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Notes: Commercial Law — Consumer Protection Act — Landlord-Tenant — Remedies — Private Action by Tenant under Maryland's Consumer Protection Act Requires Demonstration of Actual Loss or Injury, i.e., Diminution in Rental Value, in Order to Justify Restitutionary Award of Rents Paid for the Lease of Unlicensed Residential Property. CitaraManis v. Hallowell, 328 Md. 142, 613 A.2d 964 (1992)

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COMMERCIAL LAW—CONSUMER PROTECTION ACT—LANDLORD-TENANT—REMEDIES—PRIVATE ACTION BY TENANT UNDER MARYLAND'S CONSUMER PROTECTION ACT REQUIRES DEMONSTRATION OF ACTUAL LOSS OR INJURY, I.E., DIMINUTION IN RENTAL VALUE, IN ORDER TO JUSTIFY RESTITUTIONARY AWARD OF RENTS PAID FOR THE LEASE OF UNLICENSED RESIDENTIAL PROPERTY. *CitaraManis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992).

The General Assembly of Maryland enacted the state's Consumer Protection Act ("CPA") in 1974[1] in an effort to "take strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland."[2] In 1976 the legislature broadened the scope of the CPA to include consumer real estate within its coverage.[3] Ten years later, in *Golt v. Phillips*,[4] the Court of Appeals of Maryland first interpreted the CPA in the consumer real estate context, concluding that the remedy applicable to the landlord's violation of the CPA was complete restitution of all rents paid.[5] Recently, in *CitaraManis v. Hallowell*,[6] the court of appeals revisited the issues originally considered in *Golt*, and concluded that a violation of the local property license ordinance at issue, in and of itself, was insufficient to warrant restitution of rents paid. The *CitaraManis* holding thus scales back the measure of damages and restricts the effectiveness of the CPA as applied in the landlord-tenant context.

In late 1987, Tammy and Michael CitaraManis entered into a lease to rent a Howard County residence from Eustace and Portia Hallowell.[7] The lease ran from November 1, 1987 to October 31, 1988.[8] Thereafter, the CitaraManises and Hallowells orally agreed to

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1. Act of May 31, 1974, ch. 609, 1974 Md. Laws 2054. The current version of the CPA appears at MD. CODE ANN., COM. LAW II §§ 13-101 to 13-411 (1990 & Supp. 1993).
2. MD. CODE ANN., COM. LAW II § 13-103(b)(3) (1990).
3. Act of May 17, 1976, ch. 907, 1976 Md. Laws 2487.
4. 308 Md. 1, 517 A.2d 328 (1986).
5. *See infra* notes 18-32 and accompanying text.
6. 328 Md. 142, 613 A.2d 964 (1992).
7. *Id.* at 144, 613 A.2d at 965. The CitaraManises responded to an advertisement placed in a local newspaper by the Hallowells. *Id.*
8. *Id.*

extend the lease on a month-to-month basis, with a modest increase in the monthly rent.[9] On April 30, 1989 the CitaraManises vacated the premises.[10] Approximately three months later, the CitaraManises filed suit against the Hallowells in the Circuit Court for Howard County, seeking restitution of all rents paid to the Hallowells under the original lease and its extension.[11] The complaint alleged that the Hallowells had engaged in unfair and deceptive trade practices prohibited by the Maryland Consumer Protection Act.[12] Specifically, the CitaraManises asserted that the Hallowells violated section 13-301 of the Commercial Law Article by failing to license the property as rental property, as mandated by the Howard County Code,[13] and by subsequently failing to reveal the lack of licensure.[14]

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9. *Id.* at 145, 613 A.2d at 965.
10. Hallowell v. CitaraManis, 88 Md. App. 160, 163, 594 A.2d 591, 592 (1991).
11. *CitaraManis*, 328 Md. at 145, 613 A.2d at 965.
12. *Id.* (citation omitted).
13. The relevant portion of the Howard County Code stated as follows:

> SEC. 13.100. HOUSING CODE; INCORPORATION BY REFERENCE.
>
> The Housing Code of Howard County adopted by the board of county commissioners on December 22, 1964, as amended, is incorporated herein by reference.
>
> SEC. 13.101. ENFORCEMENT AUTHORITY.
>
> (a) The department of public works is hereby given the power and authority to enter into, inspect and examine all buildings, improvements, real and leasehold property and vehicles of every description, after giving the owner thereof prior written notice of five (5) days, to ascertain their condition for health, cleanliness and safety.
>
> . . . .
>
> SEC. 13.102. LICENSING AND FEES.
>
> The director of public works is hereby authorized and empowered to fix a schedule of fees or charges to cover the cost of inspection and of the issuance of a rental housing license for leasing, renting or letting of any buildings or structures, or parts thereof, as dwelling units for human habitation in Howard County . . . . Fee schedules for such inspection and licensing services will be approved by the council by resolution at the recommendation of the director of public works. No building or structure, or part thereof, shall be leased, rented or let or subleased, subrented or sublet without first obtaining a rental housing license from the department of public works and paying the requisite fee or charge therefor.
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> SEC. 13.103. PENALTIES.
>
> Any person, firm, corporation, or officer of a corporation who violates any provision adopted or enacted pursuant to the authority of this subtitle shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1000. No conviction hereunder shall in any manner relieve any person of any other penalties or the necessity of compliance with all other applicable rules, regulations and laws.

HOWARD COUNTY, MD., CODE §§ 13.100-103 (1977 & Supp. 1985) (citation omitted) (current version at HOWARD COUNTY, MD., CODE §§ 13.100-103, -

Throughout the resulting litigation, the CitaraManises never alleged that the property failed to meet any of their material expectations regarding habitability, comfort or safety; rather, they admitted that they received exactly what they bargained for with respect to the physical, tangible condition of the property.[15] Nevertheless, they contended that section 13-408(a), which authorizes private civil actions "to recover for injury or loss sustained . . . as the result of a practice prohibited by [the CPA],"[16] entitled them to the restitutionary relief requested, regardless of whether the violation had resulted in corporeal loss or injury.[17] The court thus faced the challenge of

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106, -131 (1977 & Supp. 1994)). The CitaraManises stated that they became aware of the Hallowells' failure to license the property shortly after they notified the Hallowells of their intention to vacate the premises. *CitaraManis*, 328 Md. at 145, 613 A.2d at 965.

14. *CitaraManis*, 328 Md. at 145, 613 A.2d at 965. Section 13-301 of the CPA provides as follows:

§ 13-301. UNFAIR OR DECEPTIVE TRADE PRACTICES DEFINED.

