Docket No.: **Docket No. #12-CV-00647**
Parties: **Maureen Blake, Richard Blake, Barbara Craw, Jennifer Crowley-Rhodes, Pat A. Henry, Nancy Joseph, Linda McCarey, James McDonald, Cindy A. McKenna, Timothy Robinson, Oakhill Community Residents Association, Inc. and Byron T. Yarboro, President PLAINTIFFS v. Hometown America Communities, Inc. and Hometown Oak Hill, LLC DEFENDANTS**
Judge: **/s/WILBUR P. EDWARDS, JR.**
Date:

SOUTHEASTERN DIVISION
MEMORANDUM OF DECISION ON CROSS MOTIONS FOR SUMMARY JUDGMENT
Introduction

The Plaintiffs[1] in this class action are tenants in a manufactured housing community of approximately 175 home sites in Attleboro, Massachusetts. They have alleged that the Defendants, their landlord and owner of the manufactured housing community, have knowingly violated provisions of the Massachusetts Manufactured Community Housing statute codified at M.G.L. c. 140, § 32L. These alleged violations of the statute arise out of the Defendants requiring the Plaintiffs to pay rental amounts in excess of the rents charged to other tenants who resided in the community prior to the commencement of the Plaintiffs' tenancy.

M.G.L. c.140, § 32L states in pertinent part the following:

Section 32L. The following requirements and restrictions shall apply to all manufactured housing communities:

1) A manufactured housing community licensee may promulgate rules governing the rental or occupancy of a manufactured home site but no such rule shall be unreasonable, unfair or unconscionable.

2) Any rule or change in rent which does not uniformly apply to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair.

...

6) Any rule or condition of occupancy which is unfair or deceptive or which does not conform to the requirements of this section shall be unenforceable.

7) Failure to comply with the provision of section thirty-two A to thirty-two S, inclusive, shall constitute an unfair or deceptive practice under the provisions of paragraph (a) of section two of chapter ninety-three A. Enforcement of compliance and actions for damages shall be in accordance with the applicable provisions of section four to ten, inclusive, of said chapter ninety-three A. M.G.L. c.140, § 32L

The Plaintiffs alleged that the Defendants' actions constituted a violation of both M.G.L. c. 140, § 32L(2) and M.G.L. c. 93A (2)(a) by treating them as a separate class from other tenants.

The Defendants acquired the manufactured housing community known as Oak Hill Park on January 27, 2006. The Defendants are subject to M.G.L. c. 140, § 32F as same defines a manufactured housing community as "[a]ny lot or tract of land upon which three or more manufactured homes occupied for dwelling purposes are located, including any buildings, structures, fixtures and equipment used in connection with manufactured homes". The Court will refer to the Oak Hill Park manufactured housing community at 1003 Oak Hill Avenue, Attleboro, Massachusetts as the "Community".

The Plaintiffs were certified as a class consisting of "individual unit owners who own units within Hometown America Communities Oak Hill Park and who acquired the units after February 1, 2006." The Plaintiffs specifically allege that after the Defendants purchased the Community on January 27, 2006, they violated M.G.L. c. 140, § 32L(2) by charging members of the class ninety-six ($96.00) dollars more in monthly rental than those tenants of the Community who resided there prior to the January 27, 2006 acquisition (the

"Pre-acquisition Residents"). The Plaintiffs allege that they have not been provided any additional services by the Defendants that were different from the Pre-acquisition Residents. The Plaintiffs further argue that the Defendants' actions in charging different rents in the Community based solely on the date of the Defendants' acquisition of the Community constituted a violation of M.G.L. c. 93A(2).

The Defendants in response argue that the Plaintiffs' class and the Pre-acquisition Residents are in different classes as defined and allowed by M.G.L. c. 140, § 32L(2) and therefore the Plaintiffs are not entitled to the relief sought in the Complaint.

Standard of Review for Summary Judgment Motions

To prevail on a Motion for Summary Judgment, the moving party must demonstrate with admissible evidence, based upon the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, that there are no genuine issues as to any material facts and that the moving party is entitled to judgment as a matter of law. Mass.R.Civ.P. 56(c); Oak Hill Park National Bank v. Dawes, 369 Mass. 550, 553556 (1976). Once the moving party meets its initial burden of proof, the burden shifts to the nonmoving party "to show with admissible evidence the existence of a dispute as to material facts." Godbout v. Cousens, 396 Mass. 254, 261 (1985). "A party moving for summary judgment in a case in which the opposing party will have the burden of proof at trial is entitled to summary judgment if he demonstrates, by reference to material described in Mass.R.Civ.P. 56(c), unmet by countervailing materials, that the party opposing the motion has no reasonable expectation of proving an essential element of that party's case." Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991). See also Flesner v. Technical Communications Corp., 410 Mass. 805, 80809 (1991).

