionally equivalent to a direct appropriation of or ouster from private property," *Lingle*, 544 U.S. at 529. Here, the requirement that a landlord have a license in order to collect or retain rent falls far short of something that can be characterized as the functional equivalent of a direct appropriation or ouster from private property. The economic impact should be minimal because the licensing requirements are not particularly onerous to meet. To the extent that there is any interreference at all with investment-backed expectations, any such expectation could only be the expectation that violations of the licensing requirements that have been in place for multifamily dwellings in Baltimore City long before the Ordinance would go without consequence, which is, of course, not a reasonable investment-backed expectation. An unlicensed landlord illegally renting out a property has no legitimate expectation that it will nevertheless be able to keep the rent it illegally collects, any more than the unlicensed lawyer or unlicensed contractor has a reasonable expectation that they can still be compensated for the illegal work they do. *See Harry Berenter, Inc. v. Berman*, 258 Md. 290, 296, 265 A.2d 759, 763 (1970) (unlicensed contractor may not collect fees); *Vista Designs, Inc. v. Silverman*, 774 So. 2d 884, 887 (Fla. Dist. Ct. App. 2001) (New Jersey attorney must disgorge fees

earned representing client in case in Florida where attorney was not admitted to practice in Florida).

B. E.T.G. and Roizman Had No Vested Property Right in the Illegal Rent, and Thus § 5-4(a)(2) Does Not Violate the Contracts Clause or Eliminate a Vested Right.

E.T.G. and Roizman also argue that they had a vested property interest in the rent that is prohibited under § 5-4(a)(2), and thus that preventing them from collecting or retaining that illegal rent would violate the Maryland Constitution and the Contracts Clause of Article 1, Section 10 of the United States Constitution. E.T.G. and Roizman are incorrect, as § 5-4(a)(2) has not impermissibly interfered with any such vested right.

Initially, it should be noted that there is no evidence in the record that § 5-4(a)(2) impacted a single lease for the Property in existence at the time of its passage. As noted above, the effective date of the Ordinance was more than one year prior to the time that E.T.G. and Roizman allowed their license to lapse. App 5, at ¶ 13. Assanah-Carroll's lease commenced many months after the effective date of the Ordinance. Accordingly, certainly with regard to Assanah-Carroll's lease, as well as any lease entered into or renewed after the effective date of the Ordinance (which is likely all of them if E.T.G. and Roizman use one-year leases), E.T.G. and Roizman have no standing to argue that § 5-4(a)(2) violates the prohibition on retroactive impairment of vested rights.

However, even if they did have standing to raise such claims, § 5-4(a)(2) does not impermissibly interfere with any vested right for landlords who, like E.T.G. and Roizman, were already prohibited from renting out an unlicensed property under the Baltimore City Code even before it was passed. Unlike the owners of ground rent

properties who "had no reason to believe that their interests were anything but well-settled," *Muskin v. State Dep't of Assessments & Tax'n*, 422 Md. 544, 558, 30 A.3d 962, 970 (2011), as explained above, Baltimore City landlords were prohibited from renting unlicensed properties even before the Ordinance was passed.

C. § 5-4(a)(2) Is a Valid Local Ordinance

Finally, E.T.G. and Roizman challenge the validity of § 5-4(a)(2) as impermissibly creating a private cause of action in violation of the home rule provisions of the Maryland Constitution. Appellees' Brief at 30-31. Simply put, they are incorrect, as the Baltimore City Council was acting pursuant to its authority to pass local laws concerning the landlord-tenant relationships within Baltimore City. The fact that violations of those laws may give rise to a private cause of action under the existing state-wide laws protecting consumers does not invalidate the Ordinance.

This Court has routinely reaffirmed that counties have the power to pass laws concerning the landlord/tenant relationships within their counties. *McBriety v. City of Baltimore*, 219 Md. 223, 231, 148 A.2d 408, 414 (1959) ("the City has full power and authority not only to license for regulatory purposes but also to tax for revenue purposes the rooming houses, multiple family dwellings and combinations thereof…"). *See also Cty. Council for Montgomery Cty. v. Invs. Funding Corp.*, 270 Md. 403, 415, 312 A.2d 225, 232 (1973) (stating that there is "clear authority for the lower court's ruling that the Council was empowered to enact local legislation regulatory of the apartment rental business and landlord-tenant relationships in Montgomery County"). This is appropriate, because it is difficult to imagine a more local issue than addressing the consequences for

violating a Baltimore City licensing requirement regarding the rental of a Baltimore City property.