Unfair or deceptive trade practices include any:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;

(2) Representation that:

(i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;

(ii) A merchant has a sponsorship, approval, status affiliation, or connection which he does not have;

. . . or

(iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;

(3) Failure to state a material fact if the failure deceives or tends to deceive . . . .

MD. CODE ANN., COM. LAW II § 13-301 (1990).

15. *CitaraManis*, 328 Md. at 149, 613 A.2d at 967.

16. MD. CODE ANN., COM. LAW II § 13-408(a) (1990).

17. *CitaraManis*, 328 Md. at 145, 613 A.2d at 965. In its entirety, section 13-408 of the CPA provides as follows:

§ 13-408. ACTION FOR DAMAGES.

(a) *Actions authorized.* — In addition to any action by the Division or Attorney General authorized by this title and any other action otherwise authorized by law, any person may bring an action to recover for injury or loss sustained by him as a result of a practice prohibited by this title.

(b) *Attorney's fees.* — Any person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

(c) *Frivolous actions.* — If it appears to the satisfaction of the

striking the proper balance between the equitable treatment of landlords who act in good faith and effective enforcement of the CPA in protecting the health and safety of the renting public. In holding for the landlords, the Court of Appeals of Maryland elected not to penalize them for noncompliance with the CPA that had not, in the court's judgment, materially damaged the tenants.

This interpretation of the CPA, although not insupportable, contradicts the arguably "pro-tenant" result reached by the same court just six years earlier in *Golt v. Phillips*.[18] In addition, the *CitaraManis* court's treatment of the tenant's common-law illegal contract argument deviates from the approach customarily pursued by the Maryland courts regarding the enforceability of illegal contracts.[19] As a result, the court of appeals' ruling jeopardizes the ability of the state's subdivisions to effectuate the purposes of the class of regulatory measures implicated in this case.

In *Golt v. Phillips*, the tenant responded to an advertisement placed by the landlords for a residential apartment in Baltimore City.[20] After inspecting the apartment and pointing out several conditions that required repair, Mr. Golt was assured that the deficiencies would be promptly corrected.[21] When the landlords failed to perform the requested repairs and other necessary maintenance subsequent to Mr. Golt's occupation of the premises, Mr. Golt filed a complaint with the Baltimore City Department of Housing and Community Development.[22] The resulting inspection by the Department revealed that the landlords had not obtained the license necessary to rent a multi-unit dwelling within the city.[23] In addition, Mr. Golt's unit was plagued with several other city housing code violations, "including the lack of toilet facilities . . . defective door locks, and the lack of fire exits and fire doors."[24] Instead of obtaining the required license and correcting the code violations, the landlords evicted Mr. Golt, who was then forced to obtain substitute housing at a higher cost.[25]

The *Golt* court concluded that the landlords' actions in advertising and renting the unlicensed dwelling constituted "an unfair and

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court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees.

MD. CODE ANN., COM. LAW II § 13-408 (1990).

18. 308 Md. 1, 517 A.2d 328 (1986).
19. *See infra* notes 83-113 and accompanying text.
20. *Golt*, 308 Md. at 5, 517 A.2d at 330.
21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 5-6, 517 A.2d at 330.
25. *Id.* at 6, 517 A.2d at 330.

deceptive trade practice," and a clear violation of the CPA.[26] Therefore, under section 13-408(a), which defines the available remedy, Mr. Golt could maintain a private action against the landlords in order to "recover for injury or loss sustained by him as the result of" the prohibited practice.[27] In addressing the nature of the section 13-408(a) remedy, the *Golt* court stated the following:

> This private remedy is purely compensatory; it contains no punitive component. Indeed, any punitive assessment under the CPA is accomplished by an imposition of a civil penalty recoverable by the State under § 13-410, as well as by criminal penalties imposed under § 13-411. Thus, in determining the damages due the consumer, we must look only to his *actual loss or injury* caused by the unfair or deceptive trade practices.[28]

Having concluded that the actual loss or injury suffered determines the damages due, the court faced the remaining pivotal question: What constitutes "actual loss or injury" for which the tenant may be compensated?

The *Golt* court evaluated the nature of the Baltimore City licensing ordinance, and noted that

> [i]t is well settled in this State that if a statute requires a license for conducting a trade or business, and the statute is regulatory in the sense that it is for the protection of the public, an unlicensed person will not be able to enforce a contract within the provisions of that regulatory statute. Moreover, . . . the unlicensed person will not be able to recover under *quantum meruit*, regardless of any unjust enrichment to the other party; to permit a recovery under *quantum meruit* would defeat the efficacy of the regulatory statute.[29]

Relying upon its analysis of the Baltimore City ordinance, the court recognized that the licensing requirement upon which Mr. Golt's claim was based was "a model example of a public health and safety regulation."[30] As a result, the court determined that the landlords should not be permitted to "retain any benefits from the unlicensed lease, and [the tenant was entitled to] recover *his full damages*."[31] The court concluded that "Golt's actual loss [was] comprised of restitutionary and consequential damages."[32]

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26. *Id.* at 9, 517 A.2d at 332.
27. *See* MD. CODE ANN., COM. LAW II § 13-408(a).
28. *Golt*, 308 Md. at 12, 517 A.2d at 333 (emphasis added).
29. *Id.* at 12, 517 A.2d at 333-34 (citations omitted).
30. *Id.* at 13, 517 A.2d at 334.
31. *Id.* (emphasis added).
32. *Id.* The restitutionary award consisted of all rents paid under the illegal lease. *Id.* at 13-14, 517 A.2d at 334.

In *CitaraManis*, citing the court of appeals' prior interpretation in *Golt v. Phillips*,[33] the Circuit Court for Howard County found that the landlords' failure to inform the tenants that the property was unlicensed violated the CPA.[34] The circuit court granted the tenants' motion for summary judgment and directed the landlords to return to the tenants all rents paid.[35] The Court of Special Appeals of Maryland, reversing the judgment of the circuit court, held that the CitaraManises failed to establish any housing code violations within the meaning of the rent escrow statute of the Real Property Article,[36] and consequently suffered no damages recoverable under section 13-408(a) of the CPA.[37] The court of special appeals also noted that the CPA violation did not result in any diminution of the rental value of the property that would justify the restitutionary relief requested.[38] The Court of Appeals of Maryland affirmed the reversal

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33. 308 Md. 1, 517 A.2d 328 (1986).
34. *CitaraManis*, 328 Md. at 146, 613 A.2d at 966.
35. *Id.*
36. The rent escrow statute, § 8-211 of the Real Property Article, imposes upon residential landlords a duty to correct dangerous defects in their dwelling units. Subsections (a) and (b) of that section expressly delineate the purposes for which it was enacted:

> (a) The purpose of the section is to provide tenants with a mechanism for encouraging the repair of serious and dangerous defects which exist within or as part of any residential dwelling unit, or upon the property used in common of which the dwelling forms a part. The defects sought to be reached by this section are those which present a substantial and serious threat of danger to the life, health and safety of the occupants of the dwelling unit, and not those which merely impair the aesthetic value of the premises, or which are, in those locations governed by such codes, housing code violations of a non-dangerous nature.
>
> (b) It is the public policy of Maryland that meaningful sanctions be imposed upon those who allow dangerous conditions and defects to exist in leased premises, and that an effective mechanism be established for repairing these conditions and halting their creation.

