

Chapter 93A Litigation Newsletter | 4th Quarter 2022



A summary of Massachusetts state and federal court decisions relating to General Laws Chapter 93A, the Massachusetts Consumer Protection Law, from Oct. 1 to Dec. 31, 2022.

MASSACHUSETTS STATE COURTS

Supreme Judicial Court/Appeals Court

Marengi v. 6 Forest Road LLC, 2022 Mass. LEXIS 566 (2022).

Supreme Judicial Court defines “costs” under Chapter 40A by reference to “costs” as used in Chapter 93A.

Plaintiffs filed a complaint in Superior Court challenging a municipal zoning board of appeals approval of a comprehensive permit under Mass. Gen. Laws c. 40B, § 21. The defendant developer sought to have plaintiffs post a bond under c. 40A, § 17, which the Superior Court approved in the amount of \$35,000. The plaintiffs appealed the order to a Single Justice of the Appeals Court, which the Supreme Judicial Court (SJC) transferred *sua sponte* to address whether the bond provisions of c. 40A, § 17 applied to c. 40B, § 21.

When analyzing Section 17’s use of the word “costs,” the SJC relied on the use of the word “costs” under Chapter 93A. Specifically, the SJC explained that costs under Section 17 refer to “certain nontaxable litigation costs like those recoverable under G. L. c. 93A, which includes the costs of experts but, in the absence of any explicit authorization, does not extend to include attorney’s fees, carrying costs, or other delay damages.” Examples of taxable costs are those described in Mass. Gen. Laws c. 261, § 23, such as

filing fees, witness fees, “certain small daily fees (five dollars per day in court, up to fifteen dollars maximum),” travel by a party “in a sum the court may allow” and, under Chapter 93A, “actual costs of experts.” Finally, the SJC noted that allowing costs under Chapter 93A seeks to “vindicate the policies” of that statutory scheme.

Murphy v. Dadmun, 2022 Mass. App. Unpub. LEXIS 692 (Mass. App. Ct. Nov. 3, 2022).

Appeals Court finds evidence supporting Chapter 93A, Section 11 violations lacking.

Plaintiff sold her business to defendant, and after defendant failed to pay the amount due under the sales contract, plaintiff brought claims against defendant for breach of contract, and Chapter 93A violations, among other claims. Specifically, plaintiff alleged that defendant violated Chapter 93A by failing to pay amounts due under the contract and by attempting to renegotiate the contract in an attempt to pay less. The Court found this did not violate 93A, as the jury specifically found that no contract was ever formed and absent a contract, defendant’s conduct was not unfair or deceptive.

Defendant countersued, also alleging Chapter 93A violations. Defendant’s Chapter 93A claim was premised on three allegations: (1) plaintiff attempted to intimate and bully defendant into signing a different contract from what the parties originally contemplated; (2) plaintiff demanded payment despite the absence of a contract; and (3) plaintiff agreed upon a payment amount but then later rejected that agreement, demanded more money, and then commenced this litigation when defendant would not pay the higher amount. The Court found that defendant’s first and second allegations did not cause defendant a loss of money or property, an essential element of a Chapter 93A, Section 11 claim because defendant never made the payments plaintiff demanded. Defendant’s third allegation also did not amount to a Chapter 93A violation because the Court found that a valid contract never existed, so plaintiff was free to attempt to negotiate a higher price.

Starr Capital Partners, LLC v. Toll. Brothers, Inc., 2022 Mass. App. Unpub. LEXIS 695 (App. Ct. Mass. Nov. 3, 2022).

Appeals Court finds that plausible, but incorrect, interpretation of the agreement does not violate Chapter 93A.

Plaintiff sold real property to the defendants, and a dispute arose concerning the terms of the sales agreement, specifically concerning the environmental remediation costs for the property. Plaintiff sued defendant alleging breach of contract and violation of Chapter 93A, among other claims. Specifically, plaintiff alleged that defendant violated Chapter 93A by inflating the remediation cost of the property so that plaintiff could not exercise the option, informing plaintiff it had mutual approval rights over cost increases and later telling plaintiff it did not, and ignoring plaintiff’s cost-cutting proposals and objections to the remediation work. The Court found that defendant’s behavior did not amount to a Chapter 93A violation. The parties disagreed about the terms of the contract and were engaged in discussions to resolve the disagreement. At most, the Appeals Court concluded that plaintiff might be able to show defendant relied on a plausible, but incorrect, interpretation of the agreement, which did not amount to an unfair or deceptive act under 93A.

Trial Court

Alo, LLC v. L3 149 Newbury St., LLC 2022 Mass. LCR LEXIS 115 (Mass. Ld. Ct. Dec. 21, 2022).

Allegations insufficient for “stringing along” Chapter 93A liability.

Parties entered into a letter of intent to sign a commercial lease. After negotiating the lease but before the parties executed it, the defendant-landlord informed the plaintiff-tenant that defendant was proceeding with another tenant and would not be executing the lease with plaintiff. Plaintiff brought an action in the Land Court alleging a Chapter 93A violation and seeking a declaratory judgment that the lease (that was never entered into) was valid. The Court found that plaintiff’s allegations “likely” fell short of the standard required under Chapter 93A. While one business “stringing along” another business is a form of commercial extortion (and a valid Chapter 93A claim), plaintiff did not plead sufficient facts to support a “stringing along” Chapter 93A violation. The Court noted that a “stringing along” 93A violation requires allegations of misrepresentation and coercion that induce plaintiff into entering a contract on unfavorable terms. However, the Land Court ultimately held that it did not have ancillary jurisdiction over the Chapter 93A claim – the Chapter 93A claims were not so intertwined with the declaratory relief plaintiff sought and were “sufficiently distinct.” The Court held that the Chapter 93A claim must be considered separately and dismissed it without prejudice.