§ 5-4(a)(2) does not proport to, and does not need to, explicitly create a private cause of action to still effect the duties of landlords who are subject to it. It is extremely common for a local ordinance to impact an existing cause of action – take, for example, a change in the Baltimore City Housing Code that alters the duties of Baltimore City landlords under negligence law. *Lewin Realty III, Inc. v. Brooks*, 378 Md. 70, 835 A.2d 616 (2003), *abrogated on other grounds by Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 17 A.3d 676 (2011). Just because a violation of local law exposes E.T.G. and Roizman to liability under the MCDCA and MCPA, as well as the common law action of money had and received, does not mean that the ordinance creates a new cause of action. Nor did the Baltimore City Council need to create a new cause of action because, as discussed below, Maryland law already provides residential tenants with private remedies against a landlord that collects an amount that is explicitly prohibited by law.

III. The MCDCA and MCPA Provide a Private Cause of Action for the Return of Rent That a Landlord Was Specifically Prohibited from Collecting or Retaining.

Having established that the plain, unambiguous language of § 5-4(a)(2) prohibits the collection or retention of rent for any period where the property is unlicensed, even if a license is later acquired, and is a valid ordinance, Assanah-Carroll and the other tenants of the Property are entitled to pursue the return of illegally collected and retained rent through the MCDCA and the MCPA. Contrary to the false assertion by E.T.G. and

Roizman, Assanah-Carroll most certainly has not "stipulated that she did not sustain any actual damages." Appellees' Brief at 15. Instead, as actually stated in the Order Certifying Questions of Law to the Court of Appeals of Maryland in this case, "Plaintiff alleges that the entire rental payment for any unlicensed period constitutes damages." App. 156. Brief at 15. Those illegal rental payments constitute damages because, if E.T.G. and Roizman had complied with their obligations under § 5-4(a)(2), the MCDCA, and the MCPA, they would not have taken that illegal rent from their tenants and would not retain the illegal rent that they did collect.

Any other result would incentivize a landlord to conceal any licensing violation and aggressively attempt to collect the money, all while knowing they had no right to do so, because there would be no avenue for the tenants to get the money back afterwards. Indeed, that is exactly what E.T.G. and Roizman did here. Although they knew of the licensing issue since they allowed the license to lapse in August of 2019, they continued to aggressively pursue rent from the tenants of the Property during the entire period that the Property was unlicensed, even after a judge on the District Court of Maryland explicitly ruled against them on the licensing issue on February 4, 2020. App 5, at ¶¶ 14-16. For example, a March 25, 2020 Letter from the Law Offices of Edward J. Maher, P.C. and signed by Edward J. Maher was sent to every tenant of the Property on behalf of E.T.G. and Roizman and falsely claimed that "ALL RENT AND ANY OTHER MONIES DUE UNDER YOUR LEASE ARE PAYABLE AS USUAL ON THE DUE DATE" (emphasis in original). App 5, at ¶ 17.

Incentivizing landlords to engage in such duplicity by denying tenants the ability to sue for the return of the illegally collected amounts would be totally incompatible with the plain language of the MCDCA and the MCPA and the guidance this Court has provided that "the remedial nature of the MCDCA requires [the Court to] interpret § 14-202(8) broadly to reach any claim, attempt, or threat to enforce a right that a debt collector knows does not exist." *Chavis*, 476 Md. at __, 264 A.3d at 1269.[2] This Court has often stated that "remedial statutes are to be construed liberally in favor of claimants 'to suppress the evil and advance the remedy.'" *E.g. Haas v. Lockheed Martin Corp.*, 396 Md. 469, 495, 914 A.2d 735, 750-51 (2007).