MD. CODE ANN., REAL PROP. § 8-211(a), (b) (1988 & Supp. 1993). Subsections (c) through (o) further define the scope of the section's application and provide the mechanisms to effect the objectives stated in subsections (a) and (b). *See id.* § 8-211(c)-(o) (1988 & Supp. 1993).

37. Hallowell v. CitaraManis, 88 Md. App. 160, 169-70, 594 A.2d 591, 595-96 (1991). As noted by Professor Gilligan and others, the relationship between the CPA and the Real Property Article has been the source of confusion since the adoption of the CPA amendments addressing consumer realty. M. Michele Gilligan, *Landlord Beware: Private Actions By Tenants Under the Maryland Consumer Protection Act*, U. BALT. L.F., Fall 1987, at 18-19 (discussing *Golt* and citing Comment, *Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices*, 38 MD. L. REV. 733, 764 (1979)).
38. *Hallowell*, 88 Md. App. at 170, 594 A.2d at 596. With respect to establishing

of the trial court, albeit on other grounds.[39] The majority concluded that the holding of *Golt* was based upon facts which "[stood] in stark contrast with those of the case *sub judice*"[40] and did not mandate restitution in the instant case.

Notwithstanding the "actual loss or injury" language of the *Golt* opinion,[41] the CitaraManises asserted that their unknowing rental of unlicensed property did constitute "injury or loss" as contemplated by section 13-408(a) and the *Golt* court's interpretation of that section.[42] In support of their argument, the CitaraManises pointed to the following language from the unanimous *Golt* opinion: "It is evident that the license fee is charged to support the cost of inspections, and not to raise revenue. Therefore, [the landlords] may not retain any benefits from the unlicensed lease, and Golt may recover his full damages."[43] Acknowledging that this language may have left the impression that the licensure failure itself, rather than the substandard physical condition of the premises, gave rise to the award of restitution, the *CitaraManis* majority concluded that the court had previously "spoke[n] much too broadly" in that portion of the *Golt* opinion.[44]

Unlike the tenant in *Golt*, the CitaraManises had "not allege[d] that the house they had rented was unclean, unsafe, uninhabitable or unsuitable in any regard."[45] The only "damage" that they sustained, therefore, resulted from unknowingly renting unlicensed property. According to the majority, unknowingly renting unlicensed

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the measure of damages applicable to actions brought pursuant to § 13-408(a) of the CPA, the court of special appeals concluded that the situation is no different than those causes founded in the applicable provisions of the Real Property Article. *Id.* The Real Property Article provisions generally focus upon the dangerous condition of the premises. *See supra* note 36.

39. *CitaraManis*, 328 Md. at 164, 613 A.2d at 974. The case was remanded to the trial court with instructions

> to determine whether the tenants are able to prove that they suffered "actual injury or loss," justifying recovery under § 13-408(a) of the CPA [according to the "diminution in value" standard], or that the landlords' loss of all rent would be proportional to the purpose sought to be achieved by the licensing scheme.

Id. at 164, 613 A.2d at 975.

40. *Id.* at 149, 613 A.2d at 967.
41. *See supra* note 28 and accompanying text.
42. *CitaraManis*, 328 Md. at 149, 613 A.2d at 967 nn.2-3 and accompanying text.
43. Golt v. Phillips, 308 Md. 1, 13, 517 A.2d 328, 334 (1986) (cited in *CitaraManis*, 328 Md. at 149-50, 613 A.2d at 967).
44. *CitaraManis*, 328 Md. at 150, 613 A.2d at 967 ("Because of the obvious actual loss and damage suffered by the tenant in *Golt* who paid rent for what proved to be an uninhabitable apartment, we realize now, for the reasons hereinafter set forth, that we spoke much too broadly in making the statement just quoted.").
45. *Id.* at 149, 613 A.2d at 967.

property was not the type of damage intended by the legislature to be redressed in a section 13-408(a) action.[46] Rather, the majority concluded that the proper interpretation of section 13-408(a)—as one section within a comprehensive enactment—evidences the intent of the legislature to require a showing akin to a diminution in rental value in order to justify the award of damages.[47]

In divining the legislative impetus behind passage of the CPA, the court benefitted from an express statement of the legislative intent underlying the measure: "[The CPA] is intended to provide minimum standards for the protection of consumers in the State."[48] To fulfill

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46. *Id.* at 151, 613 A.2d at 968. "It is manifest from the language employed in § 13-408(a) that the General Assembly intended that a plaintiff pursuing a private action under the CPA prove actual 'injury or loss sustained.'" *Id.* (citing *Golt*, 308 Md. at 12, 517 A.2d at 333).
47. *See id.* at 152-53, 613 A.2d at 968-69.
48. MD. CODE ANN., COM. LAW II § 13-103(a) (1990). The statement of intent is further codified as follows:

> § 13-102. DECLARATION OF FINDINGS AND PURPOSE.
>
> (a) *Findings.* — (1) The General Assembly of Maryland finds that consumer protection is one of the major issues which confront all levels of government, and that there has been mounting concern over the increase of deceptive practices in connection with sales of merchandise, real property, and services and the extension of credit.
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> (2) The General Assembly recognizes that there are federal and State laws which offer protection in these areas, especially insofar as consumer credit practices are concerned, but it finds that existing laws are inadequate, poorly coordinated and not widely known or adequately enforced.
>
> (3) The General Assembly of Maryland also finds, as a result of public hearings in some of the metropolitan counties during the 1973 interim, that improved enforcement procedures are necessary to help alleviate the growing problem of deceptive consumer practices and urges that favorable consideration be given to requests for increased budget allocation for increases in staff and other measures tending to improve the enforcement capabilities or increase the authority of the [Division of Consumer Protection of the Office of the Attorney General].
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> (b) *Purpose.* — (1) It is the intention of this legislation to set certain minimum statewide standards for the protection of the consumers across the State, and the General Assembly strongly urges that local subdivisions which have created consumer protection agencies at the local level encourage the function of these agencies at least to the minimum level set forth in the standards of this title.
>
> (2) The General Assembly is concerned that public confidence in merchants offering goods, services, realty, and credit is being undermined, although the majority of business people operate with integrity and sincere regard for the consumer.
>
> (3) The General Assembly concludes, therefore, that it should take strong protective and preventative steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these