Undisputed Facts

The Plaintiffs and Defendants submitted a Joint Statement of Material Facts as to Which There is No Genuine Issue to be Tried. The Court finds the following: Both Defendant Hometown America Communities, Inc. ("Hometown America") and Hometown Oak Hill, LLC ("Hometown Oak Hill"), are Foreign Limited Liability Companies authorized to do business in Massachusetts. Hometown Oak Hill is a wholly owned subsidiary of Hometown America. Hometown Oak Hill acquired the property known as Oak Hill Park at 1003 Oakhill Avenue, Attleboro, Massachusetts, on January 27, 2006. Oak Hill Park (the "Community") is comprised of approximately one hundred and seventy five (175) home sites. The Community is a manufactured housing community as defined in M.G.L. c. 140, § 32F as "[a]ny lot or tract of land upon which three or more manufactured homes occupied for dwelling purposes are located, including any buildings, structures, fixtures and equipment used in connection with manufactured homes". Under regulations promulgated by the Attorney General at 940 CMR 10.01governing Manufactured Housing, the Defendants are "Operators" of the Community and the Plaintiffs are "Residents" and "Tenants" of the Defendants.[2] The named class Plaintiffs (with the exception of Oakhill Community Residents Association, Inc., as discussed below) became Residents or Tenants of the Community after January 27, 2006, when Hometown Oakhill acquired the Community. The Plaintiffs and Defendants entered into written leases which charged the Plaintiffs ninety-six dollars ($96.00) more in rent each month than the Pre-acquisition Residents. On April 1, 2012, named Plaintiff Nancy Joseph, through counsel, sent the Defendants a demand letter pursuant to M.G.L. c. 93A. The Defendants responded to the Plaintiff's demand letter on or about May 1, 2012, denying any liability as to Ms. Joseph's claim.

Procedural History

The Complaint in this action was filed on September 28, 2012 by ten individuals residing in the Community. The Oak Hill Park Residents Association (the "Association") and Byron T. Yarboro ("Yarboro") in his capacity as the president of the Association were also named as Plaintiffs. The Defendants filed their Answer on October 29, 2012. Their Answer was subsequently amended on motion and allowed by this Court on March 18, 2014.

On July 30, 2013 the Court, Chaplin, F.J., allowed the Plaintiffs' Motion for Class Certification Pursuant to Mass. R. Civ. P. 23. Approximately twenty-nine (29) individuals were part of the initial class. One individual was dismissed from the class by the Court on September 30, 2014.

On December 12, 2014 the Plaintiffs filed their Motion for Summary Judgment with a Memorandum of Law. On December 16, 2014, the Defendants filed their Motion for Summary Judgment with a Memorandum of Law. On February 6, 2015 the Plaintiffs filed its Opposition to Defendants' Motion for Summary Judgment. On February 10, 2015 the Court held a hearing on the parties' respective cross-motions.

DISCUSSION

A. Standing

As a preliminary matter, the Defendants have raised the issue of standing with regard to the Association and Byron Yarboro. Byron Yarboro is no longer the president of the Association as represented to the Court by counsel. In general, "[t]o have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury." Slama v. Attorney Gen., 384 Mass. 620, 624, (1981). The Plaintiffs did not brief nor argue that either the Association or Byron Yarboro in his official capacity as President of the Association had standing to remain in this action. Accordingly, Oakhill Community Residents Association and Byron Yarboro, in his capacity as president of Oakhill Community Residents Association, are DISMISSED as parties for lack of standing.

B. Statute of Limitations

The Defendants in their opposition have raised an affirmative defense based on the statute of limitations. See Defendants' Amended Answer The statute of limitations for the Plaintiffs' contractual claim against the Defendants pursuant to M.G.L. c. 140, § 32L is six (6) years. M.G.L. c. 260, § 2. The Plaintiffs' claim under M.G.L. c. 93A(2)(a) carries a four (4) year limitation. M.G.L. c. 260, § 5A. The Plaintiffs' Complaint was filed on September 28, 2012. At the hearing on February 10, 2015, the parties orally stipulated and the Court now finds that the respective statute of limitations will limit the Plaintiffs' damages, if any, to those incurred after September 28, 2006 for the Plaintiffs' claims under M.G.L. c. 140, § 32L(2). For the Plaintiffs' claims under M.G.L. c. 93A(2)(a), damages will be limited to those that occurred after September 28, 2008.

C. Count I: Plaintiffs Claim Under M.G.L. c. 140, § 32L.

The Plaintiffs' primary claim in this class action matter alleges that the Defendants charged residents of the Community different rental amounts that were not uniform for the same or similar class of residents. M.G.L. c. 140, § 32L(1) and (2) states in pertinent part that:

"1) A manufactured housing community licensee may promulgate rules governing the rental or occupancy of a manufactured home site but no such rule shall be unreasonable, unfair or unconscionable.