The MCDCA prohibits a "collector" such as E.T.G. and Roizman from knowingly collecting an amount that is prohibited by law or engaging in conduct that violates Section 808 of the FDCPA, which prohibits, among other things, the "collection of any

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[2] That same broad interpretation also applies to MD. CODE, COMM. L. § 14-202(11). In a footnote, E.T.G. and Roizman rely on an unpublished U.S. District Court opinion to argue that a person must qualify as a debt collector under the narrower definition of debt collector under the Fair Debt Collection Practices Act ("FDCPA") in order to be covered by § 14-202(11). Appellees' Brief, at 19 n. 10. However, the Fourth Circuit, in a recently published decision, carefully parsed the language of the MCDCA and § 14-202(11) and concluded that that subsection, as is clear from the plain language of the MCDCA, applies the relevant substantive prohibitions in the FDCPA to any person who qualifies as a debt collector under the MCDCA even if they do not fall into the definition of a debt collector under the FDCPA. *Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370, 372 (4th Cir. 2022).

amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." MD. CODE, COMM. L. § 14-202(8) and (11). If a "collector" such as E.T.G. and Roizman violates the MCDCA, it is "liable for any damages proximately caused by the violation." MD. CODE, COMM. LAW § 14-203. Had E.T.G. and Roizman refrained from collecting and retaining rental payments that are prohibited under § 5-4(a)(2), in violation of the MCDCA, Assanah-Carroll and the other tenants in the building would not have had those funds illegally taken from them, and thus the rental payments constitute damages.[3]

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[3] The default judgment against Assanah-Carroll in a failure to pay rent case regarding two months' rent does not have any preclusive effect that interferes with her ability to assert these claims in this case. At most, that default would only apply as to two months at issue in the failure to pay rent case, not the remaining rental payments illegally collected from Assanah-Carroll. But further, with the exception of where personal service is requested and effectuated, which E.T.G. and Roizman do not and cannot allege occurred in that case, a summary ejectment action under Maryland law is an *in rem* proceeding. *See* MD. CODE, REAL PROP. § 8-401 (b)(4)(ii). Where a party does not appear in an *in rem* proceeding, any default judgment has no *res judicata* effect except as to the *res* at issue. *Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship*, 338 Md. 1, 20, 655 A.2d 1265, 1274 (1995). In this case, the *res* at issue in a summary ejectment rent court action is possession of the property, and this lawsuit is not seeking to establish who has a possessory right to any of the apartments in the Property. Yet further, because of the nature of the claims presented in this case, claim preclusion would not apply even if there had been *in personam* jurisdiction. In *LVNV Funding LLC v. Finch*, 463 Md. 586, 611-12, 207 A.3d 202, 217 (2019), this Court stated that the MCDCA provides judgment debtors a cause of action for any attempts to enforce judgments illegally obtained by the unlicensed debt collectors that is not prohibited by the collateral attack doctrine.

Similarly, as argued more fully in Appellant's Opening Brief at p. 26, the collection of illegal rent by E.T.G. and Roizman constitutes an "[u]nfair, abusive, or deceptive trade practices" under the MCPA. It is the fact that the collection and retention of rent is prohibited and forms the basis of the MCDCA and MCPA claims, rather than the mere lack of a license in a county that does not prohibit an unlicensed landlord from later collecting rent, that distinguishes this case from *Citaramanis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992), *Galola v. Snyder*, 328 Md. 182, 186, 613 A.2d 983, 985 (1992) and *McDaniel v. Baranowski*, 419 Md. 560, 587, 19 A.3d 927, 943 (2011).

To further explain, a legislature imposing a licensing requirement can do one of three things regarding the enforceability of a contract that violates the licensing requirement. It can explicitly prohibit the payment on such a contract, as Baltimore City has done here. It can leave the issue unaddressed, leaving it to courts to determine whether or not the purposes of the licensing requirement require the conclusion that an unlicensed party can still enforce contracts that could only be entered into by a licensed party. *Compare Berman*, 258 Md. at 296, 265 A.2d at 763 (an unlicensed contractor may not recover for home improvement work performed while unlicensed) *with Schloss v. Davis*, 213 Md. 119, 124-25, 131 A.2d 287, 290-91 (1957) (holding that the failure to obtain a building permit required by the Baltimore City Code does not prevent a contractor from enforcing a contract). Finally, the legislature could explicitly state that the lack of a license will not affect the validity of a contract. If the legislature chooses the first or the third path, there is, of course, no room for the policy analysis engaged by courts, as the determination by the legislature settles the issue.