this objective, the legislature provided alternative avenues through which those acts prohibited by the CPA are addressed. The CPA empowers the Division of Consumer Protection of the Office of the Attorney General (the "Division"), either in response to a complaint filed by a consumer or upon its own initiative, to investigate allegedly unfair or deceptive trade practices.[49] Depending upon the circumstances, the Division's investigation may lead to resolution through dismissal,[50] conciliation,[51] imposition of a cease and desist order,[52] submission to arbitration,[53] or injunction.[54] Sections 13-410 (civil penalties) and 13-411 (criminal penalties) detail the sanctions applicable to these public enforcement actions.[55]

Juxtaposed with the enforcement proceedings conducted by the Division, section 13-408(a) permits a private action by an aggrieved consumer.[56] Although the legislature provided, in one comprehensive measure, alternative means with which to address violations of consumer confidence, the *CitaraManis* majority concluded that the bases upon which public enforcement actions proceed are clearly distinguishable from those necessary to sustain private actions.[57] Evaluating the language and organization of section 13-408(a), the court of appeals delineated the distinction as follows:

> In a public enforcement proceeding "[a]ny practice prohibited by this title is a violation . . . whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice." § 13-302. In contrast, a private enforcement proceeding pursuant to § 13-408(a) expressly

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> practices, and to prevent these practices from occurring in Maryland. It is the purpose of this title to accomplish these ends and thereby maintain the health and welfare of the citizens of the State.

Id. § 13-102. The General Assembly's direction that "[the CPA] shall be construed and applied liberally to promote its purpose," *id.* § 13-105, further bolsters the sweeping mandate of §§ 13-102 and 13-103.

49. *Id.* § 13-204.
50. *See id.* § 13-401(d).
51. *See id.* § 13-402.
52. *See id.* § 13-403 (1990 & Supp. 1993).
53. *See id.* § 13-404 (1990).
54. *See id.* § 13-406.
55. *See id.* §§ 13-410, 13-411 (1990 & Supp. 1993). In the case of a "first violation," a merchant is subject to a fine of not more than $1000 for each such violation. *Id.* § 13-410(a) (Supp. 1993). Repeat offenders are subject to a fine of not more than $5000 for each subsequent violation. *Id.* § 13-410(b). In addition to the imposition of a fine, or in the alternative, "any person who violates any provision of [the CPA] is guilty of a misdemeanor and . . . on conviction is subject to . . . imprisonment not exceeding one year . . . ." *Id.* § 13-411(a) (1990).
56. *See id.* § 13-408 (1990).
57. CitaraManis v. Hallowell, 328 Md. 142, 154, 613 A.2d 964, 969-70 (1992).

> only permits a consumer "to recover for injury or loss sustained by him as the result of a practice prohibited by this title." § 13-408(a). Section 13-408(a), therefore, requires an aggrieved consumer to establish the nature of the actual injury or loss that he or she has allegedly sustained as a result of the prohibited practice.[58]

Citing the support of commentators,[59] the majority concluded that "[a] construction of the CPA that would establish § 13-302 as a benchmark to determine whether a consumer has sustained 'injury or loss,' within the meaning of § 13-408(a), is both strained and illogical."[60] The majority also asserted that such a construction would transform section 13-408(a) into a punitive measure[61]—a result both unjustified by its language and unnecessary in light of the express punitive provisions of sections 13-410 and 13-411.[62] Thus, according to the majority, comprehensive examination and analysis of the CPA's structure demonstrate that a private action under section 13-408(a) requires a showing of *actual* injury or loss in order to recover damages.

In addition to the discussion of the language and structure of the CPA, the majority engaged in a survey of other state courts' treatment of similar consumer protection statutes,

> and observe[d] that the consumer protection statutes construed therein fall into three general categories: (1) statutes that require proof of actual damages and in the absence of such proof award nominal statutory damages; (2) statutes that explicitly require that an aggrieved consumer be granted a complete refund; and (3) statutes that explicitly require actual damages be proven.[63]

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58. *Id.* at 152, 613 A.2d at 969.
59. *Id.* The following language was quoted by the *CitaraManis* majority:
> Enjoining an activity that has not yet caused actual harm seems entirely consistent with an important purpose of the Act, to prevent unfair or deceptive practices. *See id.* § 13-102(b)(3). *It is clearly contrary, however, to the language of § 13-408 to permit a consumer a cause of action if no damages have been sustained,* and no legitimate legislative purpose would be served by such a reading. Section 13-302 should be interpreted to pertain to enforcement action by the Attorney General and the Division of Consumer Protection, and § 13-408 should be read to control the elements necessary to establish a private cause of action.

Id. at 153, 613 A.2d at 969 (quoting Comment, *Maryland's Consumer Protection Act: A Private Cause of Action for Unfair or Deceptive Trade Practices*, 38 MD. L. REV. 733, 739 n.50 (1979)) (emphasis in *CitaraManis*).
60. *CitaraManis*, 328 Md. at 153, 613 A.2d at 969.
61. *Id.*
62. *See supra* note 55 and accompanying text.
63. *CitaraManis*, 328 Md. at 155, 613 A.2d at 970.

Upon reviewing statutes in each category, the court found the language in Maryland's section 13-408(a) most similar to the type (3) statute enacted by the Connecticut legislature.[64] As a result, the majority considered *Conaway v. Prestia*,[65] interpreting the concomitant Connecticut statute in a factual setting identical to the present case.