2) Any rule or change in rent which does not uniformly apply to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair."

The Plaintiffs argue in their Complaint that the Plaintiffs and the Pre-acquisition Residents are members of a "similar class" for the purposes of M.G.L. c. 140, § 32L(2). The Defendants contend that the Plaintiffs and the Pre-acquisition Residents are in separate, dissimilar classes.

As set forth in Greenfield County Estates Tenants Association v Deep, 423 Mass.91 (1996), the S.J.C. stated the following:

"A familiarity with the statutes involved in this case is helpful to an understanding of the factual discussion. General Law c. 140, §§32A-32R establishes a statutory scheme intended to protect tenants of manufactured housing communities, formerly known as mobile home parks. Both the Legislature and the courts of the Commonwealth have recognized that manufactured housing communities provide a viable, affordable housing option

to many elderly persons and families of low and moderate income, who are often lacking in resources and deserving of legal protection."

The Plaintiffs rely on Chelmsford Trailer Park v. Town of Chelmsford, 393 Mass. 186 (1984), to support their interpretation of "similar class". Chelmsford Trailer Park was based on issues of law and fact vastly different from those presented in this class action. Chelmsford Trailer Park, was brought as a challenge by the owner of a manufactured housing community as to the validity of an act enabling the Town of Chelmsford to adopt a rent control by-law governing a manufactured housing community in the municipality. Id. at 186. The by-law would control the process for adjusting the tenant's rent in such a community through a municipal board. The S.J.C. found the enabling legislation constitutional granting the Town of Chelmsford the right to control rent adjustments in a manufactured housing community. Id. The S.J.C. mentioned M.G.L. c. 140, §32L briefly in directions to the local rent control board to be mindful of the statutory protections against the "arbitrary granting of rent decreases" when allowing or denying requests for changes in rent. Id. at 193-194. Based on the limited discussion of M.G.L. c. 140, §32L by the S.J.C. and the different factual and legal context in Chelmsford Trailer Park, it offers little guidance to this Court on whether the Plaintiffs in this case and the Pre-acquisition Residents are in a similar class.

The Defendants argue that there are two separate and dissimilar classes of residents who reside on the property; the initial class consists of individuals who were residents prior to January 27, 2006 (the Pre-Acquisition Residents) and the other class consists of individuals who became residents after January 27, 2006, essentially the Plaintiffs' class. To support their defense, the Defendants cite Commonwealth of Massachusetts, et.al v. James DeCoitis, et.al, Suffolk Superior Court Docket No. 87-7160 in support of this argument. Appended to the Defendants' Memorandum of Law is Exhibit #7 which purports to be a Master Lease (the "Master Lease") between the owner of a manufactured housing community and the tenants[3]. In this case the Commonwealth of Massachusetts and the Town of Chelmsford brought an action to restrain the owner of a manufactured housing community from selling the community. The parties in the case established a master lease between the owner and the residents of the manufactured housing community. The master lease allowed the owner to increase the rent for certain new tenants in that community and stated that "a new tenant shall be regarded as a member of a dissimilar class." DeCoitis, Master Lease ¶ 11. The Master Lease by its own terms lacks any precedential value in this Court. DeCoitis, Master Lease ¶ 5. Defendant's Exhibit 7 As such, based on the documentation submitted by the Defendants, this court is not persuaded that an agreement set forth in a lease document in which the parties expressly state that it has no precedential value would allow this Court to find in the Defendants' favor.

The determination of whether residents are in a "similar class" for the purposes of M.G.L. c. 140, § 32L(2) must take into account a variety of factors, such as lot size and the availability of services and facilities. In this case, it is undisputed that the lots are approximately the same size, and the services and facilities are equally available to each resident or tenant of the Community. The only difference that the Court can discern from the pleadings for the Defendants' rental charge differential is the acquisition date of January 27, 2006. This difference alone is not enough to place the residents of the Community in dissimilar classes when all other aspects of the tenancies in the Community are the same.

Based on the pleadings and documentation submitted with the respective motions and the oral arguments, the Court finds the Plaintiffs and the Pre-acquisition Residents are in a "similar class" for the purposes of M.G.L. c. 140, § 32L(2) and therefore must be treated fairly and uniformly. The Court finds that the Plaintiffs have sustained their burden that they have not been treated fairly and uniformly due to the Defendants' imposition of additional rental charges that are in excess of those charged to Pre-

acquisition Residents.

M.G.L. c. 140,§32L(2) permits the Defendants to rebut the presumption that the non-uniform rent assessment charged to a similar class of residents is unfair. The Defendants offered no evidence regarding the fairness or even the reason for the rent differential put in place in the Community after January 27, 2006. The Defendants have, accordingly, failed to rebut the presumption. The Court therefore finds for the Plaintiffs as to their request for summary judgment as to Count I of the Complaint.