E.T.G. and Roizman accuse Assanah-Carroll of misleadingly quoting *Citaramanis*, but in so doing, precisely highlight the point that a legislative determination controls. Appellees' Brief at p. 16. E.T.G. and Roizman complain that Assanah-Carroll did not quote the passage in *Citaramanis* stating that "[i]t is conceivable that a case could arise in which the public policy is so strong and the degree of violation so great that one benefitted by services rendered by an unlicensed person would be permitted to recover monies paid for the services, but that is not the situation presented on this record." *Citaramanis*, 328 Md. at 158. But E.T.G. and Roizman are ignoring the fundamental principle that public policy is first set by the legislature, not the courts. *First Nat. Bank of St. Mary's v. Fid. & Deposit Co.*, 283 Md. 228, 239, 389 A.2d 359, 365 (1978) ("the legislature is the normal policy-declaring department of the government"); *Adler v. Am. Standard Corp.*, 291 Md. 31, 45, 432 A.2d 464, 472 (1981) ("declaration of public policy is normally the function of the legislative branch"). The policy issues weighed by the Court in *Citaramanis* can no more invalidate the public policy choice made by the Baltimore City Council to prohibit the collection or retention of rent by an unlicensed landlord than the opposite policy choice made by the Court in its unlicensed contractor cases such as *Berman* could invalidate a hypothetical bill stating that an unlicensed contractor can still recover on its contracts. This result is consistent with the framework laid out in the Restatement (First) of Contracts that has informed this Court's analysis of these licensing issues and is discussed in detail in Appellant's Opening Brief at pp. 12-14. *See also Beard v. American Agency Life Ins. Co.*, 314 Md. 235, 255, 550 A.2d 677, 687

(1988) ("the statute must be examined as a whole to find out whether or not the makers of it meant that a contract in contravention of it should be void, or that it was not so to be").

Holding landlords accountable for their collection and retention of illegal rent is not punitive, it is remedial. In *Citaramanis*, this Court determined that a lack of licensure alone was not sufficient to extinguish the rent obligation under the ordinances at issue in that case, which were silent as to the issue. Accordingly, because the rent was still owed and collectable, requiring its forfeiture as damages under the MCPA in the absence of additional injuries would be punitive. In contrast, because the rent in this case is rendered illegal by § 5-4(a)(2), its collection and retention violates the MCDCA and MCPA. Allowing Assanah-Carroll and the other tenants at the Property to recover that wrongfully collected rent is consistent with the remedial purposes of the MCDCA and MCPA – "suppress[ing] the evil" (in this case, the collection of illegal rent) and advancing the remedy for the violation. *Haas*, 396 Md. at 495.

E.T.G. and Roizman cannot complain that this result would cause an unjust enrichment for Assanah-Carroll and the other tenants at the Property, any more than an unlicensed home improvement contractor can make the same argument regarding its work. This Court has explicitly rejected such an argument when it was raised by an unlicensed contractor, ruling that "[t]o permit a recovery on a *quantum meruit* would defeat and nullify the statute." *Berman*, 258 Md. at 296, 265 A.2d at 763. The Court emphasized that it would deny a contractor such a cause of action "not for the sake of the defendant, but because it will not aid such a plaintiff." *Id.*, *quoting Thorpe v. Carte*, 252

Md. 523, 529, 250 A.2d 618, 621-22 (1969) (*quoting*, in turn, the Restatement (First) of Contracts § 598 cmt. a (1932)).

By virtue of the licensing changes put in place by the Baltimore City Council, a Baltimore City tenant has the right to expect that her landlord is responsive and accountable enough to qualify for, and secure, a license to rent the property. That includes requirements such as not having an open housing code violation for more than 90 days, as E.T.G. and Roizman had in this case. Moreover, the tenant has the right to expect that if the landlord loses the license, or was never licensed at all, that the landlord will not seek to collect, collect, or retain rent in violation of § 5-4(a)(2). By collecting and retaining that illegal rent, the landlord violates the MCDCA and the MCPA, and the tenant is entitled to damages under the MCDCA and MCPA caused by that illegal collection and retention of rent.

CONCLUSION

For the foregoing reasons, Assanah-Carroll respectfully requests the Court to rule that she has stated valid causes of action for the return of illegal rent under the MCDCA and MCPA.

Respectfully Submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,450 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

3. This brief was prepared in Times New Roman 13-point font.

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CERTIFICATE OF SERVICE

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