Connecticut's statute at issue in *Conaway* provided that "[a]ny person who suffers any ascertainable loss of money or property . . . as a result of . . . a [prohibited] method, act or practice . . . may bring an action . . . to recover *actual* damages."[66] Addressing the issue of damages, the Connecticut court concluded that the injuries or losses compensable under the quoted portion of the statute were limited to those that could be "ascertain[ed] with reasonable certainty [as] the diminution of the rental value occasioned by the defendants' wrongful conduct."[67] Although the *CitaraManis* majority acknowledged the notable absence of the word "actual" in the Maryland CPA,[68] it interpreted the *Golt* opinion as equating "injury or loss" with "actual damages."[69] Persuaded by the rationale of the Connecticut court, the court of appeals concluded that the "injury or loss" compensable under section 13-408(a) in both *Golt* and *CitaraManis* was measured by the diminution in value of the property.[70]

The design of section 13-408(a) and the majority's conclusions regarding the underlying legislative intent, present a persuasive argument that the failure to license property in accordance with local ordinances does not justify the complete restitution of all rents paid.[71] Nevertheless, Judge Robert M. Bell emphatically argued in dissent of *CitaraManis* that the theories of recovery and measure of damages asserted by the CitaraManises were the same as those advanced and sustained by the unanimous *Golt* court.[72] According to the dissent, the condition of the rental property was not the fulcrum upon which the restitutionary award pivoted; to the contrary, the condition of the premises was immaterial to the *Golt* holding and the award of

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64. *Id.* at 155-58, 613 A.2d at 970-71.
65. 464 A.2d 847 (Conn. 1983).
66. *CitaraManis*, 328 Md. at 157 n.6, 613 A.2d at 971 n.6 (emphasis added) (quoting CONN. GEN. STAT. § 42-110g(a) (1979)) (alteration in *CitaraManis*).
67. *Conaway*, 464 A.2d at 853.
68. *See supra* note 17 and accompanying text.
69. *CitaraManis*, 328 Md. at 157-58, 613 A.2d at 971; *see* Golt v. Phillips, 308 Md. 1, 12, 517 A.2d 328, 333 (1986).
70. *CitaraManis*, 329 Md. at 157-58, 613 A.2d at 971.
71. *See supra* notes 44-61 and accompanying text.
72. *CitaraManis*, 328 Md. at 165-68, 613 A.2d at 975-77 (Bell, Robert M., J., dissenting). Judge Eldridge joined in Judge Bell's dissenting opinion. *Id.* at 181, 613 A.2d at 983 (Bell, Robert M., J., dissenting).

damages therein.[73] The simple failure of the landlords to conform to the requirements of the housing code and the CPA justified the award of full restitution in *Golt*.[74] The dissent concluded that an award of full restitution was the appropriate remedy in *CitaraManis*, not only because of the *stare decisis* import of *Golt*, but because the language and result of *Golt* also carried the tacit approval of the Maryland General Assembly.[75]

Subsequent legislative treatment of the issues presented in *Golt* lends credence to the appellants' assertions that the award of full restitution for a landlord's violation of the CPA was intended—or at least approved—by the Maryland General Assembly.[76] As proof of the legislature's acquiescence to the holding of *Golt*, the appellants noted the introduction and subsequent defeat in committee of House Bill 391.[77] The bill, which was introduced during the 1989 session as an amendment to section 8-204 of the Real Property Article, proposed the following:

> (e)(1) Notwithstanding any local ordinance or regulation requiring the leasing or inspection of single or multi-family units, a tenant shall pay rent which is due to a landlord if:
>
> (i) The premises were rendered to or provided for the tenants;
>
> (ii) The premises were otherwise habitable;
>
> (iii) The premises were used and enjoyed by the tenant; and
>
> (iv) The tenant was under reasonable notice that the landlord, in rendering or providing such premises, expected to be paid by the tenant.
>
> (2) The amount of rent paid by a tenant who rents a single or multi-family unit from a landlord who does not comply with a local ordinance or regulation described in paragraph (1) of this subsection shall reflect the difference between the property value of the rented unit and the property value of a similar unit rented in compliance with the local ordinance or regulation described in paragraph (1) of this subsection.[78]

Public commentary regarding the bill indicates that both its proponents and opponents recognized that it was introduced with the

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73. *Id.* at 169, 613 A.2d at 977 (Bell, Robert M., J., dissenting) ("The facts, including those pertaining to the condition of the leased premises, though detailed in the *Golt* opinion, played no role in our decision.").
74. *Id.* at 168-69, 613 A.2d at 976-77 (Bell, Robert M., J., dissenting).
75. *Id.* at 176-81, 613 A.2d at 980-83 (Bell, Robert M., J., dissenting).
76. *See* Brief for Appellant at 12, CitaraManis v. Hallowell, 328 Md. 142, 613 A.2d 964 (1992).
77. *Id.*
78. Md. H.R. 391, Reg. Sess. (1989).

objective of overruling *Golt*.[79] Following testimony to this effect, the bill was defeated in the House Judiciary Committee by a vote of fifteen to six.[80] This defeat, argued Judge Bell, demonstrates that the General Assembly "acquiesced . . . in the definition given [in *Golt*] to 'injury or loss' as used in [section] 13-408 and in the [restitutionary] remedy . . . prescribed for the CPA violation, as well."[81] Given the legislative history, the dissent maintained that the court had no latitude under the facts of *CitaraManis* to reach a result so contrary to the holding of *Golt*.[82]

As an alternative to the section 13-408(a) action, the CitaraManises argued that "they were entitled to obtain restitution of the rent they paid during their occupancy of the demised premises because the rent was paid pursuant to an illegal and unenforceable lease."[83] In this respect, the appellants analogized the lease agreement to contracts between consumers and persons engaged in occupations for which the law requires a license.[84] In these licensing cases, the court

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79. *CitaraManis*, 328 Md. at 179, 613 A.2d at 982 (Bell, Robert M., J., dissenting); *see* Brief for Appellant at 12-13, CitaraManis v. Hallowell, 328 Md. 142, 613 A.2d 964 (1992); Brief *Amicus Curiae* of the Legal Aid Bureau, Inc. at 15-19, CitaraManis v. Hallowell, 328 Md. 142, 613 A.2d 964 (1992).

One proponent of House Bill 391 wrote to the House Judiciary Committee that Legal Aid attorneys in Cumberland, Maryland, armed with *Golt*,

> started recruiting tenants who were being evicted for various reasons and showing them how to recover large damages from landlords over technicalities with the City's Occupancy [sic] permit process.
>
> Dozens of landlords were sued by tenants for thousands of dollars because the landlords' permit was [sic] no longer valid. They were using a court case from Baltimore (Golt vs. Phillips) and the judges were helpless to rule in an equitable manner because the Maryland Law was mute on the subject. As a stop gap measure, Cumberland repealed it's occupancy permit ordinance until a remedy could be found. We believe House Bill 391 is that remedy.

Letter from Mary C. Miltenberger, representing the Legislation Committee of the Associated Landlords of Cumberland Area, to the House Judiciary Committee, *microfilmed on* Md. Gen. Assembly Leg. Hist., H.R. 391, Reg. Sess. (1989).

