

## COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 1873CV01157BRISTOL, SS SUPERIOR COURT  
FILED

ANDREW STEINKE

OCT 12 2022

vs.

JENNIFER A. SULLIVAN, ESQ.

CLERK / MAGISTRATE SOUTHCOAST GREENLIGHT ENERGY, INC., & others<sup>1</sup>**DECISION AND ORDER ON  
DEFENDANTS' MOTION FOR RECONSIDERATION**

On July 21, 2022, the court allowed the defendants' motion for summary judgment as to all of the plaintiff's counts except Count VII for a violation of G. L. c. 93A, § 9.<sup>2</sup> The defendants, pursuant to Superior Court Rule 9D, now move for reconsideration of the decision as to Count VII. The court held a hearing on the defendants' motion on October 12, 2022, and took the matter under advisement. The defendant's motion for reconsideration is **ALLOWED**. After reconsideration, the defendants' motion for summary judgment on the Chapter 93A, § 9 count is **ALLOWED**.<sup>3</sup>

A motion for reconsideration is left to the motion judge's discretion. *Audubon Hill S. Condominium Ass'n v. Community Ass'n Underwriters of Am., Inc.*, 82 Mass. App. Ct. 461, 470 (2012). On a motion for reconsideration, the court determines whether the party seeking reconsideration has specified either "changed circumstances," or "a particular and demonstrable error in the original ruling or decision." *Id.* (citations omitted). These criteria apply with "special force" if a party has already received a written, reasoned decision. *Id.*

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<sup>1</sup> Gary T. Cyr, Jonathan L. Cyr, and Peter T. Cyr

<sup>2</sup> References to the decision will take the form of "Decision, at Page Number."

<sup>3</sup> The court incorporates by reference the background from the defendants' original motion. See Decision, at 1-3.

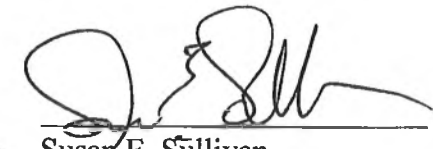
The court originally denied the defendants' motion for summary judgment on the G. L. c. 93A, § 9 count, ruling that the plaintiff could still receive nominal damages if successful at trial. See Decision, at 8-9. In its motion for reconsideration, the defendants argue the court erred in its ruling because the law still requires that the plaintiff prove he sustained an actual loss. For the following reasons, the court agrees.

Chapter 93A, § 2(a), provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” A person injured by another’s unfair or deceptive conduct may receive actual damages or twenty-five dollars. See G. L. c. 93A, §§ 9(1), (3). Types of cognizable injuries include “a readily quantifiable loss of money or property or measurable emotional distress.” See *Tyler v. Michaels Stores, Inc.*, 464 Mass. 492, 504 n.20 (2013). “If any person invades a consumer’s legally protected interests, and if that invasion causes the consumer a loss—whether that loss be economic or noneconomic—the consumer is entitled to redress under [G. L. c. 93A]. A consumer is not, however, entitled to redress under G. L. c. 93A, where no loss has occurred.” *Hershenow v. Enterprise Rent-A-Car Co. of Boston, Inc.*, 445 Mass. 790, 802 (2006). See *Tyler*, 464 Mass. at 503 (“[A] plaintiff bringing an action for damages under c. 93A, § 9, must allege and ultimately prove that [he] has, as a result, suffered a distinct injury or harm that arises from the claimed unfair or deceptive act itself.”).

Here, the summary judgment record fails to show any loss or damage sustained by the plaintiff. As discussed at length in the initial decision, the plaintiff failed to demonstrate how the defendants’ purported misconduct caused him any financial damage. Decision, at 6-9. The question of damages has been a recurring one throughout these proceedings. On April 28, 2021, the defendants moved to compel answers to interrogatories and document requests. As part of

that motion, the defendants specifically sought information and documents concerning the plaintiff's financial damages. On May 3, 2021, the court allowed the defendants' motion as plaintiff failed to oppose the motion. At the initial hearing on the defendant's summary judgment motion, the court explicitly asked plaintiff's counsel where the court could locate the plaintiff's damages in the record. Plaintiff's counsel, however, failed to do so. While the plaintiff would be entitled to at least nominal damages if he sustained an injury from the defendants' purported misconduct under Chapter 93A, § 9, he still needed to demonstrate that he "suffered a distinct injury or harm that [arose] from the claimed unfair or deceptive act[.]" *Tyler*, 464 Mass. at 503. Even at the hearing on the Motion for Reconsideration, the plaintiff did not identify an economic loss. His failure to demonstrate damages in the summary judgment record proves fatal to the Chapter 93A, § 9 count.

After reconsideration, it is hereby **ORDERED** that the defendants' motion for summary judgment as to the G. L. c. 93A, § 9 count (Count VII) is **ALLOWED**. Judgment shall enter in favor of the defendants on this count.

  
Susan E. Sullivan  
Justice of the Superior Court

October 12, 2022