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WALKER WILCOX SECURES SUMMARY JUDGMENT RULING SIGNIFICANTLY REDUCING DAMAGES IN ILLINOIS CONSUMER FRAUD ACT CLAIM

Neil Holmen and Jeremy Keman recently obtained a favorable partial summary judgment ruling in the Circuit Court of Cook County that will reduce our clients' potential damages from nearly $1,000,000 to the low-five figures.

The April 1, 2016 summary judgment victory, and the Court's August 3, 2016 denial of plaintiffs' motion to reconsider came in a class action lawsuit brought on behalf of the tenants of an apartment complex in the South Loop neighborhood of Chicago. The plaintiff, on behalf of a proposed class of building tenants, sought the recovery of all sums paid by all tenants to the building owner and authorized management agent for gas, water and sewer utility services. The basis of the claim was that from mid-2011 to the time of the filing of the lawsuits, the owner and/or the authorized management agent allegedly failed to provide the tenants with the formula used to allocate utility charges amongst the tenants as required by the Illinois Tenant Utility Payment Disclosure Act ("TUPDA"). Specifically, plaintiff claimed that that the defendants' failure to comply with the TUPDA was a violation of public policy, which in turn was a violation of the Illinois Consumer Fraud Act ("ICFA"), and that the purported class was therefore entitled to damages in the full amount of all utility payments ever made to defendants.

On behalf of the defendants, our firm prepared a partial summary judgment motion asking the court to find that plaintiff's damages were limited to only those actually suffered (*i.e.* the overbilling for utilities, if any such overbilling even existed). The court agreed that plaintiff's damages should be limited, noting that plaintiff's complaint sought a refund of *all* amounts tenants paid for utilities during the purported class period, not just overcharges. Significantly, the court also recognized that one of the requirements to succeed on a cause of action under the ICFA is that a plaintiff must suffer *actual* damages, which the court defined as "actual pecuniary loss." The court held then that the damages sought by the plaintiff were not "actual pecuniary loss," but amounted to a penalty against the landlord, and that the terms of the TUPDA does not allow for any such penalty. The effect of the court's ruling was to limit the plaintiffs' damages to amounts paid by tenants in excess of the correct prorata share for each tenant, if any.

Walsh v. McCaffery Interests, Inc. and CJUF III McCaffery Roosevelt Residential I, LLC, No.2014 CH 16257, Circuit Court of Cook County, Illinois