80. *CitaraManis*, 328 Md. at 180, 613 A.2d at 983 (Bell, Robert M., J., dissenting).
81. *Id.*
82. *Id.*
83. *CitaraManis*, 328 Md. at 158, 613 A.2d at 971. The appellants argued that the lease was rendered illegal by virtue of the violation of § 13.103 of the Howard County Code. *See supra* note 13. As noted by Judge Bell in dissent, "[t]he majority does not dispute that the lease in this case was illegal, against the public policy of the State of Maryland, and, hence, unenforceable. Indeed, it specifically so acknowledges." *Id.* at 173, 613 A.2d at 979 (Bell, Robert M., J., dissenting). That the failure to conform to the Baltimore City housing code licensing provision rendered the lease therein "illegal" was also acknowledged in *Golt*. *See* Golt v. Phillips, 308 Md. 1, 13, 517 A.2d 328, 334 (1986).
84. *CitaraManis*, 328 Md. at 158, 613 A.2d at 971-72.

of appeals "has denied a recovery, either on an express contract theory or on the theory of *quantum meruit*, sought by one who rendered services for which payment has not yet been made."[85] If applied to the case at bar, this common-law illegal contract theory would weigh in favor of awarding restitution to the former tenants.

At base, the common-law restitution principle urged by the tenants is analogous to the equitable doctrine of *quantum meruit*, under which one who provides valuable goods or services is permitted, pursuant to a contract implied in law, to recover the value of the goods or services from the party in receipt.[86] The law permits recovery in order to extract from the party in receipt of the goods or services the "unjust enrichment" that would accrue if recovery were prohibited.[87] According to this principle, in the absence of an enforceable lease, a landlord may recover from the tenant the reasonable rental value of the occupied premises.[88] Recovery by the landlord is therefore predicated upon a demonstration that the tenants are unjustly enriched by escaping payment of the reasonable rental value of the property.

The premise posed by the CitaraManises mirrors the previously described example: Because the landlords failed to license the property as required, any rent received unlawfully, and therefore unjustly, enriches them, to the detriment of the tenants. Restitution of the rent paid would force the landlords to disgorge the benefits that were unjustly received. According to the majority, however, the CitaraManises' restitution argument failed because "the tenants have received everything that they bargained for, and a necessary element justifying the remedy of restitution, i.e., unjust enrichment, is lack-

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85. *Id.*

86. *See, e.g.*, McCardie & Akers Constr. Co. v. Bonney, 647 S.W.2d 193, 194 (Mo. Ct. App. 1983) ("Quantum meruit is based on a promise implied by the law that a person will pay reasonable compensation for valuable services or materials provided at his request or with his approval.").

87. *See, e.g.*, Department of Envtl. Resources v. Winn, 597 A.2d 281 (Pa. Commw. Ct. 1991). The Pennsylvania Commonwealth Court delineated the doctrine as follows:

> The equitable doctrine of *quantum meruit* involves a class of obligations imposed by law, regardless of the intention or assent of the parties for reasons dictated by justice and is based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. To avoid such unjust enrichment, the law implies a promise to pay a reasonable amount for the *labor and materials* furnished, even absent a specific contract therefor.

Id. at 284 n.3.

88. *Cf.* Holliday v. Pegram, 85 S.E. 908 (S.C. 1915) (where rental contract is rendered unenforceable by the failure of the parties to agree to the amount of the rent, claim for rent due was properly advanced on quantum meruit grounds).

ing."[89] The cases cited in the majority opinion in support of this conclusion[90] generally provide that "a defendant, who in good conscience provides services should not be required to return the moneys received, since in so doing, it would bestow an unjust enrichment upon the complaining party."[91] According to the majority, requiring the landlord to forfeit the rent paid is "'tantamount to *civil* punishment,'"[92] an objective expressly served by other measures in the CPA.[93]

In situations where the party seeking recovery lacks a required license—as in the occupational licensing cases advanced by the appellants as analogous to their case[94]—permitting the provider of goods or services to recover their value runs counter to the public interests preserved in denying restitutionary relief. As noted by Judge Karwacki in the majority opinion, Maryland law provides that "[u]nenforceability of a contract because of illegality is a function of the strength of the public policy involved together with the degree of the violation of that policy under the facts of the case."[95] In *CitaraManis*, the majority concluded that "the facts . . . on summary judgment do not present the degree of illegality that triggers application of the rule of the unlicensed occupation cases."[96]

In drawing the distinction between the occupational licensing cases and the facts of *CitaraManis*, the majority determined that, "[i]n effect, premises and not people are to be licensed" under the Howard County Code provision.[97] The majority opinion analogized

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89. *CitaraManis*, 328 Md. at 159, 613 A.2d at 972.
90. *See CitaraManis*, 328 Md. at 159-62, 613 A.2d at 972-73 (citing Comet Theatre Enters., Inc. v. Cartwright, 195 F.2d 80, 83 (9th Cir. 1952); Host v. Gauntlett, 341 N.Y.S.2d 201, 203 (N.Y. Civ. Ct. 1973); Mosley v. Johnson, 453 P.2d 149, 152 (Utah 1969)).
91. *CitaraManis*, 328 Md. at 160, 613 A.2d at 973.
92. *Id.* at 160-61, 613 A.2d at 973 (quoting Host v. Gauntlett, 341 N.Y.S.2d 201, 204 (N.Y. Civ. Ct. 1973)) (emphasis in *Host*).
93. *See supra* note 55 and accompanying text.
94. The demonstrative cases cited by the court are: S.A.S. Personnel Consultants, Inc. v. Pat-Pan, Inc., 286 Md. 335, 341, 407 A.2d 1139, 1143 (1979); Harry Berenter, Inc. v. Berman, 258 Md. 290, 293, 265 A.2d 759, 761 (1970); Thorpe v. Carte, 252 Md. 523, 529, 250 A.2d 618, 621-22 (1969); Smirlock v. Potomac, 235 Md. 195, 203, 200 A.2d 922, 926-27 (1964); Snodgrass v. Immler, 232 Md. 416, 421-22, 194 A.2d 103, 105-06 (1963); and Goldsmith v. Manufacturers' Liab. Ins. Co., 132 Md. 283, 286, 103 A. 627, 628 (1918). *See CitaraManis*, 328 Md. at 158, 613 A.2d at 972.
95. *CitaraManis*, 328 Md. at 158, 613 A.2d at 971-72 (citing Schloss v. Davis, 213 Md. 119, 124-25, 131 A.2d 287, 290-91 (1957)).
96. *Id.* at 162, 613 A.2d at 973; *see infra* note 100 and accompanying text.
97. *CitaraManis*, 328 Md. at 162, 613 A.2d at 973. This statement follows from the assertion by Judge Karwacki that, rather than determining competence as a service provider, the license here concerned has as its "purpose the identification of premises to be inspected in order to determine compliance with housing codes." *Id.*

the setting of the instant case to that presented in *Schloss v. Davis*.[98] Judge Karwacki summarized the facts of *Schloss* as follows:

> The plaintiff in *Schloss* performed what we would now call construction manager services in the construction of a residence for the owner. In the construction manager's suit on an oral contract for all of the allegedly promised compensation, the owner defended on the ground, *inter alia*, that the construction manager had violated the local building code by beginning work on the foundation and frame without a building permit. The permit apparently was obtained when final drawings became available before work progressed beyond the foundation and frame stages.[99]

In permitting the construction manager to recover, the *Schloss* court noted the following:

> It is the general rule that recovery will be denied if a contract is illegal in purpose or made by a person lacking the legal qualifications to contract. But there is a recognized exception where a denial of recovery would impose a penalty out of all proportion to the public good, particularly where the violation is not of a serious nature and merely incidental to the performance of the contract. . . . We think the violation here falls within the exception.[100]

According to the *CitaraManis* majority, awarding restitution to the CitaraManises would likewise constitute "a penalty out of all proportion to the public good" sought to be preserved by the licensing requirement.[101] The tenants bargained for safe, healthy, and secure housing, which, licensed or not, is exactly what they received.

The "premises versus persons" distinction made by the *CitaraManis* majority adds an element previously unacknowledged in Maryland case law.[102] In addition, this distinction arguably contradicts

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98. 213 Md. 119, 124-25, 131 A.2d 287, 290-91 (1957).
99. *CitaraManis*, 328 Md. at 162, 613 A.2d at 974.
100. *Id.* at 163, 613 A.2d at 974 (quoting *Schloss*, 213 Md. at 125, 131 A.2d at 291) (citations omitted).
101. *See id.*
102. Judge Bell asserts in dissent that the analysis undertaken by the court in *Golt*, far from contemplating the distinction now asserted by the majority, was performed solely with an eye toward determining whether the Baltimore City ordinance at issue was regulatory or revenue-generating. *CitaraManis*, 328 Md. at 170, 613 A.2d at 977 (Bell, Robert M., J., dissenting); *see* Golt v. Phillips, 308 Md. 1, 12-13, 517 A.2d 328, 333-34 (1986). *But cf.* Harry Berenter, Inc. v. Berman, 258 Md. 290, 265 A.2d 759 (1970). The *Berman* court noted that

> [I]f a statute requiring a license for conducting a trade, business or profession is regulatory in nature for the protection of the public,

the court's analogy to, and reliance upon, *Schloss*. In *Schloss*, the defendant argued, on two independent grounds, that the contract for services was "void for illegality."[103] As one basis for this illegality argument, the defendant asserted the plaintiff's failure to obtain the necessary building permits before advancing with construction. This permit issue was the point on which Judge Karwacki in *CitaraManis* drew the analogy to *Schloss*:

> The approval of dwellings under a rental housing licensing scheme, from a public safety and welfare standpoint, is more like the approval of plans for the construction of buildings than the licensing of service occupations. Inasmuch as the construction manager in *Schloss* was permitted affirmatively to recover promised compensation, *a fortiori*, the Hallowells, on the present record, are not obliged to refund rent paid.[104]

This analogy—linking the permit issue in *Schloss* to the rental license at issue in *CitaraManis*—is persuasive to a point; to consider it conclusive, however, disregards the very language from *Schloss* quoted by Judge Karwacki:[105] "The contract for supervision was not illegal *per se*" as a consequence of the plaintiff's failure to obtain the required permits.[106] In *CitaraManis*, however, the lease of the unlicensed property patently violated the Howard County Code,[107] and was therefore illegal per se. Thus, both the strength of the public policy at issue in *CitaraManis* and the degree of the violation exceed those weighed by the *Schloss* court. While the conclusion that the facts of *CitaraManis* "do not present the degree of illegality that triggers application of the rule of the unlicensed occupation cases" may still be tenable,[108] the nature of the violation committed in

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> rather than merely to raise revenue, an unlicensed person will not be given the assistance of the courts in enforcing contracts within the provisions of the regulatory statute because such enforcement is against public opinion.

Id. at 293, 265 A.2d 761. Although the general rule, as quoted, refers to "an unlicensed *person*," the author is unaware of any Maryland decision preceding *CitaraManis* which explicitly emphasizes "person" rather than "unlicensed."

103. Schloss v. Davis, 213 Md. 119, 124, 131 A.2d 287, 290 (1957).
104. *CitaraManis*, 328 Md. at 163-64, 613 A.2d at 974.
105. *See id.* at 162-63, 613 A.2d at 974.
106. *Schloss*, 213 Md. at 125, 131 A.2d at 291. Further, and as also quoted by Judge Karwacki, *see CitaraManis*, 328 Md. at 163, 613 A.2d at 974, "[a]t most, [the contract] was conditioned upon the obtaining of a permit by [the owner], based on the approval of the architectural drawings which [the owner] undertook to supply." *Schloss*, 213 Md. at 125, 131 A.2d at 291.
107. *See supra* note 83 and accompanying text.
108. *CitaraManis*, 328 Md. at 162, 613 A.2d at 973; *see supra* note 96 and accompanying text.

Schloss, and thus the degree of illegality present, are distinguishably less severe than their analogous counterparts in *CitaraManis*.

The *Schloss* court's analysis of the second basis upon which the defendant challenged the validity of the contract—whether the supervisor had the license required of general contractors by the Maryland Annotated Code—contemplated the traditional distinction drawn in the occupational licensing cases: Is the purpose of the licensing statute or ordinance regulatory or revenue-generating?[109] Speaking for the *Schloss* court, Judge Henderson considered and dismissed the defendant's argument in the span of two sentences:

> The contention that Davis had no general contractor's license, as required by Code (1951), Art. 56, Sec. 168, is without merit. It was noted in *Maguire v. State*, 192 Md. 615, that this particular license is for revenue and not for regulation.[110]

On this point, therefore, the holding of *Schloss*, rather than supporting the dismissal of the CitaraManises' complaint, merely conforms to the general rule that distinguishes between revenue-generating and regulatory statutes, and further strengthens the argument basing recovery in an analogy to the "unenforceability-due-to-illegality" principle that prevails in the occupational licensing cases.[111] The property licensing ordinance violated by the Hallowells was, and is, regulatory, rather than revenue-generating.[112] Thus, on both common-law illegal contract bases, the treatment of the licensing issue in *Schloss* can be seen, not as justification for denial of the CitaraManises' claim, but as solid grounds of support for complete restitution of all rents paid.[113]

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109. *See supra* note 29 and accompanying text; *supra* note 43 and accompanying text; *supra* note 102.
110. *Schloss*, 213 Md. at 125-26, 131 A.2d at 291.
111. *Compare supra* note 110 and accompanying text *with supra* note 100 and accompanying text.
112. *See supra* note 43 and accompanying text (discussing the analogous Baltimore City ordinance considered by the *Golt* court).
113. The majority opinion's treatment of the occupational licensing cases ends with the following:

> For the same reasons set forth in this Part IV.B., we spoke too broadly in *Golt* to the extent that *Golt* rests the recovery of rent paid on the application to the licensing of rental housing of a per se rule derived from the occupational licensing cases. *Golt* did not discuss, or cite, *Schloss*.