MASSACHUSETTS FEDERAL COURTS

District Court

Corrigan v. Covidien LP, 2022 U.S. Dist. LEXIS 210296 (D. Mass. Nov. 21, 2022).

Whether conduct meets “primarily and substantially” test under Chapter 93A, Section 11 was a fact-intensive inquiry precluding dismissal.

Plaintiffs brought various product-liability related claims (including a Chapter 93A claim) against defendants arising out of alleged injuries caused by a medical device. Defendants argued that plaintiffs’ Chapter 93A claims should be dismissed because the complaint failed to allege that any deceptive conduct occurred in Massachusetts. Citing Chapter 93A, Section 11, the Court explained that a plaintiff could not maintain an action under Section 11 unless the alleged unfair actions occurred “primarily and substantially” within Massachusetts. However, the Court noted that a claim could proceed if “the center of gravity of the circumstances that gives rise to the claim is primarily and substantially within” Massachusetts. The Court further noted that whether such conduct meets this situs test is “fact-intensive” (which many courts find precludes dismissal under Rule 12(b)(6)) and a question of law). Here, in addition to having alleged that defendants have a principal place of business in Massachusetts, plaintiffs alleged in the complaint that “the core of Defendants’ deceptive trade practices originated in or were conducted in Massachusetts” and supported that allegation with specific facts. Those facts were sufficient enough to survive defendants’ motion to dismiss.

Dicroce v. McNeil Nutritionals, LLC, 2022 U.S. Dist. LEXIS 204785 (D. Mass. Nov. 10, 2022).

Plaintiff's allegations insufficient to meet "reasonable consumer" standard under Chapter 93A, Section 9.

Plaintiff commenced a putative class action alleging that defendants unlawfully and misleadingly labeled their product, Lactaid, in violation of Chapter 93A and Chapter 266, Section 91. Defendants moved to dismiss plaintiff's amended complaint on the grounds that plaintiff lacked standing and that the amended complaint failed to plead facts in support of each cause of action.

Plaintiff alleged that certain statements on the packaging of Lactaid, which defendants market as a dietary supplement to assist with the digestion of dairy products, lead consumers to believe that the supplement is an effective treatment for lactose intolerance. The amended complaint asserted that this labeling was false and misleading and that the Lactaid products were misbranded. Plaintiff further alleged that she purchased Lactaid products many times over the course of several years based on the alleged misstatements on the product's label. She maintained that had the product been labeled correctly, she either would not have purchased Lactaid or would have done so only for a lower price.

The Court found that "no reasonable consumer" could find the product labels to be deceptive, and plaintiff had not identified any misrepresentation of fact. The labels attached to the amended complaint, the Court found, plainly stated that Lactaid is not a drug and is not intended to treat any disease. Moreover, this disclaimer was conspicuously located on the front and back of the box, and the font was bolded. The Court therefore granted defendants' motion to dismiss the Chapter 93A claim.

WNAC, LLC v. Verizon Corp. Servs. Grp., 2022 U.S. Dist. LEXIS 227569, 2022 WL 17752132 (D. Mass. Dec. 19, 2022).

Chapter 93A claims preempted by Copyright Act because defendant did not allege use of unethical means to access plaintiff's copyrighted work.

Plaintiff, a local television station, brought suit alleging the defendants conspired to wrongfully retransmit the signal from plaintiff's station without plaintiff's consent and without compensating plaintiff, in violation of the Copyright Act and Chapter 93A. Defendants argued the Chapter 93A claim was duplicative of the copyright counts and was therefore preempted by federal copyright law. The court noted that "[c]ourts in this district typically hold unfair competition claims, when based on the same allegations as the copyright claims, to be preempted...but Chapter 93A claims can evade preemption if they allege the use of unethical means to access another's copyrighted work." Here, plaintiff did not allege defendants used any unethical means – allegations defendants concealed their conduct were not sufficient, and plaintiff did not allege defendants broke or hacked into plaintiff's studio. At most, defendants' actions constituted an "illegal download," "which courts have held to be preempted because such claims are not different in nature from copyright claims." In sum, the 93A claim was preempted because plaintiff "failed to allege any facts that suggest [the 93A] claim seeks to protect anything other than what the Copyright Act already protects."

Bearce v. Morton Hosp., No. 22-cv-10708-DJC, 2022 U.S. Dist. LEXIS 228445 (D. Mass. Dec. 22, 2022).

Negligence absent an unfair or deceptive act or practice held not to violate Chapter 93A.

Plaintiff brought suit under Chapter 93A alleging that after he went to the emergency room at defendant's hospital to adjust his medication, he was subsequently held at the hospital against his will and without any explanation. Plaintiff alleged a Chapter 93A violation for the defendant's "false imprisonment" of plaintiff. The Court dismissed the Chapter 93A claim, noting that the conduct necessary to sustain such a claim is more than mere negligence – a Chapter 93A violation can be based in negligence only when the negligence is paired with an unfair or deceptive act or practice. Even reading the complaint in the light most favorable to plaintiff, the Court found it was "unclear" how plaintiff's allegations would give rise to a claim for unfair or deceptive acts under Chapter 93A. Plaintiff also alleged a Chapter 93A violation for defendant's failure to adequately respond to his demand letter, and the Court found that failing to respond to a Chapter 93A demand letter does not in and of itself constitute a plausible claim under Chapter 93A.

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