D. Count II: Violation of Chapter 93A(2)(a)

M.G.L.c.140,§32L(7) states that:

> [f]ailure to comply with the provisions of sections thirtytwo A to thirtytwo S, inclusive, shall constitute an unfair or deceptive practice under the provisions of paragraph (a) of section two of chapter ninetythree A. Enforcement of compliance and actions for damages shall be in accordance with the applicable provisions of section four to ten, inclusive, of said chapter ninetythree A.

The Court has found that the Plaintiffs and the Pre-acquisition Residents are in a "similar class" for purposes of M.G.L. c. 140, § 32L(2). The Defendants have failed to rebut the presumption of unfairness under M.G.L. c. 140, § 32L(2) based on the non-uniform change in rent charged to the Plaintiffs. Accordingly, the Defendants are therefore liable to the Plaintiffs under M.G.L. c. 93A(2)(a). Commonwealth v Michael Decotis and another, 366 Mass. 234, 239 (1974)("Clearly the leasing of lots for mobile homes is a "trade" or "commerce")

Under M.G.L. c. 93A(9) double and treble damages are available to the Plaintiffs only if the unfair "practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two." Relying on the documents submitted by the parties, the Court finds that there are issues of material fact as to whether the Defendants' violation of M.G.L. c. 140, § 32L(2) was willful or knowing as contemplated in M.G.L. c. 93A(9).

The Plaintiffs have alleged for the first time in their Summary Judgment Motion and at oral argument that the Defendants also separately violated M.G.L. c. 140, § 32L by intentionally omitting or failing to disclose pre-leasing information to the Plaintiffs. Absent an appropriate amendment to the Complaint, these allegations alone are insufficient to meet the Plaintiffs' burden of proof on summary judgment. The Defendants have denied these new allegations.

The Court finds that issues of material fact still exist as to whether the Defendants' violation of M.G.L.c.140, § 32L(2) as to the rent differential charge was a willful and knowing violation of M.G.L. c. § 93A(9). The Court therefore DENIES the Plaintiffs' Motion for Summary Judgment as to Count II of their Complaint.

E. Damages

Plaintiffs' damages pursuant to M.G.L.c.140, § 32L(2) will be determined after further hearing as to Count I of their Complaint. The Court will also conduct a further hearing on July 21, 2015 at 2:00 P.M. in Taunton as to whether the Defendants' unfair acts as found by the Court were willful and knowing violations of M.G.L. c. 93A(9).

ORDER

For the above-stated reasons, the Plaintiffs' Motion for Summary Judgment is
ALLOWED as to Count 1 and so much of Count 2 as addresses the Defendants' liability under M.G.L. c. 93A(2)(a) for an unfair or deceptive practice. The Plaintiffs' Motion for Summary Judgement is DENIED as to the portion of

Count 2 that addresses whether the Defendants' violation of M.G.L. c. 93A(9) was a willful and knowing violation.

For purposes of assessing damages under M.G.L.c.140, § 32L(2), the Court has determined that damages will be computed from September 28, 2006. For the purposes of assessing damages, if any, pursuant to M.G.L. c. 93A(2), the Court has determined that September 28, 2008 will be the determinative date.

The Defendants' Motion for Summary Judgment is DENIED.

SO ORDERED.

/s/WILBUR P. EDWARDS, JR.
ASSOCIATE JUSTICE

cc: Peter V. Tekippe, Esq,
Robert Kraus, Esq.

---

[1] The Plaintiffs are Maureen Blake, Richard Blake, Barbara Craw, Jennifer Crowley-Rhodes, Pat A. Henry, Nancy Joseph, Linda McCarey, James McDonald, Cindy A. McKenna, Timothy Robinson, Oakhill Community Residents Association, Inc. And Byron T. Yarboro. The Court for convenience will refer to them collectively as (the "Plaintiffs").

[2] 940 CMR 10.01 defines "Operator" as "a person who directly or indirectly owns, conducts, controls, manages, or operates any manufactured housing community, and his/her agents or employees." "Resident" is defined as "any person who normally resides in a manufactured home in a manufactured housing community, regardless of whether or not he or she has an occupancy agreement with the operator. "Tenant" is defined as "a person who has an occupancy agreement or oral tenancy agreement with an operator for the use and occupancy of a manufactured home site, common areas, facilities, and other appurtenant rights."

[3] From a review of the Master Lease supplied by the Defendant in the DeCoitis case, the Court will infer that the parties settled the underlying Superior Court case as part of a global settlement. The parties did not supply any additional information regarding the actual Superior Court case and this Court was unable to obtain a copy of any settlement agreement.