CitaraManis, 328 Md. at 164, 613 A.2d at 974. Although Judge Bell, in dissent in *CitaraManis*, does not specifically address the majority's substantive treatment of *Schloss* from the same perspective advanced herein, he notes as "curious" the retrospective use of that case to undermine the unmistakable restitutionary underpinnings and holding of *Golt*, a case that *Schloss* predates by almost thirty years. *Id.* at 174, 613 A.2d at 979-80 (Bell, Robert M., J., dissenting).

The *CitaraManis* majority expressly declined to consider "whether lack of the required rental housing license, in and of itself and without regard to the condition of the premises, would be sufficient to bar a landlord's claim for unpaid rent or for use and occupation."[114] The treatment of the occupational licensing cases in the majority opinion implies, however, that although rent "voluntarily" paid may not be recovered by the tenant, the unenforceability of the lease would preclude the landlord from the award of rent due but unpaid.[115] Even though this dichotomy arguably hinges upon form rather than substance, such a holding would be consistent with the Connecticut Supreme Court's treatment of its analogous consumer protection statute,[116] and with those occupational licensing cases denying recovery to the unlicensed plaintiffs.[117]

One purpose of the Maryland CPA, implicitly if not explicitly, is to assist the state's subdivisions in enforcing local property licensure laws.[118] The dissenters argue that rather than supporting enforcement efforts, the interpretation of the CPA's remedy provisions in the instant case vitiates the economic incentive that, in the wake of *Golt v. Phillips*, encouraged residential landlords to comply with local licensing requirements.[119] Instead, the *CitaraManis* result offers a

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114. *Id.* at 158-59, 613 A.2d at 972.

115. *See CitaraManis*, 328 Md. at 158-64, 613 A.2d at 971-74. The striking deviation from the pattern is the recovery, in *Schloss*, by the unlicensed contractor. As illustrated above, *see supra* notes 109-111 and accompanying text, the example of *Schloss*, rather than demonstrating an exception to the prevailing jurisprudence, conforms to the established distinction between regulatory and revenue-generating licenses.

116. *See supra* note 65 and accompanying text. Note, however, that the Connecticut consumer protection statute expressly precludes recovery of rent by the landlord in such circumstances:

> Sec. 47a-5. (Formerly Sec. 47-24a). NO RENT RECOVERABLE FOR PERIOD OF UNLAWFUL OCCUPATION. In any borough, city or town which requires a certificate of occupancy prior to human habitation of any building located therein, if any building is occupied in whole or in part without such occupancy permit, rent shall not be recoverable by the owner or lessor of the premises for such period of unlawful occupation.

CONN. GEN. STAT. § 47a-5 (1979). The Supreme Court of Connecticut reached the same result as the *CitaraManis* majority, even in the face of the above-quoted provision. *See* Conaway v. Prestia, 464 A.2d 847 (Conn. 1983). Neither the Maryland CPA nor the Maryland Real Property Article contains such a provision.

117. *See, e.g.*, Snodgrass v. Immler, 232 Md. 416, 194 A.2d 103 (1963).

118. *See* Statement of Mary Gardner, Legal Officer Supervisor, Department of Housing and Community Development (of Baltimore) before the House Judiciary Committee (Feb. 9, 1989) ("The licensing requirement is essential to the City's ability to ensure decent housing."), *microfilmed on* Md. Gen. Assembly Leg. Hist., H.R. 391, Reg. Sess (1989); *supra* note 48.

119. *CitaraManis*, 328 Md. at 175, 613 A.2d at 980 (Bell, Robert M., J., dissenting).

disincentive to landlords, making it economical for them to ignore similar licensing requirements until such time as the lack of licensure is uncovered. As long as the tenant continues to pay the rent as provided in the unenforceable lease, the landlord's exposure, in any civil action initiated by the tenant, is limited to the difference between the rent received and the actual rental value of the premises for the period covered by the payments.[120] In response, the majority notes that such practices more appropriately fall within the purview of the public enforcement proceedings effected by the CPA, rather than a section 13-408(a) private civil action.[121]

As alleged by Judge Bell, the *CitaraManis* majority's treatment of the damages question may well hinge on the perceived unfairness in taking from the landlords that which they seem to have honestly earned, and conveying upon the tenants a subsequently "unjust enrichment."[122] The intentions and motivations of the landlords notwithstanding, the dissenting opinion reasonably points out that, in addressing the relative equities of the situation, it makes little sense to expend such considerable effort to aid that party which failed to comply with the law, and in so failing, created his or her own liability.[123] Nonetheless, under these facts, where one of two parties may be seen to have been "unjustly enriched," the *CitaraManis* holding resolves the issue in a manner consistent with the reasonable contractual expectations of the parties[124] and arguably in accordance with the declared spirit of the CPA, although clearly to the financial detriment of these particular consumers. The battle lines thus drawn,[125] unless and until the legislature chooses to affirmatively address the issue and enact a contrary result, the holding of *CitaraManis* has recast what was the post-*Golt* sword of the cunning tenant into the protective shield of those unwary tenants who fall victim to unscrupulous landlords.

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120. *Id.*
121. *Id.* at 154, 613 A.2d at 969 ("[T]he appropriate means for addressing this potential [disincentive] problem is through the imposition of civil penalties under § 13-410, and criminal penalties under § 13-411 of the CPA, not by transforming § 13-408(a) into a punitive measure.").
122. *Id.* at 177, 613 A.2d at 981 (Bell, Robert M., J., dissenting).
123. *Id.* at 177-78, 613 A.2d at 981 (Bell, Robert M., J., dissenting).
124. This is true only if the "value" associated with the approval of the licensing authority is entirely discounted.
125. *See* Galola v. Snyder, 328 Md. 182, 613 A.2d 983 (1992) (reaching same result on analogous facts with same members of court comprising majority and dissent).